



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Monday, June 23, 2014
2:00 p.m.

City of Brentwood
Brentwood City Hall, Council Chambers
150 City Park Way, Brentwood, 94513

AGENDA

2:00 p.m. Convene meeting

- 1) **Introductions.**
- 2) **Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).**
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 28, 2014.**
- 4) **Consider ACCEPTING the audited financial statements and related documents for the Year Ending December 31, 2013. (John Kopchik)**
- 5) **Consider the following items related to Conservancy finances:**
 - a) **ACCEPT the mid-year status report on finances and the 2014 Conservancy Budget.**
 - b) **AUTHORIZE staff to execute an amendment to the existing contract for golden eagle research with the East Bay Regional Park District (“EBRPD”), to extend the term from December 31, 2013 to December 31, 2015.**
(John Kopchik)

- 6) **TAKE the following actions related to the adoption of a Labor Compliance Program:**
- a) **APPROVE Resolution No. 2014-02 related to adopting a Labor Compliance Program for capital projects funded by Proposition 84.**
 - b) **AUTHORIZE staff to prepare and submit an application for the Labor Compliance Program to the State of California Department of Industrial Relations.**
- (Abigail Fateman)
- 7) **Consider the following actions to implement the Hess Creek Restoration Project (“Project”):**
- a) **CONSIDER and APPROVE “CEQA Addendum, Hess Creek Channel Restoration Project, Greenhouse Gas Emissions” (Addendum), prepared pursuant to CEQA guidelines for Greenhouse Gas Emissions adopted in March 2010, subsequent to adoption of the EIR/EIS for the HCP/NCCP. FIND that impacts of Project are fully disclosed and analyzed in the EIR/EIS for the HCP/NCCP and the Addendum.**
 - b) **AUTHORIZE Conservancy staff to execute an agreement with the East Bay Regional Park District (“District”) for construction of the Project.**
 - c) **AUTHORIZE the payment of up to \$738,119 to the District for construction of the Project.**
 - d) **DIRECT Conservancy staff to file a Notice of Determination with the County Clerk disclosing Board approval of the Project.**
 - e) **DIRECT Conservancy staff to monitor construction of the Project and inspect final improvements to confirm completion of the Project in accordance with the plans and specifications.**
- (Abigail Fateman)
- 8) **Consider the following actions related to extending take coverage to Chevron Pipe Line Company for the Chevron Pipeline KLM 32 PIM Repair Project:**
- a) **AUTHORIZE staff to file a Notice of Determination for this Board action with the County Clerk.**
 - b) **AUTHORIZE Executive Director to execute a First Amendment to the Participating Special Entity Agreement with Chevron Pipe Line Company for the Chevron Pipeline KLM 32 PIM Repair Project as further described in Addendum 1.0 (the Addendum to the Planning Survey Report), provided the Wildlife Agencies concur with the Amendment.**
- (Krystal Hinojosa)

9) Consider the following actions related to extending take coverage to San Pablo Bay Pipeline Company LLC for the Shell Pipeline North 20 ILI Repair Project:

a) AUTHORIZE staff to file a Notice of Exemption with the County Clerk for the project.

b) AUTHORIZE staff to execute a Participating Special Entity Agreement with San Pablo Bay Pipeline Company LLC for the take coverage of the Shell Pipeline North 20 ILI Repair Project.

(Krystal Hinojosa)

Adjourn to Closed Session

CS1) Conference with Legal Counsel – Existing Litigation (Gov. Code, § 54956.9(d)(1))
Discovery Builders, Inc. v. City of Brentwood, California; City Council of the City of Brentwood, et al.; Contra Costa County Superior Court, Case No. N13-1781

CS2) Conference with Real Property Negotiators
Property: APNs 020-171-001 and 020-172-004; 8831 Byron Highway, Knightsen, CA
Agency Negotiators: John Kopchik, Abigail Fateman and Joanne Chiu
Negotiating Parties: Conservancy, East Bay Regional Park District and Ronald Nunn Family LP
Under negotiation: Price and payment terms

Reconvene Open Session

10) Report on any actions taken in Closed Session.

11) Adjourn. Next Governing Board meeting on August 25, 2014.

If you have questions about this agenda or desire additional meeting materials, you may contact Maureen Parkes of the Contra Costa County Department of Conservation and Development at 925-674-7203.

The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for April 28, 2014

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 28, 2014.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: <u>Yes</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>June 23, 2014</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<input type="checkbox"/> UNANIMOUS	
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
	ATTESTED
	<u>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u>
	BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Monday, April 28, 2014
City of Clayton

The Board convened the meeting at 2:00 p.m.

1) Introductions.

Governing Board members in attendance were:

Joel Bryant	City Council, City of Brentwood
Hank Stratford	City Council, City of Clayton
Randy Pope	City Council, City of Oakley (Conservancy Vice Chair)
Salvatore Evola	City Council, City of Pittsburg

Other attendees (who signed the sign-in sheet):

Mike Vukelich	Contra Costa County Farm Bureau
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Conservancy Staff and consultants in attendance were:

John Kopchik	Conservancy Staff
Abigail Fateman	Conservancy Staff
Joanne Chiu	Conservancy Staff
Chris Beale	Conservancy Legal Counsel

- 2) **Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).** Mike Vukelich commented on items to be discussed in closed session and stated he hoped the lawsuit does not progress to court.
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of February 20, 2014.** The meeting record was approved. (4-0, Bryant, Evola, Pope and Stratford)
- 4) **Consider APPROVING Resolution No: 2014-01 related to Conservancy grant applications which AUTHORIZE Conservancy staff to:**
 - i. **Submit grant applications to the California Department of Fish and Wildlife (CDFW) for the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (total amount: \$60,157); and**
 - ii. **Enter into a grant agreement to accept grant funds if approved by CDFW.**Ms. Fateman provided an overview of the staff report. The item was approved as recommended. (4-0, Bryant, Evola, Pope and Stratford)
- 5) **Consider the following actions related to legislative matters:**
 - i. **ACCEPT update on activities to implement the 2014 Legislative Platform.**
 - ii. **ADVOCATE for HCP/NNCPs to be specifically recognized in a potential future California park bond and allocated significant funding equal to or greater than earlier measures such as Proposition 84 (\$90 million), if such park bond is proposed and approved by the voters.**

Mr. Kopchik provide an update on activities related to the 2014 Legislative

Platform and summarized the proposed park bond. Mr. Kopchik informed the Board of the upcoming visit to East Contra Costa County by the Secretary of the Interior, Sally Jewell. Mr. Evola recommended having representatives from the development community attend the community meeting portion of her visit. Approved as recommended. (4-0, Bryant, Evola, Pope and Stratford)

- 6) **Consider AMENDING the authorization approved on December 9, 2013 related to the acquisition of the Smith Property (APN 078-050-003, -004, -006 and 078-100-002, -003, -007; 6401 Briones Valley Road, Brentwood, CA 94513) to increase the amount of federal grant funds and decrease the amount funded with state grant funds.** Ms. Chiu provided an overview of the staff report. The item was approved as recommended. (4-0, Bryant, Evola, Pope and Stratford)

- 7) **Consider REVIEWING and APPROVING the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2013 Annual Report and the East Contra Costa County Habitat Conservancy Year in Review summary document.** Mr. Kopchik provided an overview of the Annual Report and the Year in Review. The item was approved as recommended. (4-0, Bryant, Evola, Pope and Stratford)

- 8) **Consider ACCEPTING report produced by the California Habitat Conservation Planning Coalition regarding the Economic Effects of Regional Habitat Conservation Plans.** Mr. Kopchik provided an overview of the new Report prepared for the Coalition. Mr. Pope asked about distributing the Report and staff indicated an ability to distribute it as needed. Mr. Pope commented that it may be useful as Antioch considers its developing its own plan. (4-0, Bryant, Evola, Pope and Stratford)

The Board announced adjournment to Closed Session.

- 9) **Report on any actions taken in Closed Session.** There were no actions to report.

 - 10) **Adjourned to the next regular Governing Board meeting on June 23, 2014.**
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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Audited Financial Statements for 2013

RECOMMENDATION

ACCEPT the audited financial statements and related documents for the Year Ending December 31, 2013.

BACKGROUND

The joint exercise of powers agreement (JEPA) forming the Conservancy requires periodic audits of Conservancy finances and financial safeguards. State and federal law also require the Conservancy to perform certain types of audits. Maze and Associates, Certified Public Accountants, has completed the required independent audits and examinations for 2013.

The three reports prepared by Maze and Associates are listed below and are attached. The reports do not include any new findings. Tim Krisch from Maze and Associates will be in attendance at the Governing Board meeting and will be available to answer questions.

Attachments:

- Basic Financial Statements (for the year ending December 31, 2013)
- Memorandum on Internal Controls and Required Communications (Year ending December 31, 2013)
- Single Audit Report (Year ending December 31, 2013)

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>June 23, 2014</u> APPROVED AS RECOMMENDED: _____	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
___ AYES: _____	
___ NOES: _____	
___ ABSENT: _____	
___ ABSTAIN: _____	

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

BASIC FINANCIAL STATEMENTS

**FOR THE YEARS ENDED
DECEMBER 31, 2013 AND 2012**

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**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 BASIC FINANCIAL STATEMENTS
 FOR THE YEARS ENDED DECEMBER 31, 2013 AND 2012**

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INDEPENDENT AUDITOR'S REPORT

The Governing Board
East Contra Costa County Habitat Conservancy
Martinez, California

Report on Financial Statements

We have audited the accompanying financial statements of the governmental activities and the major fund of the East Contra Costa County Habitat Conservancy (Conservancy) as of and for the years ended December 31, 2013 and 2012 and the related notes to the financial statements, which collectively comprise the Conservancy's basic financial statements as listed in the Table of Contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Conservancy's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Conservancy's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the Conservancy as of December 31, 2013 and 2012, and the respective changes in the financial position, thereof, and the budgetary comparison listed as part of the basic financial statements for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Emphasis of Matters

Management adopted the provisions of the Governmental Accounting Standards Board Statements No. 65 – *Items Previously Reported as Assets and Liabilities* and Statement No. 66 – *Technical Corrections—2012—an amendment of GASB Statements No. 10 and No. 62*, which became effective during the year ended December 31, 2013, but did not have a material effect on the financials..

The emphasis of these matters does not constitute a modification to our opinions.

Other Matters

The Conservancy has not presented the Management’s Discussion and Analysis that the Governmental Accounting Standards Board has determined is necessary to supplement, although not required to be part of, the basic financial statements. Our opinion on the basic financial statements is not affected by this missing information.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated May 23, 2014, on our consideration of the Conservancy’s internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Conservancy’s internal control over financial reporting and compliance.

Maze + Associates

Pleasant Hill, California
May 23, 2014

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**STATEMENT OF NET POSITION
AND STATEMENT OF ACTIVITIES**

The purpose of the Statement of Net Position and the Statement of Activities is to summarize the entire Conservancy's financial activities and financial position. They are prepared on the same basis as is used by most businesses, which means they include all the Conservancy's assets and deferred outflows of resources and all its liabilities and deferred inflows of resources, as well as all its revenues and expenses. This is known as the full accrual basis—the effect of all the Conservancy's transactions is taken into account, regardless of whether or when cash changes hands. This differs from the “modified accrual” basis used in the Fund financial statements, which reflect only current assets, current deferred outflows of resources, current liabilities, current deferred inflows of resources, available revenues and measurable expenditures.

The Statement of Net Position summarizes the financial position of all the Conservancy's financial position in a single column.

The Statement of Activities reports increases and decreases in the Conservancy's net position. The Statement of Activities presents the Conservancy's expenses first, listed by program. Program revenues—that is, revenues which are generated directly by these programs—are then deducted from program expenses to arrive at the net expense of the program. The Conservancy's general revenues are then listed, and the Change in Net Position is computed and reconciled with the Statement of Net Position.

These financial statements along with the fund financial statements and footnotes are called *Basic Financial Statements*.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
STATEMENT OF NET POSITION
DECEMBER 31, 2013 AND 2012

	2013	2012
ASSETS		
Cash and investments (Note 3)	\$1,401,688	\$1,875,591
Accounts receivable	1,954,946	333,980
Total Assets	3,356,634	2,209,571
LIABILITIES		
Accounts payable	183,776	143,359
Total Liabilities	183,776	143,359
NET POSITION (Note 4)		
Unrestricted	3,172,858	2,066,212
Total Net Position	\$3,172,858	\$2,066,212

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
STATEMENT OF ACTIVITIES
FOR THE YEARS ENDED DECEMBER 31, 2013 AND 2012

	<u>2013</u>	<u>2012</u>
Program Expenses:		
Habitat Conservation Plan Development Fee Account:		
Program administration	\$638,835	\$587,760
Land acquisition	96,458	60,858
Management, restoration, recreation planning and design	49,758	124,366
Environmental compliance	47,722	75,989
Monitoring, research and adaptive management	59,170	53,918
Habitat conservation plan/natural community conservation plan preserve management and maintenance	22,185	17,918
Habitat Conservation Wetland Fee Account:		
Management, restoration, recreation planning and design	267,018	160,145
Habitat restoration and creation	4,727	98,599
Environmental compliance	1,131	1,406
Monitoring, research and adaptive management	87,713	95,796
Habitat Conservation Plan Contributions to Recovery Account:		
Program administration	66,321	
Land acquisition	1,300,900	5,849,010
Monitoring, research and adaptive management	51,228	
	<u>2,693,166</u>	<u>7,125,765</u>
Program Revenues:		
Charges for services (including mitigation fees and other revenues)	2,233,475	1,710,806
Capital grants for land acquisition	1,300,900	5,960,068
Operating grants	265,437	216,500
	<u>3,799,812</u>	<u>7,887,374</u>
Total Program Revenues		
Net Program Income	<u>1,106,646</u>	<u>761,609</u>
Change in Net Position	1,106,646	761,609
Net Position - Beginning	<u>2,066,212</u>	<u>1,304,603</u>
Net Position - Ending	<u>\$3,172,858</u>	<u>\$2,066,212</u>

See accompanying notes to financial statements.

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FUND FINANCIAL STATEMENTS

Major funds are defined generally as having significant activities or balances in the current year.

The Conservancy's **General Fund** is its only fund and is therefore a major fund. It is used to account for all financial resources. General operating expenditures, fixed charges and capital costs are paid from this fund.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
GOVERNMENTAL FUNDS - GENERAL FUND
BALANCE SHEET
DECEMBER 31, 2013 AND 2012

	<u>2013</u>	<u>2012</u>
ASSETS		
Cash (Note 3)	\$1,288,227	\$1,762,443
Investments (Note 3)	113,461	113,148
Accounts receivable	<u>1,954,946</u>	<u>333,980</u>
Total Assets	<u>\$3,356,634</u>	<u>\$2,209,571</u>
LIABILITIES		
Accounts payable	<u>\$183,776</u>	<u>\$143,359</u>
DEFERRED INFLOWS OF RESOURCES		
Unavailable revenue - grants (Note 2D)	<u>63,881</u>	<u>331,392</u>
Total Liabilities and Deferred Inflows of Resources	<u>247,657</u>	<u>474,751</u>
FUND BALANCE		
Fund balances (Note 4):		
Unassigned	<u>3,108,977</u>	<u>1,734,820</u>
Total Fund Balance	<u>3,108,977</u>	<u>1,734,820</u>
Total Liabilities, Deferred Inflows of Resources and Fund Balance	<u>\$3,356,634</u>	<u>\$2,209,571</u>

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 Reconciliation of the
 GOVERNMENTAL FUND - BALANCE SHEET
 with the
 STATEMENT OF NET POSITION
 DECEMBER 31, 2013

Total fund balances reported on the governmental funds balance sheet	\$3,108,977
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Amounts reported for Governmental Activities in the Statement of Net Position are different from those reported in the Governmental Fund above because of the following:

ACCRUAL OF NON-CURRENT REVENUES AND EXPENSES

Revenues which are unavailable on the Fund Balance Sheets because they are not available currently are taken into revenue in the Statement of Activities.

	63,881
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NET POSITION OF GOVERNMENTAL ACTIVITIES

	\$3,172,858
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See accompanying notes to financial statements

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 GOVERNMENTAL FUNDS - GENERAL FUND
 STATEMENT OF REVENUES, EXPENDITURES
 AND CHANGES IN FUND BALANCE
 FOR THE YEARS ENDED DECEMBER 31, 2013 AND 2012

	<u>2013</u>	<u>2012</u>
REVENUES		
Habitat Conservation Development Fee Account	\$2,077,166	\$1,079,596
Habitat Conservation Wetland Fee Account	246,209	398,880
Habitat Conservation Contributions to Recovery Account	1,743,948	6,267,840
Habitat Conservation Giant Garter Snake/Swainson's Hawk Compensation Account		<u>30,000</u>
Total Revenues	<u>4,067,323</u>	<u>7,776,316</u>
EXPENDITURES		
Habitat Conservation Plan Development Fee Account:		
Program administration	638,835	587,760
Environmental compliance	47,722	75,989
Land acquisition	96,458	60,858
Management, restoration, recreation planning and design	49,758	124,366
Monitoring, research and adaptive management	59,170	53,918
Habitat conservation plan/natural community conservation plan preserve management and maintenance	22,185	17,918
Habitat Conservation Wetland Fee Account:		
Environmental compliance	1,131	1,406
Management, restoration, recreation planning and design	267,018	160,145
Habitat restoration and creation	4,727	98,599
Monitoring, research and adaptive management	87,713	95,796
Habitat Conservation Plan Contributions to Recovery Account:		
Program administration	66,321	
Land acquisition	1,300,900	5,849,010
Monitoring, research and adaptive management	<u>51,228</u>	
Total Expenditures	<u>2,693,166</u>	<u>7,125,765</u>
NET CHANGE IN FUND BALANCE	1,374,157	650,551
FUND BALANCE, BEGINNING OF YEAR	<u>1,734,820</u>	<u>1,084,269</u>
FUND BALANCE, END OF YEAR	<u>\$3,108,977</u>	<u>\$1,734,820</u>

See accompanying notes to financial statements.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 Reconciliation of the
 NET CHANGE IN FUND BALANCE - TOTAL GOVERNMENTAL FUND
 with the
 STATEMENT OF ACTIVITIES
 FOR THE YEAR ENDED DECEMBER 31, 2013

The schedule below reconciles the Net Changes in Fund Balances reported on the Governmental Funds Statement of Revenues, Expenditures and Changes in Fund Balance, which measures only changes in current assets and current liabilities on the modified accrual basis, with the Change in Net Assets of Governmental Activities reported in the Statement of Activities, which is prepared on the full accrual basis.

NET CHANGE IN FUND BALANCE - TOTAL GOVERNMENTAL FUND	\$1,374,157
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Amounts reported for governmental activities in the Statement of Activities are different because of the following:

ACCRUAL OF NON-CURRENT ITEMS

The amount below included in the Statement of Activities do not provide or (require) the use of current financial resources and therefore are not reported as revenue or expenditures in governmental funds (net change):

Unavailable revenues	<u>(267,511)</u>
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CHANGE IN NET ASSETS OF GOVERNMENTAL ACTIVITIES	<u><u>\$1,106,646</u></u>
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See accompanying notes to financial statements

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED DECEMBER 31, 2013

	<u>Budgeted Amounts</u>		Actual Amounts	Variance with Final Budget
	<u>Original</u>	<u>Final</u>		Positive (Negative)
EXPENDITURES				
Program administration	\$609,840	\$609,840	\$705,156	(\$95,316)
Land acquisition	14,029,084	14,029,084	1,397,358	12,631,726
Management, restoration, recreation planning and design	310,136	310,136	316,776	(6,640)
Habitat restoration and creation	256,609	256,609	4,727	251,882
Environmental compliance	171,086	171,086	48,853	122,233
Habitat conservation plan/natural community conservation plan preserve management and maintenance	219,318	219,318	22,185	197,133
Monitoring, research and adaptive management	259,756	259,756	198,111	61,645
Remedial measures	6,000	6,000		6,000
Contingency fund	91,337	91,337		91,337
	<u>15,953,166</u>	<u>15,953,166</u>	<u>2,693,166</u>	<u>13,260,000</u>
NET CHANGE IN FUND BALANCE - NON GAAP BUDGET BASIS	<u>(\$15,953,166)</u>	<u>(\$15,953,166)</u>	2,693,166	<u>\$18,646,332</u>
NON BUDGETED ITEMS				
ADD RECONCILING ITEMS:				
REVENUES				
Habitat Conservation Development Fee Account			2,077,166	\$2,077,166
Habitat Conservation Wetland Fee Account			246,209	246,209
Habitat Conservation Contributions to Recovery Account			1,743,948	1,743,948
			<u>4,067,323</u>	<u>4,067,323</u>
NET CHANGE IN FUND BALANCE - GAAP BUDGET BASIS			1,374,157	
FUND BALANCE, BEGINNING OF YEAR			<u>1,734,820</u>	
FUND BALANCE, END OF YEAR			<u>\$3,108,977</u>	

See accompanying notes to financial statements.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
NOTES TO BASIC FINANCIAL STATEMENTS
For the Years Ended December 31, 2013 and 2012**

NOTE 1 - GENERAL

A. *Joint Exercise of Powers Agreement*

On April 16, 2007, the County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley and City of Brentwood, collectively referred to as the "Parties," entered into a Joint Exercise of Powers Agreement ("Agreement").

The Parties intend to implement the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan ("Conservation Plan"). The Parties expect the Conservation Plan to provide an effective framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for impacts on rare and sensitive species and their habitat. The Parties expect that the Conservation Plan will also enable them to achieve certain land use planning goals and to provide comprehensive species, wetlands, and ecosystem conservation and to contribute to the recovery of endangered species in Northern California. The Parties have a common interest in creating an entity capable of implementing the Conservation Plan in accordance with the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("Implementing Agreement"). The Conservation Plan and Implementing Agreement identify certain duties and obligations that must be fulfilled by an implementing Entity in order to support the issuance of permits to the Parties under the Federal Endangered Species Act and the California Natural Community Conservation Planning Act that cover urban development and other development projects in eastern Contra Costa County.

B. *Reporting Entity*

The Conservancy's operations are financed by federal, state and private grants, development fees, wetland fees and fees for service. The Conservancy is the only entity included in these financial statements.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of the Conservancy conform with generally accepted accounting principles as applicable to governments. The following is a summary of the significant policies:

A. *Basis of Presentation*

The Conservancy's Basic Financial Statements are prepared in conformity with accounting principles generally accepted in the United States of America. The Governmental Accounting Standards Board is the acknowledged standard setting body for establishing accounting and financial reporting standards followed by governmental entities in the United States of America.

These Standards require that the financial statements described below be presented.

Government-wide Statements: The Statement of Net Position and the Statement of Activities include the financial activities of the overall Conservancy. Governmental activities generally are financed through taxes, intergovernmental revenues, and other nonexchange transactions.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
NOTES TO BASIC FINANCIAL STATEMENTS
For the Years Ended December 31, 2013 and 2012**

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

The Statement of Activities presents a comparison between direct expenses and program revenues for each function of the Conservancy's governmental activities. Direct expenses are those that are specifically associated with a program or function and, therefore, are clearly identifiable to a particular function. Program revenues include (a) charges paid by the recipients of goods or services offered by the programs, (b) grants and *contributions* that are restricted to meeting the operational needs of a particular program and (c) fees, grants and contributions that are restricted to financing the acquisition or construction of capital assets.

Fund Financial Statements: The fund financial statements provide information about the Conservancy's General Fund. The emphasis of fund financial statements is on the major individual governmental fund displayed in a column.

B. Major Fund

The Conservancy's **General Fund** is its only fund. It is used to account for all financial resources. General operating expenditures, fixed charges and capital costs are paid from this fund. Pursuant to Government Code Section 6600, the Conservancy segregates development fee revenue from wetland fee revenue.

C. Basis of Accounting

The government-wide financial statements are reported using the *economic resources measurement focus* and the *full accrual basis* of accounting. Revenues are recorded when *earned* and expenses are recorded at the time liabilities are *incurred*, regardless of when the related cash flows take place.

Basis of accounting refers to *when* revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements, regardless of the measurement focus applied. All governmental funds are accounted for using the modified accrual basis of accounting. Thus, fund revenues are recognized when they become measurable *and* available as net current assets. Measurable means the amount of the transaction can be determined and available means the amount is collectible within the current period or soon enough thereafter (generally sixty days) to be used to pay liabilities of the current period. Amounts which could not be measured or were not available were not accrued as revenue in the current fiscal year.

Those revenues susceptible to accrual are interest revenue, grants and charges for services.

Non-exchange transactions, in which the Conservancy gives or receives value without directly receiving or giving equal value in exchange, include grants, entitlements, and donations. Revenue from grants, entitlements, and donations is recognized in the fiscal year in which all eligibility requirements have been satisfied.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
NOTES TO BASIC FINANCIAL STATEMENTS
For the Years Ended December 31, 2013 and 2012

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

D. Deferred Outflows/Inflows of Resources

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time. The Conservancy has only one type of item, which arises only under a modified accrual basis of accounting that qualifies for reporting in this category. Accordingly, the item is unavailable revenues from grantors. These amounts are deferred and recognized as an inflow of resources in the period that the amounts become available.

E. Budgets and Budgetary Accounting

The Conservancy follows these procedures in establishing the budgetary data reflected in the financial statements:

1. Prior to the end of the fiscal year, a proposed operating budget is submitted to the Governing Board for the fiscal year commencing the following January 1. The operating budget includes proposed expenditures. Revenues are not budgeted and are presented as a reconciling item on the budget and actual statement. The budget is legally enacted through passage of a vote of the Governing Board. The legal level of budgetary control has been established at the program level.
2. Formal budgetary integration is employed as a management control device during the year. Budgets are adopted on a basis consistent with generally accepted accounting principles. The Governing Board has sole transfer authority over budgetary items.
3. Minor exceedances of program budget levels may be covered by the Contingency fund budget. In fiscal year 2013, the Contingency fund budget covered all but about \$10,000 of the program exceedances.

F. Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
 NOTES TO BASIC FINANCIAL STATEMENTS
 For the Years Ended December 31, 2013 and 2012**

NOTE 3 - CASH AND INVESTMENTS

A. Policies

California Law requires banks and savings and loan institutions to pledge government securities with a market value of 110% of the Conservancy's cash on deposit or first trust deed mortgage notes with a value of 150% of the Conservancy's cash on deposit as collateral for these deposits. Under California Law this collateral is held in a separate investment pool by another institution in the Conservancy's name and places the Conservancy ahead of general creditors of the institution. The Conservancy has waived collateral requirements for the portion of deposits covered by federal deposit insurance.

B. Classification

The Conservancy's cash and investments is controlled and invested by Contra Costa County's Treasury office. Investments are stated at fair value as required by generally accepted accounting principles. Pooled investment earnings are allocated by the Treasurer to each fund based on the cash and investment balances in these funds at the end of each quarter.

The Conservancy is a participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code Section 16429 under the oversight of the Treasurer of the State of California. The Conservancy reports its investment in LAIF at the fair value amount provided by LAIF, which is the same as the value of the pool share. The balance is available for withdrawal on demand, and is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis. Included in LAIF's investment portfolio are collateralized mortgage obligations, mortgage-backed securities, other asset-backed securities, loans to certain state funds, and floating rate securities issued by federal agencies, government-sponsored enterprises, United States Treasury Notes and Bills, and corporations. At December 31, 2013, these investments matured in an average of 209 days.

Cash and investments as December 31 were classified in the accompanying financial statements as follows:

	2013	2012
Cash deposits with the County	\$1,288,227	\$1,762,443
Local Agency Investment Fund	113,461	113,148
Total cash and investments	\$1,401,688	\$1,875,591

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
NOTES TO BASIC FINANCIAL STATEMENTS
For the Years Ended December 31, 2013 and 2012**

NOTE 4 – NET POSITION AND FUND BALANCE

A. Net Position

Net Position is the excess of all the Conservancy's assets over all its liabilities.

The *Unrestricted* is the portion of Net Position which is not restricted to use.

B. Fund Balance

Governmental fund balances represent the net current assets of each fund. Net current assets generally represent a fund's cash, receivables and deferred outflows of resources, less its liabilities and deferred inflows of resources.

The Conservancy's fund balances are classified based on spending constraints imposed on the use of resources. For programs with multiple funding sources, the Conservancy prioritizes and expends funds in the following order: Restricted, Committed, Assigned, and Unassigned. Each category in the following hierarchy is ranked according to the spending constraint:

Nonspendable represents balances set aside to indicate items do not represent available, spendable resources even though they are a component of assets. Assets not expected to be converted to cash, such as prepaids or loans receivable, are included. However, if proceeds realized from the sale or collection of nonspendable assets are restricted, committed or assigned, then nonspendable amounts are required to be presented as a component of the applicable category.

Restricted fund balances have external restrictions imposed by creditors, grantors, contributors, laws, regulations, or enabling legislation which requires the resources to be used only for a specific purpose.

Committed fund balances have constraints imposed by formal action of the Governing Board which may be altered only by formal action of the Governing Board.

Assigned fund balances are amounts constrained by the Conservancy's intent to be used for specific purpose, but are neither restricted nor committed. Intent is expressed by the Governing Board or its designee and may be changed at the discretion of the Governing Board or its designee. This category includes: nonspendables, when it is the conservancy's intent to use proceeds or collections for a specific purpose.

Unassigned fund balance represents residual amounts that have not been restricted, committed, or assigned.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
NOTES TO BASIC FINANCIAL STATEMENTS
For the Years Ended December 31, 2013 and 2012**

NOTE 5 – COST SHARING AGREEMENTS

The Conservancy periodically participates in cost sharing agreements with the East Bay Regional Park District (the District). Under these agreements, the Conservancy and the District each share out-of-pocket pre-acquisition and due diligence costs and expenses incurred in connection with joint land acquisition projects. Furthermore, the Conservancy and the District share out-of-pocket planning costs and expenses incurred in connection with joint restoration planning projects. For the year ended December 31, 2013, the Conservancy did not participate in any cost sharing agreements with the District.

All land acquisitions through the financial statements date were completed in partnership with the District. The District holds title to all parcels acquired and is responsible for managing all lands.

NOTE 6 – CONTINGENT GRANT LIABILITY

The Conservancy's federal and State grant programs have been audited by its auditors in accordance with the provisions of the federal Single Audit Act as amended and applicable State requirements. No cost disallowances were proposed as a result of these audits; however, the programs are still subject to further audit by the grantors. If further audits are performed, the Conservancy expects any disallowances that might result to be immaterial.

**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS
FOR THE YEAR ENDED DECEMBER 31, 2013**

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**EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
MEMORANDUM ON INTERNAL CONTROL
AND
REQUIRED COMMUNICATIONS**

For The Year Ended December 31, 2013

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MEMORANDUM ON INTERNAL CONTROL

To the Governing Board of
the East Contra Costa County Habitat Conservancy, California

We have audited the basic financial statements of the East Contra Costa County Habitat Conservancy for the year ended December 31, 2013, and have issued our report thereon dated May 23, 2014. In planning and performing our audit of the basic financial statements of the East Contra Costa County Habitat Conservancy, in accordance with auditing standards generally accepted in the United States of America, we considered the Conservancy's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Conservancy's internal control. Accordingly, we do not express an opinion on the effectiveness of the Conservancy's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Conservancy's financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all such deficiencies have been identified. In addition, because of inherent limitations in internal control, including the possibility of management override of controls, misstatements due to error or fraud may occur and not be detected by such controls. We did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, Governing Board, others within the organization, and agencies and pass-through entities requiring compliance with generally accepted government auditing standards, and is not intended to be and should not be used by anyone other than these specified parties.

Maze + Associates

Pleasant Hill, California
May 23, 2014

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REQUIRED COMMUNICATIONS

May 23, 2014

To the Governing Board of
the East Contra Costa County Habitat Conservancy, California

We have audited the basic financial statements of the East Contra Costa County Habitat Conservancy for the year ended December 31, 2013. Professional standards require that we communicate to you the following information related to our audit under generally accepted auditing standards and, *Government Auditing Standards* and OMB Circular A-133.

Significant Audit Findings

Accounting Policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by East Contra Costa County Habitat Conservancy are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year.

The following pronouncements became effective, but did not have a material effect on the financial statements:

GASB 65 - *Items Previously Reported as Assets and Liabilities*

GASB issued Statement No. 65 *Items Previously Reported as Assets and Liabilities*, which establishes accounting and financial reporting standards that reclassify, as deferred outflows of resources or deferred inflows of resources, certain items that were previously reported as assets and liabilities and recognizes, as outflows of resources or inflows of resources, certain items that were previously reported as assets and liabilities. This Statement also provides other financial reporting guidance related to the impact of the financial statement elements deferred outflows of resources and deferred inflows of resources, such as changes in the determination of the major fund calculations and limiting the use of the term *deferred* in financial statement presentations. This Statement is effective for fiscal periods beginning after December 15, 2012.

GASB 66 - *Technical Corrections—2012—an amendment of GASB Statements No. 10 and No. 62*

The objective of this Statement is to improve accounting and financial reporting for a governmental financial reporting entity by resolving conflicting guidance that resulted from the issuance of two pronouncements, Statements No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, and No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*.

This Statement removes the GASB Statement No. 10 provision that limits fund-based reporting of an entity's risk financing activities to the general fund and the internal service fund type.

This Statement also amends Statement 62 by modifying the specific guidance on accounting for (1) operating lease payments that vary from a straight-line basis, (2) the difference between the initial investment (purchase price) and the principal amount of a purchased loan or group of loans, and (3) servicing fees related to mortgage loans that are sold when the stated service fee rate differs significantly from a current (normal) servicing fee rate. These changes clarify how to apply Statement No. 13, *Accounting for Operating Leases with Scheduled Rent Increases*, and result in guidance that is consistent with the requirements in Statement No. 48, *Sales and Pledges of Receivables and Future Revenues and Intra-Entity Transfers of Assets and Future Revenues*, respectively.

Unusual Transactions, Controversial or Emerging Areas

We noted no transactions entered into by the Conservancy during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate(s) affecting the Conservancy's financial statements are market to market values of investments.

- *Estimated Fair Value of Investments* (Note 3 to the financial statements) – As of December 31, 2013, the Conservancy held approximately \$1.3 million of cash and investments as measured by fair value. Fair value is essentially market pricing in effect as of December 31, 2013. These fair values are not required to be adjusted for changes in general market conditions occurring subsequent to December 31, 2013.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. We did not propose any audit adjustments that, in our judgment, could have a significant effect, either individually or in the aggregate, on the entity's financial reporting process.

Professional standards require us to accumulate all known and likely uncorrected misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. We have no such misstatements to report to the Board.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in a management representation letter dated May 23, 2014.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Conservancy's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the governmental unit's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Governing Board and management and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Maye + Associates

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EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
SINGLE AUDIT REPORT
FOR THE YEAR ENDED DECEMBER 31, 2013

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EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

**SINGLE AUDIT REPORT
For The Year Ended December 31, 2013**

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EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

SCHEDULE OF FINDINGS AND QUESTIONED COSTS
For The Year Ended December 31, 2013

SECTION I—SUMMARY OF AUDITOR’S RESULTS

Financial Statements

Type of auditor’s report issued: Unmodified

Internal control over financial reporting:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Noncompliance material to financial statements noted? Yes X No

Federal Awards

Type of auditor’s report issued on compliance for major programs: Unmodified

Internal control over major programs:

- Material weakness(es) identified? Yes X No
- Significant deficiency(ies) identified? Yes X None Reported

Any audit findings disclosed that are required to be reported in accordance with section 510(a) of OMB Circular A-133? Yes X No

Identification of major programs:

<u>CFDA#(s)</u>	<u>Name of Federal Program or Cluster</u>
<u>15.615</u>	<u>Cooperative Endangered Species Conservation Fund</u>

Dollar threshold used to distinguish between type A and type B programs: \$300,000

Auditee qualified as low-risk auditee? X Yes No

SECTION II – FINANCIAL STATEMENT FINDINGS

Our audit did not disclose any significant deficiencies, or material weaknesses or instances of noncompliance material to the basic financial statements. We have also issued a separate Memorandum on Internal Control dated May 23, 2014 which is an integral part of our audits and should be read in conjunction with this report.

SECTION III – FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

Our audit did not disclose any findings or questioned costs required to be reported in accordance with section 510(a) of OMB Circular A-133.

**SECTION IV - STATUS OF PRIOR YEAR FINDINGS AND QUESTIONED COSTS –
Prepared by Management**

Financial Statement Prior Year Findings

There were no prior year Financial Statement Findings reported.

Federal Award Prior Year Findings and Questioned Costs

There were no prior year Federal Award Findings and Questioned Costs reported.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For the Fiscal Year Ended December 31, 2013**

<u>Federal Grantor/ Pass-Through Grantor/Program or Cluster Title</u>	<u>Federal CFDA Number</u>	<u>Pass-Through Identifying Number</u>	<u>Federal Expenditures</u>
Department of Interior Pass-Through Programs From:			
Department of Fish and Game, State of California			
Cooperative and Endangered Species Conservation Fund			
Subgrant - Alaimo Property	15.615	SG-1214BG	\$166,500
Subgrant - Adrienne Galvin Property	15.615	SG-1215BG	<u>1,134,400</u>
Total Expenditures of Federal Awards			<u><u>\$1,300,900</u></u>

See Accompanying Notes to Schedule of Expenditures of Federal Awards

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

**NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For The Year Ended December 31, 2013**

NOTE 1-REPORTING ENTITY

The Schedule of Expenditure of Federal Awards (the Schedule) includes expenditures of federal awards for the East Contra Costa County Habitat Conservancy, California as disclosed in the notes to the Basic Financial Statements.

NOTE 2-BASIS OF ACCOUNTING

Basis of accounting refers to *when* revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements, regardless of the measurement focus applied. All governmental funds and agency funds are accounted for using the modified accrual basis of accounting. Expenditures of Federal Awards reported on the Schedule are recognized when incurred.

NOTE 3-DIRECT AND INDIRECT (PASS-THROUGH) FEDERAL AWARDS

Federal awards may be granted directly to the Conservancy by a federal granting agency or may be granted to other government agencies which pass-through federal awards to the Conservancy. The Schedule includes both of these types of Federal award programs when they occur.

NOTE 4-SUBRECIPIENTS

Of the federal expenditures presented in the Schedule, the Conservancy provided federal awards to subrecipients as follows:

<u>CFDA Number</u>	<u>Program Name</u>	<u>Amount Provided to Subrecipients</u>
15.615	Cooperate and Endangered Species Conservation Fund	\$1,300,900



**INDEPENDENT AUDITOR'S REPORT ON
INTERNAL CONTROL OVER FINANCIAL REPORTING
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH *GOVERNMENT AUDITING STANDARDS***

To the Honorable Members of the Governing Board
East Contra Costa County Habitat Conservancy, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the basic financial statements of the East Contra Costa County Habitat Conservancy (Conservancy), as of and for the year ended December 31, 2013, and the related notes to the financial statements, and have issued our report thereon dated May 23, 2014. Our report included an emphasis of a matter paragraph disclosing the implementation of new accounting principles.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered Conservancy's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Conservancy's internal control. Accordingly, we do not express an opinion on the effectiveness of Conservancy's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Conservancy's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Conservancy's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We have also issued a separate Memorandum on Internal Control dated May 23, 2014 which is an integral part of our audits and should be read in conjunction with this report.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Conservancy's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Conservancy's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Pleasant Hill, California
May 23, 2014



INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR FEDERAL PROGRAM; REPORT ON INTERNAL CONTROL OVER COMPLIANCE; AND REPORT ON THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS REQUIRED BY OMB CIRCULAR A-133

To the Honorable Members of the Governing Board
East Contra Costa County Habitat Conservancy, California

Report on Compliance for Each Major Federal Program

We have audited East Contra Costa County Habitat Conservancy's compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on each of the Conservancy's major federal programs for the year ended December 31, 2013. The Conservancy's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of the Conservancy's major federal programs based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about the Conservancy's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program. However, our audit does not provide a legal determination of the Conservancy's compliance.

Opinion on Each Major Federal Program

In our opinion, the Conservancy complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2013.

Report on Internal Control Over Compliance

Management is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Conservancy's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for each major federal program and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Conservancy's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this report is not suitable for any other purpose.

Report on Schedule of Expenditures of Federal Awards Required by OMB Circular A-133

We have audited the basic financial statements of the Conservancy as of and for the year ended December 31, 2013, and have issued our report thereon dated May 23, 2014, which contained an unmodified opinion on those financial statements. Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the schedule of expenditures of federal awards is fairly stated in all material respects in relation to the financial statements as a whole.



Pleasant Hill, California
May 23, 2014

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Mid-year 2014 Budget Update and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) ACCEPT the mid-year status report on finances and the 2014 Conservancy Budget.
- b) AUTHORIZE staff to execute an amendment to the existing contract for golden eagle research with the East Bay Regional Park District (“EBRPD”), to extend the term from December 31, 2013 to December 31, 2015.

DISCUSSION

Item (a): Attached please find a table entitled, “Mid Year Budget Status: Conservancy's 2014 Budget” which provides a status report on Conservancy expenditures so far in 2014. Information on revenue to date is also provided. As of June 5, the Conservancy is estimated to have spent \$399,386 and have received \$9,450. Invoices for work performed in May and June are generally not reflected in these figures. Therefore, the figures presented in the table represent activity for about one-third of the fiscal year. As further discussed below, expenditures in many budget categories as well revenues do not occur at a steady pace. Based on staff’s knowledge of fees and grants approved but not yet paid and of upcoming expenditures for the remainder of the year, staff anticipates that both expenditures and revenues will occur at a faster pace in the remainder of the year.

As shown in the table, expenditures to date are within the approved budget levels and are generally occurring at a pace to remain under budget limits through the end of the year. The budget for Program Administration and Permitting Program is being spent at the fastest pace relative to the other categories (on a percentage basis). Staff will monitor spending for this task,

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: June 23, 2014 APPROVED AS RECOMMENDED: _____
 OTHER: _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS
 ___ AYES: _____
 ___ NOES: _____
 ___ ABSENT: _____
 ___ ABSTAIN: _____

I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.

ATTESTED _____
*CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY
 HABITAT CONSERVANCY*

BY: _____, DEPUTY

but no budget adjustment is recommended at this time. These costs are typically predictable and steady, though often more administrative work is needed in the first six months of a year than in the second six months (e.g., the Annual Report and the Maze financial audit are tasks included in the program administration category and costs of these tasks will be mostly limited to the first six months of 2014). For this reason, we typically we spend more than half of the Program Administration budget in the first half of the year and still come in under budget at the end of the year

The budget for Monitoring, Research, and Adaptive Management is being spent at the second-fastest pace with much of the budget amount still remaining. Work performed under this category includes wetland and rare plant inventories of acquisitions and monthly monitoring of restoration projects completed by the Conservancy. Project monitoring occurs more intensively during the wet season and blooming seasons (January – April and October – December). The pace of spending in this category will slow over the summer and pick-up again in the winter.

Expenditures in other categories are on a pace to come in under budget. However, the pace of expenditures for many of these categories, such as land acquisition and habitat restoration/creation, can vary greatly throughout the year as most expenses occur in discrete increments or phases. Two land acquisition projects are set to close in the next month. Given that land acquisition expenditures this year will be almost entirely covered by grants (grants, it should be noted, with strict time limits) and given the Conservancy's aggressive work plan with respect to land acquisition, larger expenditures from this category would be preferable.

Attachment:

- Mid-year Status Report on Finances and the 2014 Conservancy Budget

Item (b):

Overview of Research Grant and Proposed Project: In 2010, the Gordon and Betty Moore Foundation (GBMF) awarded the Conservancy a \$2,250,000 grant; \$2,000,000 to contribute to acquisition of Souza III (matching funds for a federal Section 6 grant) and \$250,000 for the design and implementation of a research project related to wind turbine generator (WTG) and wildlife interactions. The purpose of the research grant was to contribute to the body of science focused on reducing WTG-related impacts to birds and bats, while taking advantage of the fact that the Souza III property includes a portion the Buena Vista wind farm thus facilitating access to a study site.

At the meeting of the Conservancy Governing Board on September 29, 2011, the Board approved a contract with the East Bay Regional Park District for \$140,000 to fund research on the movement of resident Golden Eagles in the region. The East Bay Regional Park District (EBRPD) has requested an extension of the contract end-date to complete the study and incorporate additional data into the final hazard mapping product. No additional funds are being requested.

Attachment:

- March 2014 Progress Report and Contract Extension request

Mid Year Budget Status: Conservancy's 2014 Budget				
<i>(Expenditures and revenues include Conservancy's own funds as well as grant funds passed through the Conservancy)</i>				
	Expenditures			
	A	B	C= A minus B	D= C/A*100
	Approved 2014 Conservancy Budget¹	Expenditures as of 6/5/14²	Budget Amount Remaining	Percent Remaining
Program Administration and Permitting Program	\$813,923	\$257,410	\$556,513	68%
Land Acquisition	\$22,434,765	\$47,042	\$22,387,724	99.8%
Management, Restoration & Recreation Planning & Design	\$391,937	\$25,404	\$366,533	94%
Habitat Restoration/Creation	\$963,719	\$29,183	\$934,536	97%
Environmental Compliance	\$163,249	\$900	\$162,349	99%
HCP/NCCP Preserve Management and Maintenance	\$383,630	\$7,264	\$376,366	98%
Monitoring, Research, and Adaptive Management	\$300,384	\$32,183	\$268,201	89%
Remedial Measures	\$6,000	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$150,842	\$0	\$150,842	100%
TOTAL EXPENDITURES	\$25,608,449	\$399,386	\$25,209,063	98%
FEE REVENUES YEAR TO DATE (YTD) (through 6/5/14)		\$9,450		
GRANT REVENUE YTD (through 6/5/14)		\$0		
TOTAL REVENUES YTD (through 6/15/14)¹		\$9,450		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES		-\$389,936		
ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, JUNE 13, 2013³		\$2,700,000		

Notes:

- (1) Matching funds/expenditures contributed by partner agencies are not included.
- (2) Cost for work performed but not yet billed is not included. In general, expenses incurred after April are not reflected.
- (3) Does not include approximately \$20M in grant revenue that has been approved but not received before 6-5-2014 (nor does it include Proposition 84 funds allocated for Delta County NCCPs). The fund balance also does not include the California Wildlife Foundation account which is intended to support the HCP/NCCP but is controlled by the wildlife agencies. That account has a current balance of about \$3.5M.

**Progress Report to the East Contra Costa County Habitat Conservancy
Contract Number 2012-10**

For the Quarter ending March 2014

**Trapping and GPS Satellite Tracking of Golden Eagles in the Altamont Pass Wind
Resource Area (APWRA)**

**Douglas A. Bell, Ph.D.
Wildlife Program Manager
East Bay Regional Park District
dbell@ebparks.org**

Summary

The purpose of this project is to refine and expand golden eagle collision hazard maps (wind turbine siting risk maps) to encompass the entire Altamont Pass Wind Resource Area (APWRA), and to improve risk maps for red-tailed hawk and American kestrel. From December 2012 to February 2013, a total of thirteen golden eagles were trapped and outfitted with Global Positioning Satellite/Global System for Mobile Communications (GPS-GSM) transmitters, and tracked (refer to the attached Supplemental Progress Report). Of these, one was found on August 8, 2013 with a distal wing amputation caused by a wind turbine strike in the APWRA and euthanized at the Lindsay Wildlife Hospital, one is known to have had its transmitter fail, and two transmitters have gone off line for unknown reasons (death of the eagle and/or failure of the transmitter). Nine eagles are currently being tracked. Tracking data show that juvenile and sub-adult eagles are using many areas throughout the Diablo Range including the APWRA. Golden eagles largely avoid using urbanized habitat. Digital elevation modeling (DEM) of the APWRA has been completed. Risk maps for red-tailed hawk and American kestrel using previously obtained observational data are being finalized. The golden eagle risk maps based on this existing observational data were uninformative. Therefore, a revised risk map for golden eagles incorporating new observational data is being prepared. Risk mapping will be used to inform current and future repowering efforts in the APWRA to reduce golden eagle and other raptor fatalities.

Request for Contract Renewal and Revised Timeline

We request extension of the Contract Number 2012-10 to December 31, 2015 due to unexpected delays in several phases of this project and to provide time to incorporate new behavioral observation data on golden eagles into a collision hazard map. In addition, an

extension of the grant timeline will also allow us to incorporate substantially more GPS-based eagle location data into tasks 3-5. A new timeline for each task is presented below:

<u>Task</u>	<u>Completion</u>
1. Trap and tag	Completed
2. Eagle tracking and mapping	12/31/15
3. Validate current model	12/31/15
4. Update models and develop APWRA-wide	12/31/15
5. Write up	12/31/15
- Other minor Tasks	12/31/14

Task 1. Trap and transmitter up to six golden eagles.

Task Completion: 100%

A total of 13 golden eagles were trapped, banded and outfitted with GPS-GSM satellite transmitters between 12/18/12 and 2/1/14 (for trapping histories of individual eagles to-date, please see attached "Supplemental Progress Report"). Nine eagles are currently being tracked.

Although Task 1 is complete for Contract Number 2012-10, we will be trapping select additional eagles in the APWRA and vicinity to increase eagle-GPS location data and thereby further refine risk mapping analyses. Any additional eagles caught and transmitterd would represent "added value" to Contract No. 2012-10 and improve the final collision hazard map.

Task 2. Track eagles fitted with transmitters, and map golden eagle usage using a geographic information system (GIS).

Task Completion: 50%

GPS tracking for this project began as soon as the first eagles were trapped and transmitterd on 12/18/12, and has proceeded to-date. The GPS-GSM transmitters provide location information during daylight hours at 15 min intervals for 27 days per month, and ramp up to 30 sec intervals for three days per month, separated by 10 day intervals. For detailed tacking histories and maps, please refer to the attached "Supplemental Progress Report". Of the 13 golden eagles that were outfitted with transmitters, one was found on August 8, 2013 with a distal wing amputation caused by a

wind turbine strike in the APWRA and euthanized at the Lindsay Wildlife Hospital, one is known to have had its transmitter fail, and two transmitters have gone off line for unknown reasons (death of the eagle and/or failure of the transmitter). Nine eagles are currently being tracked. Tracking data show that juvenile and sub-adult eagles are using many areas throughout the Diablo Range including the APWRA. The eagles largely avoid using urbanized habitat.

The technology for this new style of GPS-GSM transmitter brings with it some risk and transmitter performance has been variable on deployed birds. In some cases, transmitters have ceased to function within a few weeks of deployment, other have gone offline only to come on-line again, and some transmitters report locations with high error rates. Significant progress was made in downloading and quality control of the GPS-GSM tracking data. We have obtained thousands of eagle location data points that are providing a unique picture of eagle movements in the APWRA and throughout the region.

A GIS DEM for Buena Vista Wind Farm and the entire APWRA has been completed. Creating a DEM is necessary prior to developing collision hazard (risk) maps. Mapping golden eagle use of the region will ramp up as more data are downloaded from the GPS-GSM transmitters.

Task 3. Validate existing collision hazard maps by comparing newly collected transmitter data against existing collision hazard maps to determine whether eagles use the landscape as modeled.

Task Completion: 10%

Development of a collision hazard map using the previously collected golden eagle observation data at Buena Vista was problematic in that the resulting risk map was uninformative. We therefore began developing a new golden eagle collision hazard map for the APWRA including Buena Vista based on newly acquired, detailed flight behavior observations. This new golden eagle hazard map will then be compared with a subset of the GPS-GSM-based eagle location data to validate the map. To create risk maps using the GPS-GSM-based location data, we will need wind data for the APWRA. We are negotiating with several wind companies to obtain these necessary data.

Task 4. Revise collision hazard map for Tres Vaqueros using new data, and develop new golden eagle collision hazard maps for the remainder of the APWRA using the new data.

Task Completion: 30%

A new golden eagle collision hazard map will be created for the APWRA that includes Buena Vista. Depending on the outcome of Task 3, the risk map will be based on either a

combination of the new flight behavior observational data and the GPS data, or the two data sources separately.

Task 5. Develop one or more peer-reviewed, publication-ready papers discussing the outcomes of this research.

Task Completion: 0%

Completion of Tasks 3-4 is necessary before Task 5 can be completed.

Other Minor Tasks. Develop collision hazard maps for red-tailed hawk and American kestrel using behavioral observation data already collected. Send blood samples to appropriate genetics laboratories for analysis.

Task Completion: 80%

The collision hazard maps for red-tailed hawk and American kestrel are nearly finalized. Collection of blood samples for genetic analysis is on-going. Samples will be sent to appropriate genetic laboratories upon completion of trapping efforts.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Abigail Fateman, Staff
SUBJECT: Adoption of a Labor Compliance Program for Capital Projects

RECOMMENDATION

TAKE the following actions related to the adoption of a Labor Compliance Program:

- i. APPROVE Resolution No 2014-02 related to adopting a Labor Compliance Program for capital projects funded by Proposition 84.**
- ii. AUTHORIZE staff to prepare and submit an application for the Labor Compliance Program to the State of California Department of Industrial Relations.**

BACKGROUND

In 2006, the Legislature and the voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Public Resources Code § 75075) (commonly referred to as Proposition 84; hereinafter “State Bonds”) to assist various districts in financing capital projects. In addition to the voter-approved Proposition 84, the Legislature enacted a provision that requires that any body awarding a contract for a public works project financed in any part from funds made available pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Public Resources Code § 75075) shall adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for the projects using State Bond funds.

To meet the labor compliance measure of the funding requirements, the East Contra Costa County Habitat Conservancy must adopt a Labor Compliance Program (LCP), submit it to the state and implement the program as Proposition 84 funds are expended on the construction of a capital project. The LCP is used to ensure that workers employed by the contractors on these projects are paid prevailing wages based on the current labor standards.

<p>CONTINUED ON ATTACHMENT: <u>Yes</u> ACTION OF BOARD ON: <u>June 23, 2014</u> OTHER _____</p>	<p>APPROVED AS RECOMMENDED: _____</p>
<p><u>VOTE OF BOARD MEMBERS</u></p> <p>___ UNANIMOUS</p> <p>AYES: _____</p> <p>NOES: _____</p> <p>ABSENT: _____</p> <p>ABSTAIN: _____</p>	
<p style="text-align: right; font-size: small;">I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.</p> <p style="text-align: right;">ATTESTED _____ <i>CATHERINE KUTSURIS, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i></p> <p style="text-align: right;">BY: _____, DEPUTY</p>	

In 2012, the East Contra Costa County Habitat Conservancy was awarded a \$650,000 grant from the Integrated Regional Water Management Program administered by the State Department of Water Resources and funded by Proposition 84. The Conservancy is using these funds to design and construct the Hess Creek and Wetland Restoration project.

Conservancy staff has worked with RGM and Associates to prepare the attached application to the Department of Industrial Relations for approval of the Conservancy's LCP which includes a manual outlining the policies and procedures for enforcing California's prevailing wage laws and Labor Code Sections 1720-1861 that would be applicable only to those projects receiving state funding. A sample Labor Compliance Program is attached that was prepared by RGM and Associates and adopted by the Delta Diablo Sanitation District.

This activity is funded through the awarded grant and is consistent with the budgeting for the overall Hess Creek Channel restoration project.

Attachments:

- 6a Resolution 2014-02
- 6b Sample Labor Compliance Program Workplan from Delta Diablo Sanitation District

Resolution No.: 2014-02

RESOLUTION OF THE

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

TO APPROVE THE EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY LABOR COMPLIANCE PROGRAM

WHEREAS, in 2006, the Legislature and the voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Public Resources Code § 75075) (commonly referred to as Proposition 84; hereinafter “State Bond”) to assist various districts in financing capital projects; and

WHEREAS, the Legislature enacted a provision that requires that any body awarding a contract for a public works project financed in any part from funds made available pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Public Resources Code § 75075) shall adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for the projects using State Bond funds; and

WHEREAS, the East Contra Costa County Habitat Conservancy intends to use State Bond funds as part of the funding for some of its projects; and

WHEREAS, the East Contra Costa County Habitat Conservancy will prepare an application to the Department of Industrial Relations for approval of its own Labor Compliance Program, and include a manual outlining the policies and procedures for enforcing California’s prevailing wage laws, Labor Code Sections 1720-1861 et seq.; and

WHEREAS, the East Contra Costa County Habitat Conservancy is prepared to implement a Labor Compliance Program for State Bond-funded projects.

NOW, THEREFORE, the Governing Board of the East Contra Costa County Habitat Conservancy hereby finds, determines, declares, orders, and resolves as follows:

Section 1. That the above recitals are true and correct.

Section 2. That the East Contra Costa County Habitat Conservancy designees are directed to prepare and transmit an application to the Department of Industrial Relations for approval of its own Labor Compliance Program, and

take any and all additional steps to carry out, give effect to, and comply with the terms and intent of this Resolution.

APPROVED, PASSED, AND ADOPTED by the Governing Board of the East Contra Costa County Habitat Conservancy on this 23rd day of June 2014, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
John Kopchik, Executive Director



DELTA DIABLO SANITATION DISTRICT

Labor Compliance Program

FEBRUARY 2013

INTRODUCTION

The Delta Diablo Sanitation District (“District”) issues this Labor Compliance Program (LCP) manual for the purpose of identifying its policy relative to the responsibilities and procedures applicable to the labor compliance provisions of the state and federally funded public works contracts. This LCP Manual contains the labor compliance standards required by state and federal laws, regulations, directives, as well as District policies and contract provisions.

The California Labor Code, Section 1770 *et seq.*, requires that all contractors on public works pay their workers based on the prevailing wage rates, which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research (recently incorporated into the Director’s Office of Policy, Research and Legislation).

In establishing this LCP, the District adheres to the statutory requirements as enumerated in Section 1771.5(b) of the Labor Code, which include but are not limited to:

1. All bid invitations, call for bids, Design-Build requests, and public works contracts shall contain appropriate language concerning the requirements of Labor Code Division 2, Part 7, Chapter 1.
2. A pre-job conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
3. Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
4. The District’s LCP shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
5. The District’s LCP shall withhold contract payments when payroll records are delinquent or inadequate.
6. The District’s LCP shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
7. The District’s LCP shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations.

It is the intent of the District to actively enforce this LCP on all District public works projects as required by statute; specifically, pursuant to Public Resources Code §75075, projects funded in whole or in part by Proposition 84. It is also the intent of the District to utilize qualified consultants in support of the District’s LCP. All consultants will be monitored by a District representative who will be responsible for enforcing the LCP.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, the District will modify the affected portions of this program accordingly.

Questions regarding the District’s LCP should be directed to: Dean Eckerson, Delta Diablo Sanitation District. Questions regarding the California Labor Code, including issues relating to this LCP, should be directed to Contra Costa County Legal Counsel, attn: Maryanne Johnson.

I. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, et seq., and include, but are not limited to, such types of work performed under contract as construction, modernization, alteration, demolition, installation or repair. The Division of Labor Statistics and Research (DLSR) predetermine the appropriate prevailing wage rates for particular construction trades and crafts by county.

The applicable dates for enforcement of awarding body LCP is established by Section 16422 of the California Code of Regulations. Contracts are not subject to the jurisdiction of the LCP until after the Program has received initial or final approval.

II. COMPOSITION & COMPONENTS OF A LABOR COMPLIANCE PROGRAM

As stated above and described more fully below, in accordance with Labor Code Section 1771.5(b), a Labor Compliance Program shall include, but not be limited to, the following requirements:

1. The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.
2. A prejob conference shall be conducted before commencement of the work with contractors and subcontractors listed in the bid or who are required to be identified or prequalified in a Design-Build Contract. At the prejob conference applicable federal and state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. A checklist, showing which federal and state labor law requirements were discussed, shall be kept for each conference. A checklist in the format of Attachment A presumptively meets this requirement.
3. A requirement that certified payroll records be kept by the contractor in accordance with Labor Code Section 1776 and furnished to the Labor Compliance Program at times designated in the contract, which shall be at least monthly, or within 10 days of any request by the Awarding Body. Use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and Statement of Employer Payments (PW26) constitute presumptive compliance with the requirement for certified payroll records kept in accordance with Labor Code Section 1776, provided the forms are filled out accurately and completely. These suggested forms are available from the Department of Industrial Relations and are provided in the "FORMS" section of this manual.
4. A program for orderly review of payroll records and, if necessary, for audits to verify compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.
5. A prescribed routine for withholding penalties, forfeitures, and underpayment of wages for violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.
6. All contracts to which prevailing wage requirements apply shall include a provision that contract payments shall not be made when payroll records are delinquent or inadequate.

Nothing in this section or in Title 8 California Code of Regulations Section 16421 shall be construed as limiting the responsibility and authority of an Awarding Body to take cognizance of prevailing wage violations under Section 1726 of the Labor Code and take any appropriate action pursuant to and in accordance with that responsibility and authority.

It is the responsibility of a Labor Compliance Program to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a). A Labor Compliance Program shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. A Labor Compliance Program shall neither avoid use of its enforcement authority based on cost considerations nor shall it use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred.

The failure of an Awarding Body or Labor Compliance Program to comply with any requirement imposed by the Labor Code shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Chapter 1 (commencing with Section 1720), Part 7, Division 2 of the Labor Code.

III. REQUESTS FOR PAYROLL RECORDS

Requests may be made by any person for certified copies of payroll records. Requests shall be made to any of the following: 1) the body awarding the contract, or 2) any office of the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards.

Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:

1. The body awarding the contract;
2. The contract number and/or description;
3. The particular job location if more than one;
4. The name of the contractor;
5. The regular business address, if known.

Note: Requests for records of more than one contractor or subcontractor must list the information regarding that contractor individually, even if all requests pertain to the same particular public works project. Blanket requests covering an entire public works project will not be accepted; unless contractor and subcontractor responsibilities regarding the project are not clearly defined.

1. Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor, as detailed below, to the person who requested said records.

2. Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:
 - a. Specify the records to be provided and the form upon which the information is to be provided;
 - b. Conspicuous notice of the following:
 - c. That the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and
 - d. That failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five (\$25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;
 - e. Cost of preparation as provided in Section 16402 and described below; and
 - f. Provide for inspection.

3. Inspection of Payroll Records. Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.

4. Reporting of Payroll Requests. The format for reporting of payroll records requested pursuant to Labor Code Section 1776 shall be on a form provided by the public entity. Copies of the forms may be procured at any office of the Division of Labor Standards Enforcement (DLSE) throughout the state and/or:

Division of Labor Statistics & Research P.O. Box 603 San Francisco, CA 94101

ATTENTION: Prevailing Wage Unit

Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776. If, however, the contractor does not comply with the provisions of Labor Code Section 1776, the Labor Commissioner may require the use of DIR's suggested format, "Public Works Payroll Reporting Form" (Form A-1-131).

Words of Certification. The form of certification shall be as follows: I, _____ (Name-print) the undersigned, am _____ (position in business) with the authority to act for and on behalf of _____, (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. Date: _____ Signature: _____ A public entity may require a more strict and/or more extensive form of certification. **A copy of the Certification Form to be utilized by the Delta Diablo Sanitation District is found in the "FORMS" section of this document.**

5. Costs. The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter, plus \$10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.
6. Privacy Considerations. Records received from the employing contractor shall be kept on file in the office or entity that processed the request for at least 6 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are in process. Copies on file shall not be obliterated in the manner prescribed below;
 - a. Copies provided to the public upon written request shall be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified.
 - b. All other information including identification of the contractor shall not be obliterated;

The public entity may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information.

7. Use of Electronic Reporting Forms. The certified payroll records required by Labor Code Section 1776 may be maintained and submitted electronically subject to all of the following conditions:
 - a. The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131);
 - b. The reports shall be in a format and use software that is readily accessible and available

- to contractors, awarding bodies, Labor Compliance Programs, and the Department of Industrial Relations;
- c. Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;
 - d. The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and
 - e. No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

IV. COMPETITIVE BIDDING ON DISTRICT PUBLIC WORKS CONTRACTS

Pursuant to Public Contract Code, the District publicly advertises upcoming public works projects to be awarded according to a competitive bidding process.

All District bid advertisements (or bid invitations), Design-Build requests, and construction contracts shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code.

V. JOB CONFERENCE MEETING

After the District awards the public works contract and prior to the commencement of the work, a Pre-Job Conference shall be held by the District with the contractor(s) and subcontractor(s) present. At that meeting, the District will discuss the federal and state labor law requirements applicable to the contract and will provide the contractor(s) and each subcontractor with a Checklist of Labor Law Requirements (presented in Attachment A) and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770, *et seq.*);
2. The contractor's and subcontractor's duty to employ registered apprentices on public works projects (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages, failing to employ apprentices, and failing to submit complete Certified Payroll Reports. Such penalties as may include forfeitures and debarment (Labor Code Sections 1775, 1776, 1777.7, and 1813);
4. The requirement to maintain and submit copies of certified payroll reports on a weekly basis, at times designated in the contract or within 10 days of request by the District, and penalties

- for failure to do so under Labor Code Section 1776 (h). This requirement includes and applies to all subcontractors performing work on District projects even if their portion of the work is less than one half of one percent (0.5%) of the total amount of the contract;
5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended);
 6. The prohibition against accepting or extracting kickbacks from employee wages (Labor Code Section 1778);
 7. The prohibition against accepting fees for registering any person for public works (Labor Code Section 1779) or for filing work orders on public works (Labor Code Section 1780);
 8. The requirement to list all subcontractors (Public Contract Code Section 4100, *et seq.*);
 9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor Code Section 1021 and 1021.5, and Business and Professions Code Section 7000, *et seq.*, under California Contractors License Law);
 10. The prohibition against unfair competition (Business and Professions Code Sections 17200-17208);
 11. The requirement that the contractor(s) and subcontractor(s) be properly insured for Workers' Compensation (Labor Code Section 1861);
 12. The requirement that the contractor(s) abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project;
 13. The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers; and
 14. The requirement to provide itemized wage statement to employees under Labor Code Section 226.
 15. The requirement for on-site visits, which may include worker interviews, to be conducted each week workers are on the site of the public works project.

The contractor(s) and subcontractor(s) present at the meeting will be given the opportunity to ask questions of the District's LCP representative relative to any of the Labor Law Requirements. The Checklist of Labor Law Requirements will be signed by the prime contractor's representative, subcontractor's representative, and the District's LCP representative.

At the Pre-Job Conference, the District will provide the contractor(s) with copies of the District's LCP package which will include: the Checklist of Labor Law Requirements, links to the applicable Prevailing Wage Rate Determinations, blank certified payroll report forms, fringe benefit statements, State apprenticeship forms and requirements, and reference to the Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, Sections 1720-1861).

VI. RESPONSIBILITIES OF CONTRACTOR(S) AND EACH SUBCONTRACTOR

A. Certified Payroll Records Required

The contractor(s) shall maintain payrolls and “basic payroll records” during the course of the work and shall preserve them for a period of three (3) years thereafter for all tradesworkers working at the District’s project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day in the form of a trade classification, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

1. Submission of Certified Payroll Reports

The contractor(s) shall maintain and submit all weekly certified payroll reports, including those of all subcontractors, to the District or the District’s consultant as required by contract, however not less often than monthly. Each weekly certified payroll report shall be accompanied by a statement of compliance signed by the contractor(s) under penalty of perjury pursuant to Labor Code Section 1771.5(b)(3) and applicable regulations.

The certified payroll records required by Labor Code Section 1776 may be maintained and submitted electronically subject to all of the following conditions:

- a. The reports must contain all of the information required by the Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations’ suggested “Public Works Payroll Reporting Form” (Form A-1-131);
- b. The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, Labor Compliance Programs, and the Department of Industrial Relations;
- c. Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;
- d. The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and
- e. No contractor or subcontractor shall be mandated to submit or receive electronic

reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

Basic payroll records may be requested by the District's LCP at any time and shall be provided within 10 days following the receipt of the request.

2. Review of Certified Payroll Reports

Certified payroll reports shall be routinely reviewed by the Contractor for the payment of prevailing wage rates.

3. Full Accountability

The name, address and social security number of every individual, laborer or craftsperson working at the project site must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeship craft. Owner-operators are to be reported by the contractor employing them, rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll report listing the days and hours worked, the trade classification descriptive of the work actually done, and the wages paid to the owner or partner. The contractor(s) shall provide the records required under this section to the District's LCP, any authorized representative of the District, and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

4. Responsibility for Subcontractor(s)

The contractor and subcontractor shall be jointly and severally liable; therefore, the contractor(s) shall be responsible for ensuring adherence to labor standards provisions by its subcontractor(s). Moreover, the prime contractor is responsible for Labor Code violations by its subcontractors in accordance with Labor Code Section 1775 and applicable sections of the Labor Code and California Code of Regulations.

5. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts which are due and payable for the period covered by the particular payday. Thus, an employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level

mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the prime contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor who contracted for his or her services for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

A worker's hourly wage rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journey persons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in nonapprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit Public Works Contract Award Information to applicable Apprenticeship Committees.
2. Request dispatch of apprentices and employ apprentices as available on public works projects in a ratio to journey persons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice to each five (5) journey person hours, unless a Certificate of

- Exemption is obtained and provided to the LCP;
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journey persons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
 4. If the contractor is registered to train apprentices it should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

VII. ENFORCEMENT ACTION

A. Duties of the Delta Diablo Sanitation District as LCP

The District, as the awarding body having an approved LCP, has a duty to the Director of the Department of Industrial Relations to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code in a manner consistent with the practice of the Labor Commissioner and as set forth in regulations found at 8 CCR section 16000 et seq. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and section 17201 – 17270 of Title 8 of the California Code of Regulations. The District shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. The District shall, at a minimum, undertake enforcement action in furtherance of its responsibilities as follows:

1. Review Certified Payroll Records. Certified payroll records furnished by contractors and subcontractors shall be regularly and timely reviewed by the District, as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. "Review" for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code Section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with Labor Code Section 1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of laborer listed, with confirmation of payment in the manner and to the extent described below.
2. Confirmation. "Confirmation" of payroll records shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of

- furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the District that payroll records furnished by a contractor or subcontractor are inaccurate.
3. On-Site Visits. Representatives of the District shall conduct in-person inspections at the site or sites at which the contract for public work is being performed. On-Site Visits may be undertaken randomly or as deemed necessary by the District, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with section 16429 of Title 8 of the California Code of Regulations, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the District to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.
 4. Audits/Investigations. Investigations shall be conducted and audits prepared whenever the District has determined that there may have been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages, or at the request of the Labor Commissioner.
 - a. An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract. Records should be made available to show that the audits conducted are sufficiently detailed to verify compliance with the prevailing wage requirements of the Labor Code.
 - b. An audit shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Section 1775 and 1813. An audit is sufficiently detailed when it enables the Labor Commissioner to draw reasonable conclusions as to compliance and to enable an accurate computation of underpayments of wages and of applicable penalties and forfeitures.
 - c. An audit record in the form set out in Attachment B, when accompanied by a brief narrative, and as provided in Title 8 CCR section 16432, complies with the Labor Code requirements.
 5. Notification of Contractor. After the District has determined that violations of the prevailing laws have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and any affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner. The contractor and affected subcontractor shall be

provided at least 10 days following such notification to submit exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor’s submission, the District reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the District shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the District.

- a. For each instance in which a wage deficiency is resolved, the District shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to (4) above along with any exculpatory information submitted to the District by the affected contractor or subcontractor.
6. Complaints. Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the District shall do all of the following:
- a. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
 - b. Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
 - c. Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the District;
 - d. Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
 - e. Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the District but remains under review or litigation before another entity.
7. Apprentices. The duties of the District’s Labor Compliance Program with respect to apprenticeship standards are as follows:
- a. The District’s LCP shall (1) inform contractors and subcontractors bidding public works about apprenticeship requirements, (2) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (3) refer complaints and promptly report suspected

violations of apprenticeship requirements to the Division of Labor Standards Enforcement.

- b. The District shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (1) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (2) that apprentices are paid no less than the prevailing apprentice rate, (3) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (4) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.
8. Written Summary. For each public work project subject to the District's LCP enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742.

For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state. **A copy of the LCP Review and Enforcement Form to be utilized by the Delta Diablo Sanitation District is found as Attachment C to this document.**

9. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate. The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The District shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the District has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the District provides notice that the subcontractor has cured the delinquency or deficiency.
 - a. To "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a

subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

- b. “Contracts” except as otherwise provided by agreement, means only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- c. “Delinquent payroll records” means those not submitted on the date set in the contract.
- d. “Inadequate payroll records” are any one of the following; 1) a record lacking any of the information required by Labor Code Section 1776; 2) a record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor; 3) a record remaining uncorrected for one payroll period, after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.
- e. When contract payments are withheld under this section, the District shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the District has exceeded its authority under this section.
- f. No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

A copy of the Notice of Temporary Withholding of Contract Payments Due to Incomplete or Inadequate Payroll Records Form to be utilized by the Delta Diablo Sanitation District is found as Attachment D to this document.

In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(h) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(h) does require the prior approval of the Labor Commissioner under section 16436 of Title 8 of the California Code of Regulations.

10. Withholding Contract Payments When, After Investigation, It Is Established That Underpayment or Other Violations Has Occurred.

- a. “Withhold” and “contracts” have the same meaning set forth as above.
 - b. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.
 - c. Amount equal to the underpayment” is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:
 - 1) The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code Section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid;
 - 2) The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code Section 1773.1 and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;
 - 3) Estimated amounts of “illegal taking of wages”;
 - 4) Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council;
 - 5) Estimated penalties under Labor Code Sections 1775, 1776, and 1813.
 - d. The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.
11. Forfeitures Requiring Approval by the Labor Commissioner. Pursuant to Title 8, California Code of Regulations Section 16437, “forfeitures” means the amount of wages, penalties, and forfeitures assessed by the Labor Compliance Program and proposed to be withheld pursuant to Labor Code Section 1771.6(a), and includes the following:
- a. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and
 - b. Penalties assessed under Labor Code Sections 1775, 1776, and 1813.

If the aggregate amount of forfeitures assessed to a contractor or subcontractor is less than \$1000.00, the forfeiture shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: a Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a), an

Audit as defined in 8 CCR §16432(e), and a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

12. Withholding Contract Payments for Violations of the Requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code. The District shall withhold contract payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. The authority of an approved LCP to withhold contract payments is found in Labor Code section 1771.5 and is also subject to provisions contained in section 16435 et seq. of Title 8 of the California Code of Regulations. As explained more fully below, except when the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000, the District will first obtain approval from the Labor Commissioner of the amounts of unpaid penalty and wage money assessed by the District (“forfeitures”) for violations of the prevailing wage laws; thereafter, the District will provide notice of withholding of contract payments to the contractor and other affected parties (a subcontractor and bonding company, if applicable) as required by law. The procedures to be followed by the District in obtaining approval of a forfeiture from the Labor Commissioner and providing notice of withholding to the contractor and other affected parties will be consistent with the code sections and regulations cited above, and definitions included therein (see Appendix A – “Definitions” – attached hereto), and are summarized as follows:

Step No. 1 Approval of Amount of Forfeiture by the Labor Commissioner

1. The District shall request approval of the amount of a proposed forfeiture by filing a report with the Labor Commissioner which contains at least the following information:
 - a. The date that the public work was accepted, the date that a Notice of Completion was (or will be) recorded, and the amount of funds being held in retention or escrow;
 - b. Any other deadline which if missed would impede collection;
 - c. Evidence of violation, in narrative form;
 - d. Evidence of violation obtained under section 16432 of Title 8 of the California Code of Regulations and a copy of the Audit prepared in accordance with section 16432(e) setting forth the amounts of unpaid wages and applicable penalties;
 - e. Evidence that before the forfeiture was sent to the Labor Commissioner (1) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that the violation was caused by a good faith mistake and was promptly corrected upon being brought to the attention of the contractor and subcontractor; and (2) the contractor and subcontractor either did not do so or failed to convince the District of its “good faith” position;
 - f. Where the District seeks not only wages but also a penalty as part of the forfeiture,

and the contractor or subcontractor has unsuccessfully contended that the cause of the violation was a good faith mistake that was promptly corrected, a short statement will accompany the proposal for a forfeiture with a recommended penalty amount (computed at not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates), and reasons therefore, pursuant to Labor Code section 1775(a); if the amount of wages sought involves overtime, penalties under Labor Code Section 1813 should be calculated as follows: twenty-five dollars (\$25) per worker for each calendar day during which the worker was required or permitted to work more than eight hours in any one calendar day and/or 40 hours in any one calendar week;

- g. Where the District seeks only wages, or a penalty under Labor Code section 1775 of less than fifty dollars (\$50) per calendar day as part of the forfeiture, because the contractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected, the file should include the evidence as to the contractor and subcontractors knowledge of his/her obligation including the District's communication to them of the obligation in the bid invitations, at the pre-job conference, and any other notices given and should also include a recommended penalty amount, and reasons therefore, pursuant to Labor Code section 1775; if the amount of wages sought involves overtime, penalties under Labor Code section 1813 should be calculated as follows: twenty-five dollars (\$25) for each calendar day during which each worker was required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week;
 - h. Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations
 - i. Whether the LCP for the District has been granted approval on only an interim or temporary basis under sections 16425 or 16426, or whether it has been granted extended approval under section 16427 of Title 8 of the California Code of Regulations.
2. The report should be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than thirty days before final payment, but in no event not less than 30 days before the expiration of the limitations period set forth in Labor Code 1741.
 3. A copy of the proposed forfeiture and a file or report shall be served on the contractor and subcontractor, if applicable, at the same time as it is sent to the Labor Commissioner. The District may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an audit, investigation, or meeting, if those are clearly referenced in the report.
 4. The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due.
 5. The Labor Commissioner's determination of forfeiture is effective on one of the two

following dates:

- a. For all programs other than those having extended authority under section 16427 of Title 8 of the California Code of Regulations, on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Program, on the Awarding Body if different, and on the contractor and subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor and subcontractor is effective if made on the last address supplied by the contractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.
- b. For programs with extended authority under section 16427 of Title 8 of the California Code of Regulations, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review. **A copy of the Request for Approval of Forfeiture to be utilized by the Delta Diablo Sanitation District is found as Attachment E to this document.**

Step No. 2 Notice of Withholding and Review Thereof

1. Notice of Withholding of Contract Payments

For forfeitures of less than \$1000.00 or after determination of the amount of forfeiture by the Labor Commissioner, the District shall provide Notice of Withholding of Contract Payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of prevailing wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body. **A copy of the Notice of Withholding of Contract Payments (NWCP) to be utilized by the Delta Diablo Sanitation District is found as Attachment F to this document.**

2. Review of NWCP

- a. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request for a review hearing to the office of the LCP

that appears on the NWCP within 60 days after service of the NWCP. If no hearing is requested within 60 days after the service of the NWCP, the NWCP shall become final.

- b. Within ten days following the receipt of the request for a review hearing, the LCP shall transmit to the Office of the Director-Legal Unit the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. **A copy of the required Notice of Transmittal to be utilized by the Delta Diablo Sanitation District is found as Attachment G to this document.**
- c. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt by the LCP of the written request for a hearing. Any evidence obtained by the LCP subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. **A copy of the Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742 (b) form is found as Attachment H to this document.**

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP.

Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director has adopted regulations setting forth procedures for hearings under this subdivision. **The regulations are found as Attachment I to this document.**

- d. An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for a writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition

for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

- e. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.
- f. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
- g. This procedure shall provide the exclusive method for review of a decision by the District to withhold contract payments pursuant to Section 1771.5.

B. Request for Review of a Labor Compliance Program Enforcement Action; Settlement Authority

1. A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of the District's LCP enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found at sections 17201 – 17270 of Title 8 of the California Code of Regulations. The District's LCP shall have the rights and responsibilities of the Enforcing Agency (as defined in Section 17202(f) of Title 8 of the California Code of Regulations), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.
2. If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the District, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.
3. Except in cases where the Labor Commissioner has intervened pursuant to subpart (2) above, the District's LCP shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever a Labor Compliance Program settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the Labor Compliance Program shall document the reasons for the settlement or request for dismissal and shall make that document available for the Labor

Commissioner upon request.

C. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the District shall deposit penalties and forfeitures into a fund of its choice.
2. Where collection of fines, penalties, or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and the District are both parties, the fines, penalties, or forfeitures shall be divided between the General Funds of the State and the fund of the District's choice, as the Hearing Officer or court may decide.
3. All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner, and to which the District is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of administrative proceedings or a court action pursuant to Labor Code Section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who shall handle such wages and benefits in accordance with Labor Code Section 96.7.

D. Liquidated Damages

1. After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.
2. Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 23.5 shall not apply to claims for prevailing wages under this chapter.
3. Notwithstanding subdivision (1), there shall be no liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for

the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

VI. REPORTING OF WILLFUL VIOLATIONS TO THE LABOR COMMISSIONER

Debarment Policy

It is the policy of the District that the public works prevailing wage requirements set forth in the California Labor Code, Sections 1720-1861, be strictly enforced. In furtherance thereof, contractors and subcontractors found to be willful violators under Section 1777.1 of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise being awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

If an investigation reveals that a willful violation of the Labor Code Section 1777.1 has occurred, the District's LCP will make a written report to the Labor Commissioner which shall include: (1) an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked and (2) the classification of workers employed on the public works contract. Six types of willful violations are reported as follows:

A. For Failure to Comply with Prevailing Wage Rate Requirements

Except for "good faith mistakes", failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and District contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated. The facts related to such willful violations may result in a determination that the contractor intended to defraud its employees of their wages.

B. For Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

C. For Failure to Submit Certified Payroll Reports

Refusing to comply with a request by the LCP for certified payroll reports or substantiating

information and records as contained in Section IV.A.1. will be determined to be a willful violation of the Labor Code. Additionally, refusing to correct inaccuracies or omissions that have been discovered will also be determined to be willful violation of the Labor Code.

D. For Failure to Pay Fringe Benefits

Fringe benefits are defined as the amounts stipulated for employer payments or trust fund contributions and are determined to be part of the required prevailing wage rate.

Failure to pay or provide fringe benefits and/or make trust fund contributions in a timely manner is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

E. For Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner as a willful violation, upon completion of an investigation and audit.

F. For the Taking of Kickbacks

Accepting or extracting kickbacks from employee wages under Labor Code Section 1778 constitutes a felony and may be prosecuted by the appropriate enforcement agency.

VII. PRIORITY DISTRIBUTION OF FORFEITED SUMS

G. Withholding of Forfeited Sums

Pursuant to Labor Code Sections 1726 and 1771.6, it shall be the policy of the District that prior to making payment to the prime contractor of monies due under any contract for public works, the District shall withhold and retain from the prime contractor's account all amounts which have been forfeited pursuant to any stipulation under said contract for public works.

H. Disposition of Forfeited Sums

1. Out of any funds withheld, recovered, or both, there shall first be paid the amount due each worker notwithstanding the filing of any Stop Notice by any person pursuant to Civil Code Section 3179, *et seq.* Thus, all workers employed on the public works project who are paid less than the prevailing wage rate shall have **PRIORITY** over all Stop Notices filed against the prime contractor.
2. In the event that there are "insufficient funds" available in the prime contractor's account to pay the total amount of prevailing wage violations and penalty amounts due, the unpaid prevailing wages shall have **PRIORITY STATUS** and must be paid first.

Furthermore, if insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all workers affected. From the amount recovered by the District, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into a fund of the District's choosing.

VIII. ANNUAL REPORTS

A. Annual Report on the District Labor Compliance Program to the Director of the Department of Industrial Relations

The District shall submit to the Director of the Department of Industrial Relations an Annual Report on the operation of its LCP by no later than August 31 of each year. The annual report shall cover the twelve month period commencing on July 1 of the preceding calendar year and ending on June 30 of the year in which the report is due, unless the Director authorizes the LCP to use a different reporting period. In such cases the annual report will be due no later than 60 days following the close of that reporting period. Pursuant to section 16431 of Title 8 of the California Code of Regulations, the Annual Report shall contain sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the Labor Compliance Program, and shall include, at the minimum, the following information:

1. Number of construction contracts using Proposition 84 funds subject to the District's LCP which were awarded, and their total value;
2. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates, the total amount withheld from money due to the contractors, and the total amount recovered by action in any court of competent jurisdiction;
3. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction;

A copy of the required Annual Report (LCP-AR1) to be utilized by the Delta Diablo Sanitation District is found as Attachment J to this document.

B. Filing of Statements of Economic Interest (FPPC Form 700) by Designated Employees and Consultants of Labor Compliance Program

The District shall determine and designate those employees and consultants who participate in making governmental decisions for the District within the meaning of Title 2, California Code of Regulations, sections 18700 – 18702.4. Those designated employees and consultants shall be required to file Statements of Economic Interest (FPPC Form 700) and to comply with other applicable requirements of the Political Reform Act (commencing with Section

87100 of the Government Code) in connection with work performed on behalf of the District.

APPENDIX A
DEFINITIONS

1. “Amount equal to the underpayment” is the total of the following determined by payroll review, investigation, audit, or admission of the contractor or subcontractor:
 - a. The difference between the amounts paid to workers and the correct General Prevailing Wage Rate of Per Diem Wages as defined in Title 8, CCR Section 16000, *et seq.*;
 - b. The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8, CCR Section 16000, *et seq.* and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid.
 - c. Estimated amounts of “illegal taking of wages,” and
 - d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.
2. “Basic Payroll Records” means time cards, front and back copies of cancelled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll.
3. “Contracts,” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
4. “Delinquent payroll records” means those not submitted on the basis set forth in the District contract and/or in response to a request by the LCP;
5. “Failing to pay the correct rate of prevailing wages” means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the LCP, and which are appealable by the contractor in court or before the Director of the Department of Industrial Relations under Labor Code Sections 1742 and 1742.1 pursuant to the California Code of Regulations Title 8, Chapter 8, Subchapter 8 (Sections 17201 through 17270). Regardless of what is defined as prevailing “wages” in contract terms, noncompliance with the following are considered failures to pay prevailing wages:
 - a. Nonpayment of items defined as “Employer Payments” and “General Prevailing Rate of Per Diem Wages” in Title 8, CCR Section 16000 and Labor Code Section 1771.
 - b. Payroll records required by Labor Code Section 1776;
 - c. Labor Code Section 1777.5 but only insofar as the failure consists of paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program;
 - d. Labor Code Section 1778, Kickbacks;

- e. Labor Code Section 1779, Fee for Registration;
 - f. Labor Code Sections 1813, 1815, and Title 8, CCR Section 16200(a)(3)(F) overtime for work over eight (8) hours in any one (1) day or forty (40) hours in any one (1) week (Monday through Friday). All work performed on Saturday, Sunday, and/or a holiday shall be paid pursuant to the prevailing wage determination.
6. “Forfeitures” are the amounts of unpaid penalties and wages assessed by the District for violations of the prevailing wage laws.
7. “Inadequate payroll records” are any one of the following:
- a. A record lacking any of the information required by Labor Code Section 1776;
 - b. A record which contains all of the required information but which is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
 - c. A record remaining uncorrected for one (1) payroll period, after the District has given the contractor notice of inaccuracies detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent (1%) of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Section 16401 of Title 8 of the California Code of Regulations. Prompt correction will stop any duty to withhold if such inaccuracies are de minimus.
8. “Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729.

ATTACHMENT A

**CHECKLIST OF LABOR LAW REQUIREMENTS TO REVIEW AT
JOB CONFERENCE MEETINGS**

(Pursuant to Title 8, Section 16430 of the California Code of Regulations)

NAME (print) _____ Date _____

COMPANY _____ Phone _____

ADDRESS _____ Fax # _____

The federal and state labor law requirements applicable to the contract are composed of, but not limited to, the following:

1. Payment of Prevailing Wage Rates

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. Apprentices

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under Labor Code Section 1777.5;

3. Penalties

There are penalties required for contractor's/subcontractor's failure to pay prevailing wages and for failure to employ apprentices, including forfeitures and debarment under Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813;

4. Certified Payroll Reports

Under Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day and each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to Labor Code Section 1776;

Each contractor and subcontractor shall submit its weekly certified payroll reports to the District on a monthly basis. In the event that there has been no work performed during a given week, the Certified Payroll Report shall be annotated: "No work" for that week.

Under Labor Code Section 1776(h) there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

5. Nondiscrimination in Employment

There exist prohibitions against employment discrimination under Labor Code Sections 1735 and 1777.6, the Government Code, the Public Contracts Code, and Title VII of the Civil Rights Act of 1964;

6. Kickbacks Prohibited

Contractors and subcontractors are prohibited from recapturing wages illegally or extracting "kickbacks" from employee wages under Labor Code Section 1778;

7. Acceptance of Fees Prohibited

There exists a prohibition against contractor/subcontractor acceptance of fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works contracts pursuant to Labor Code Section 1780;

8. Listing of Subcontractors

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of one percent, pursuant to Government Code Section 4100 et seq.;

9. Proper Licensing

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractor License Law found at Business and Professions Code Section 7000 et seq.

10. Unfair Competition Prohibited

Contractors/Subcontractors are prohibited from engaging in unfair competition as specified under Business and Professions Code Sections 17200 to 17208;

11. Workers Compensation Insurance

Labor Code Section 1861 requires that contractors and subcontractors be insured properly for Workers Compensation.

12. OSHA

Contractors and subcontractors are required to abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project.

13. Undocumented Workers

Contractors and subcontractors are required to comply with the federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

14. Itemized Wage Statement

Pursuant to Labor Code Section 226, every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the last four digits of his or her social security number or an employee identification, the name and address of the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

15. On-Site Visits and Employee Interviews

District's Labor Compliance Representative will conduct weekly on-site visits and will conduct weekly or periodic employee interviews.

In accordance with federal and state laws and with District contract documents, the undersigned prime contractor wishes to assure the District that it intends to comply with the above-referenced labor law requirements, fully understanding that failure to comply with the above requirements may subject it to penalties as provided above.

For the Contractor:

For the Delta Diablo Sanitation District:

(Signature)

(Signature)

(Date)

(Date)

Contractor

Project Name

ATTACHMENT B AUDIT RECORD FORM

(For Use With Title 8, CCR Section 16432 Audits)

An Audit, as defined herein, shall be prepared by the District whenever it has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Section 1775 and 1813.

An Audit which uses the forms in Attachment B, accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceeding under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at section 17201 – 17270 of Title 8 of the California Code of Regulations.

The additional steps will be taken to "verify compliance with the requirements of Chapter 1, Public Works, Part 7 of Division 2":

1. Audits of the obligation to secure workers' compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers' Compensation Insurance Rating Bureau;
2. Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works as to: whether contract award information was received, including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;
3. Audits of the obligation to pass through amounts for apprenticeship training contributions, to either the training trust or the California Apprenticeship Council, means asking for copies of checks sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of cancelled checks;
4. Audits of "illegal taking of wages" means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor's or subcontractor's files and comparison to wage deduction statements furnished to employees (Labor Code Section 226), together with an interview of employees when warranted as to any payments not shown on the wage deduction statements;
5. Audits of the obligation to keep records of working hours and pay not less than required by Title 8, CCR Section 16200(a)(3)(F) for hours worked in excess of 8 hours per day or forty hours per week are the steps for review and audit of Certified Weekly Payrolls under Title 8, CCR Section 16432;
6. Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:
 - a. All elements defined as the "General Prevailing Rate of Per Diem Wages" in Title 8, CCR Section 16000, which were determined to be prevailing in the Director's determination which was in effect on the date of

- the call for bids, available in its principal LCP office and posted at the public works job site;
- b. All elements defined as "Employer Payments" set forth in Section 16000 of these regulations, which were determined to be prevailing in the Director's Determination which was in effect on the date of the call for bids, and pursuant to Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal LCP office and posted at the public works job site.

PREVAILING WAGE DETERMINATION SUMMARY

PROJECT:

DISTRICT/AWARDING BODY:

CONTRACTOR:

ADDRESS:

SUBCONTRACTOR:

CODE NO.	CLASSIFICATION	EFFECTIVE DATE	HOURLY RATE	CONTRIBUTIONS	TRAINING	ONE + 1/2 TIME	HOLIDAY OR SUNDAY	TRAVEL & SUBSISTENCE	OTHER HOURLY REQ'MNTS	
1						\$ 0	\$ 0			
2						\$ 0	\$ 0			
3						\$ 0	\$ 0			
4						\$ 0	\$ 0			
5						\$ 0	\$ 0			
6						\$ 0	\$ 0			
7						\$ 0	\$ 0			
8						\$ 0	\$ 0			
9						\$ 0	\$ 0			
10						\$ 0	\$ 0			
11						\$ 0	\$ 0			
12						\$ 0	\$ 0			

WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

ATTACHMENT C
Suggested Single Project Labor Compliance Review and Enforcement Report Form

[Appendix C following 8 CCR §16434]

Awarding Body: DELTA DIABLO SANITATION DISTRICT

Project Name: _____

Name of Approved Labor Compliance Program: DELTA DIABLO SANITATION DISTRICT

Bid Advertisement Date: _____

Acceptance Date: _____

Notice of Completion Recordation Date: _____

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

2. Prejob Conference(s) -- Attach list(s) of attendees and dates

3. Notification to Project Workers of Labor Compliance Program’s Contact Person. (Explain Manner of Notification for each project work site.)

4. Certified Payroll Record Review

a. CPRs Received From:

<u>Contractor/Subcontractor</u>	<u>For weeks ending (“w/e”) through w/e</u>
_____	_____
_____	_____
_____	_____
_____	_____

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

<u>Classification</u>	<u>Determination No.</u>
_____	_____
_____	_____
_____	_____
_____	_____

5. Further investigation or audit due to CPR review, information or complaint from worker or other interested person, or other reason:

a. Independent Confirmation of CPR Data

<u>Contractor/Subcontractor</u>	<u>Worker Interviews (Yes/No)</u>	<u>Reconciled CPRs with Pay-checks or Stubs (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. Employer Payments (Health & Welfare, Pension, Vacation/Holiday) Confirmation

<u>Contractor/Subcontractor</u>	<u>Recipients of Employer Payments</u>	<u>Written confirmation Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

c. Contributions to California Apprenticeship Council or Other Approved Apprenticeship Program

<u>Contractor/Subcontractor</u>	<u>Recipients of Contributions</u>	<u>Written confirmation Obtained (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

d. Additional Wage Payments or Training Fund Contributions Resulting from Review of CPRs

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

<u>Name of Complainant</u>	<u>Date Received</u>	<u>Resolution or Current Status</u>
_____	_____	*
_____	_____	*
_____	_____	*
_____	_____	*

*Use separate page(s) to explain resolution or current status

7. Requests for Approval of Forfeiture to Labor Commissioner

<u>Contractor/Subcontractor</u>	<u>Date of Request</u>	<u>Approved/Modified/Denied</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Litigation Pending Under Labor Code Section 1742

<u>Contractor/Subcontractor</u>	<u>DIR Case Number</u>
_____	_____
_____	_____
_____	_____

9. (Check one): _____ Final report this project _____ Annual report this project

Authorized Representative for Labor Compliance Program

**ATTACHMENT "D"
NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS DUE TO**

Date:	Case or Contract No.:

DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR §16435)

Awarding Body:	Work performed in County of:
Project Name and Number (if any):	
Prime Contractor:	
Subcontractor:	

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

- The following payroll records are delinquent (specify weeks and due dates):
- _____
- _____
- _____

- The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):
- _____
- _____
- _____

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice:

See page 2 for additional information, including appeal rights.

Labor Compliance Officer

Prime Contractor Obligations: If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor’s payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

Notice of Right to Obtain Review – Expedited Hearing

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435.* **To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:**

[Name of Labor Compliance Officer,
address, and fax number]
Office of the Director – Legal Unit
Attention: Lead Hearing Officer
Expedited Hearing Request
Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

Important Additional Information: This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

Enclosure – text of 8 CCR §16435

§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.

(a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking any of the information required by Labor Code Section 1776;

(2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(h) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(h) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

Labor Compliance Program Regulations – ATTACHMENT E

REQUEST FOR APPROVAL OF FORFEITURE -- Suggested format

1. AWARDING BODY / THIRD PARTY LCP:

Name and Contact Information: DELTA DIABLO SANITATION DISTRICT 2500 Pittsburg-Antioch Highway Antioch, CA 94509 Ph: 925-778-4040	Date of Request:
Name and Contact Information for Awarding Body if different from LCP:	LCP Approval Status (specify if either interim or temporary or if LCP has extended authority):

2. PROJECT INFORMATION:

Project Name:	Contract Number:
Project Location:	
Bid Advertisement Dates:	Estimated Date Project is to be completed:
Acceptance Date of Project by the Awarding Body:	Notice of Completion/Date Recorded with County Recorder:
Other Relevant Deadline (specify):	Amount being held in Retention:

3. CONTRACTOR INFORMATION:

Name and address of Affected Contractor:	Name and address of Affected Subcontractor:
General Description of Scope of Work of the Entire Project:	
General Description of Scope of Work covered in the proposed Forfeiture (describe and attach relevant portions of contract or subcontract):	

4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:

Total Amount of Request for Notice of Withholding of Contract Payments:			
Wages Due:	Training Funds Due:	Total Penalties Due:	Potential Liquidated Damages [Wages + Training Funds]:
LC 1775 Penalties Due:	LC 1813 Penalties Due:	LC 1776 Penalties Due:	Other:

[Provide narrative summaries covering the following]:

- A. *Statement of Issues.*
- B. *Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*
- C. *Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*
- D. *Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*
- E. *Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

ATTACHMENTS

- 1. Audit Summary (Appendix B)
- 2. 1st Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

Send the Request and all Attachments to:

Division of Labor Standards Enforcement
 Bureau of Field Enforcement
 Attn.: Regional Manager
 300 Oceangate Blvd., No. 850
 Long Beach, CA 90802

COPIES OF THIS REQUEST, INCLUDING ALL ATTACHMENTS, SHALL BE SERVED ON THE AFFECTED CONTRACTOR AND AFFECTED SUBCONTRACTOR AT THE SAME TIME THAT IT IS SENT TO THE DIVISION OF LABOR STANDARDS ENFORCEMENT.

ATTACHMENT F

Labor Compliance Program <u>Delta Diablo Sanitation District</u> Labor Compliance Program 2500 Pittsburg-Antioch Highway Antioch, CA 94509 Phone: (925) 778-4040 Fax:	(Seal)
Date:	In Reply Refer to Case No.:

Notice of Withholding Contract Payments

Awarding Body – Delta Diablo Sanitation District	Work Performed in County of Contra Costa
Project Name	Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program (“Labor Compliance Program”) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

The Labor Compliance Program has determined that the total amount of wages due is: \$_____

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code Sections 1775 and 1813 is: \$_____

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code section 1776 is: \$_____

LABOR COMPLIANCE PROGRAM

By: _____
 Labor Compliance Representative

Notice of Right to Obtain Review – Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Delta Diablo Sanitation District
Labor Compliance Program
2500 Pittsburg-Antioch Highway
Antioch, CA 94509
Review Office-Notice of Withholding of Contract Payments
Attn: Dean Eckerson

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

**Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond.
Labor Code Section 1743.**

In accordance with Labor Code 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to Dean Eckerson at the following address:

Delta Diablo Sanitation District
2500 Pittsburg-Antioch Highway
Antioch, CA 94509

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Notice is \$_____.

Distribution:

Prime Contractor
 Subcontractor
 Surety(s) on Bond

ATTACHMENT G

<p>LABOR COMPLIANCE PROGRAM <u>Delta Diablo Sanitation District</u> <u>Labor Compliance Program</u> Review Office - Notice of Withholding of Contract Payments <u>Delta Diablo Sanitation District</u> <u>2500 Pittsburg-Antioch Highway</u> <u>Antioch, CA 94509</u> Phone: (925) 778-4040 Fax:</p>	<p>(SEAL)</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

Notice of Transmittal

To: Department of Industrial Relations
 Office of the Director-Legal Unit
 Attention: Lead Hearing Officer
 P. O. Box 420603
 San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked _____, and received by this office on _____.

Also enclosed please find the following:

- _____ Copy of Notice of Withholding of Contract Payments
- _____ Copy of Audit Summary

LABOR COMPLIANCE PROGRAM

By: Dean Eckerson, Labor Compliance Officer

cc: Prime Contractor
 Subcontractor
 Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

ATTACHMENT H

<p>LABOR COMPLIANCE PROGRAM <u>Delta Diablo Sanitation District</u> <u>Labor Compliance Program</u> Review Office - Notice of Withholding of Contract Payments <u>Delta Diablo Sanitation District</u> <u>2500 Pittsburg-Antioch Highway</u> <u>Antioch, CA 94509</u> Phone: (925) 778-4040 Fax:</p>	<p>(SEAL)</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor

Subcontractor

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

“(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) The Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code Section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.”

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

Attention: _____

Request to Review Evidence

To: _____

From: _____

Regarding Notice of Withholding of Contract Payments Dated _____

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review.

Phone No.: _____
Fax No.: _____

ATTACHMENT I

Prevailing Wage Hearing Request

**FULL REGS PROVIDED ON DISC
at the request of the Contractor**

(see Title 8 of the California Code of Regulations Sections 17201-17270)

LCP-AR1

6. LC § 1771.5 enforcement activities (provide all information requested, attaching as many sheets as necessary).

A. List projects handled by LCP within the past 12 months.

Project Name	Bid Advertisement Date	Prime Contractor	Contract Amount
Total			

B. Summary of all wages and penalties assessed and/or recovered.

Project Name	Affected Contractor (who directly employed the worker)	Amount Assessed	Amount Recovered	Approval of Forfeiture Requested from Labor Commissioner? <input type="checkbox"/> Yes <input type="checkbox"/> No	Description of Violation
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total					

LCP-AR1

C. For any amount identified in item B for which approval of forfeiture not requested from the Labor Commissioner, please explain below.

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

D. For any amount identified in item B for which approval of forfeiture was requested from the Labor Commissioner, please provide the following:

Project Name	Amount Assessed					Amount Recovered				
	LC § 1776(g)	LC § 1775	LC § 1813	Wages	Total	LC § 1776(g)	LC § 1775	LC § 1813	Wages	Total
Total										

E. Identify cases that are or were the subject of LC § 1742 proceedings.

Project Name	Contractor	Nature of Violation	ODL Case #	Current Status

F. Did you refer any contractor to the Labor Commissioner for debarment per LC § 1777.1?

Please check one: Yes No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: _____

G. Did you refer any apprenticeship violation to the Division of Apprenticeship Standards (DAS)?

Please check one: Yes No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: _____

LABOR COMPLIANCE PROGRAM

FORMS

NOTICE TO PUBLIC ENTITY

For Privacy Considerations

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size the 8-1/2 x 11 inches)



I, _____, the undersigned, am the
(Name – print)

_____ with the authority to act for and on behalf of
(Position in business)

_____, certify under penalty of perjury
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of _____
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: _____ Signature: _____

A public entity may require a stricter and/or more extensive form of certification.

STATEMENT OF COMPLIANCE

Date _____

I, _____ do hereby certify under penalty of perjury:
 (Name of signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on the _____ (Contractor or Subcontractor) _____; that during the payroll period commencing on the _____ day of _____, 20____ (Name of the Project) and ending the _____ day of _____, 20____ all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from (Contractor or Subcontractor) the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948.63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborers or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above-referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each Laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount no less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

INSTRUCTIONS FOR PREPARATION OF STATEMENT OF COMPLIANCE

This statement of compliance meets needs resulting from the amendment of the Davis-Bacon Act to include fringe benefits provisions. Under this amended law, the contractor is required to pay fringe benefits as predetermined by the Department of Labor, in addition to payment of the minimum rates. The contractor's obligation to pay fringe benefits may be met by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

The contractor should show on the face of his payroll all monies paid to the employees whether as basic or as cash in lieu of fringes. The contractor shall represent in the statement of compliance that he is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions follow:

Contractors who pay all required fringe benefits:

A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor shall continue to show on the face of his payroll the basic cash hourly rate and overtime rate paid to his employees, just as he has always done. Such a contractor shall check paragraph 4(a) of the statement to indicate that he is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exception shall be noted in Section 4(c).

Contractors who pay no fringe benefits:

A contractor who pays no fringe benefits shall pay to the employee and insert in the straight time hourly rate column of his payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on the basic or regular rate plus the required cash in lieu of fringes at the straight time rate. To simplify computation of overtime, it is suggested that the straight time basic rate and cash in lieu of fringes be separately stated in the hourly rate column, thus \$3.25/.40. In addition, the contractor shall check paragraph 4(b) of the statement to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employees as cash in lieu of fringes, and the hourly amount paid to plans, funds, or programs as fringes.

Statement of Employer Payments



Date:		In Reply, Refer to Case No.:	
Prime:			
Subcontractor:			
PROJECT NAME:			
PROJECT CONTRACT NO.:		County/location:	
HEALTH AND WELFARE			
NAME OF PLAN		Address, City and Zip	
ADMINISTRATOR		Address, City and Zip	
CLASSIFICATION(S) USED		CONTRIBUTION PER CLASSIFICATION PER HOUR	
CONTRIBUTIONS: WEEKLY _____ MONTHLY _____ QUARTERLY _____ ANNUALLY _____			
PENSION			
NAME OF PLAN		Address, City and Zip	
ADMINISTRATOR		Address, City and Zip	
CLASSIFICATION(S) USED		CONTRIBUTION PER CLASSIFICATION PER HOUR	
CONTRIBUTIONS: WEEKLY _____ MONTHLY _____ QUARTERLY _____ ANNUALLY _____			
VACATION/HOLIDAY			
NAME OF PLAN		Address, City and Zip	
ADMINISTRATOR		Address, City and Zip	
CLASSIFICATION(S) USED		CONTRIBUTION PER CLASSIFICATION PER HOUR	
CONTRIBUTIONS: WEEKLY _____ MONTHLY _____ QUARTERLY _____ ANNUALLY _____			
TRAINING			
NAME OF PLAN		Address, City and Zip	
ADMINISTRATOR		Address, City and Zip	
CLASSIFICATION(S) USED		CONTRIBUTION PER CLASSIFICATION PER HOUR	
CONTRIBUTIONS: WEEKLY _____ MONTHLY _____ QUARTERLY _____ ANNUALLY _____			

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO.
MAILING ADDRESS-NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
	ESTIMATED NUMBER OF JOURNEYMEN HOURS
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	OCCUPATION OF APPRENTICE
	ESTIMATED NUMBER OF APPRENTICE HOURS
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAMS(S))	APPROXIMATE DATED TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. We are already approved to train apprentices by the _____
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. We will comply with the standard of _____
Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 © which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with under the direct supervision of journeyman/men.

Signature _____ Date _____

Typed Name _____

Title _____

**State of California - Department of Industrial Relations
DIVISION OF APPRENTICESHIP STANDARDS**

REQUEST FOR DISPATCH OF AN APPRENTICE

Do not send this form to DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Date: _____

To Applicable Apprenticeship Committee: _____

Address: _____

Telephone: _____ Fax: _____

Contractor Requesting Dispatch: _____

Address: _____

Telephone: _____ Fax: _____

Person making request: _____

Number of Apprentice(s) Needed: _____ Craft or Trade: _____

Date Apprentice(s) to Report: _____ (48 hours notice required)

Name of Person to Report to: _____

Address to Report to: _____

Time to Report: _____

You may use this form or make a verbal or written request, to ask for the dispatch of an apprentice. Please take note of California Code of Regulations, *Title 8, § 230.1 (a)* which say in part: *if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sunday and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices...*

State of California
 Department of Industrial Relations
 California Apprenticeship Council
 P. O. Box 420603
 San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

Please use a separate **form** for each jobsite, listing the occupations for the jobsite. One **check** payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are **not accepted** by the California Apprenticeship Council for federal public works projects, or for non-apprenticeable occupations such as utility technicians, teamsters, etc.

California Apprenticeship Council

NAME AND ADDRESS OF CONTRACT/SUBCONTRACTOR MAKING CONTRIBUTION		CONTRACTORS LICENSE NUMBER		
		CONTRACT OR PROJECT NUMBER		
NAME AND ADDRESS OF PUBLIC AGENCY AWARDDING CONTRACT		JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE. GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, ETC.		
		PERIOD COVERED BY CONTRIBUTION (FROM-TO)		
CLASSIFICATION(S) OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
Total				\$0.00
SIGNATURE PLEASE TYPE OR PRINT YOUR NAME			DATE	
TITLE			AREA CODE & TELEPHONE NUMBER	

STATE OF CALIFORNIA – DEPARTMENT OF INDUSTRIAL RELATIONS

TO: California Department of Industrial Relations
 Division of Apprenticeship Standards
 P.O. Box 420603
 San Francisco, CA 94142

AWARDING AGENCY ID NUMBER

--

If you do not have an ID number please contact DAS

FROM:

**EXTRACT OF
 PUBLIC WORKS CONTRACT AWARD**

A CONTRACT TO PERFORM PUBLIC WORKS UNDER LABOR CODE SECTION 1777.6 HAS BEEN AWARDED TO:

1. NAME OF GENERAL CONTRACTOR			2. CONTRACTOR'S LICENSE NO	
3. MAILING ADDRESS (STREET NUMBER OR P.O. BOX)			4. CITY	
			5. ZIP CODE	6. TELEPHONE NUMBER
7. GENERAL CONTRACTOR'S CONTACT EMAIL ADDRESS			8. ADDRESS/LOCATION OF PUBLIC WORKS SITE (INCLUDE CITY AND COUNTY): 8a. County	
9. NAME OF PROJECT				
10. CONTRACT NUMBER	11. PROJECT NUMBER		12. DOLLAR AMOUNT OF CONTRACT AWARD	
13. FIRST ADVERTISED BID DATE MONTH DAY YEAR		14. CONTRACT AWARD DATE MONTH DAY YEAR		12a ESTIMATED TOTAL PROJECT COSTS, IF DIFFERENT FROM ITEM 12 (see instructions).
15. WHICH STATUTE, IF ANY, APPLIES TO THIS PROJECT?				
16. STATE CONSTRUCTION BONDS YES NO if YES, List the Sources and Dollar Amount of Bond Proceeds: SOURCES DOLLAR AMOUNT			17. WILL YOU OPERATE A DIR-APPROVED LABOR COMPLIANCE PROGRAM (LCP) FOR THIS PROJECT? YES NO	
			18. IS THERE A PROJECT LABOR AGREEMENT (PLA) ASSOCIATED WITH THIS PROJECT? If yes, please email a copy to cmu@dir.ca.gov YES NO	
19. STARTING DATE (ESTIMATED OR ACTUAL) (MM/DD/YYYY)			20. COMPLETION DATE (ESTIMATED OR ACTUAL) (MM/DD/YYYY)	
21. BRIEF DESCRIPTION OF WORK TO BE PERFORMED			22 NEW CONSTRUCTION REMODELING ALTERATION, DEMOLITION, REPAIR OR MAINTENANCE	
			23. CLASSIFICATION OR TYPE OF WORKER (CARPENTER, PLUMBER, ETC.) THAT WILL BE EMPLOYED BY THE CONTRACTOR(S) Please list Sub-contractors and their worker classifications on page 2	
24. Is language included in the Contract Award to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code? YES NO				
25. SIGNATURE		26. TITLE		27. DATE
28. PRINTED OR TYPED NAME		29. E-MAIL ADDRESS		30. TELEPHONE NUMBERS
If different from above, name, title, and contact information of person responsible for carrying out Awarding Body's LCP or CMU responsibilities.				
31. NAME		32. TITLE		33. E-MAIL ADDRESS
				34. TELEPHONE NUMBER

Duplication of this form is permissible

EXTRACT OF PUBLIC WORKS CONTRACT AWARD (Continued)

Listing of Sub Contractors

Con Lic. #	Contractor	Classification of workers
		Asbestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement Amendment with Chevron Pipe Line Company to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to Chevron Pipe Line Company for the Chevron Pipeline KLM 32 PIM Repair Project:

- A. **AUTHORIZE** staff to file a Notice of Determination for this Board action with the County Clerk.
- B. **AUTHORIZE** Executive Director to execute a First Amendment to the Participating Special Entity Agreement with Chevron Pipe Line Company for the Chevron Pipeline KLM 32 PIM Repair Project as further described in Addendum 1.0 (the Addendum to the Planning Survey Report), provided the Wildlife Agencies concur with the Amendment.

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize the Executive Director to execute a Frist Amendment to the Participating Special Entity Agreement and to extend take authorization under the First Amendment to Chevron Pipe Line Company (“Chevron”), for the Chevron Pipeline KLM 32 PIM Repair Project (“Project”) as described in Exhibit 1 and Addendum 1.0, is a discretionary action subject to CEQA. For purposes of the Project, the Conservancy is the CEQA lead agency. The Conservancy has determined the Project is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>June 23, 2014</u>	APPROVED AS RECOMMENDED: _____
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<input type="checkbox"/> UNANIMOUS	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

ITEM (B). At the February 20, 2014 meeting the Board authorized staff to execute a Participating Special Entity Agreement (“PSE Agreement”) with Chevron Pipe Line Company (“Chevron”), for the Chevron Pipeline KLM 32 PIM Repair Project (“Project”). The Project consisted of a minor excavation to access the pipeline, a repair and maintenance improvement, and finally the replacement of the soil upon completion of the repair. The applicant has not yet performed the required restoration and monitoring to restore the site to pre-project conditions, due to the necessary repair work requested under the First Amendment. On April 2, 2014 the PSE Agreement was executed and the Certificate of Inclusion was issued authorizing activities to commence. Chevron has paid all the mitigation and contribution to recovery fees as required in the PSE Agreement.

Chevron is requesting an amendment to the PSE Agreement and associated Exhibit 1 in order to receive additional take coverage to complete a repair to the coating of the line that was discovered during the initial repair at KLM 32. This coating repair is approximately 15 feet north of the north edge of the original trench. Chevron is proposing to trench another 20 feet to adjacent to the original trench area to access the line and conduct this repair. These changes result in an overall increase of impact acreage covered under the HCP/NCCP permit.

Attached, and to be incorporated as Exhibit 1 to the PSE Agreement, is Addendum 1.0 to the Planning Survey Report prepared by Padre & Associates (the biological consulting firm hired by Chevron to complete the Addendum) in consultation with Conservancy staff. The proposed project site description and impact areas would be the same as the approved Planning Survey Report (“PSR”) with the exception of the proposed modifications detailed in Addendum 1.0 to the PSR. A complete description of the proposed changes and the resulting impacts associated with the original PSR and Certificate of Inclusion are described in Addendum 1.0.

In order process modifications to the project description and receive incidental permit coverage under the HCP/NCCP by way of the First Amendment, the Conservancy and Chevron must execute an Amendment to the PSE Agreement obligating compliance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits. The Conservancy staff has prepared and Chevron agrees with the terms of the proposed First Amendment to the PSE Agreement for the Project (attached).

Key provisions of the Amendment:

- The First Amendment results in changes to the impact acres to be covered under the HCP/NCCP permit, these changes are reflected in the table below (see Addendum 1.0, Executive Summary for all tables):

Summary of Acreages Involved in the Amendment

Type	Acreage under Original Agreement	Total Acreage Increase under Amendment 1
Alkali Wetland (Saltgrass)	0.005	0.005
Ruderal (Trench)	0.007	-
Ruderal (Access Road)	0.02	-
TOTAL	0.032	0.005

- The Agreement provides that Chevron will reimburse the Conservancy for staff costs associated with processing the request for an amendment, up to a maximum reimbursement of \$8,500 (increasing the cap on administrative fees from \$5,000 to \$8,500).
- To date Chevron has submitted payment for \$3,305.34 in accordance with the PSE Agreement. The additional fees owed by Chevron for the First Amendment totals \$3,327.68 which amount includes \$1,663.84 in development fees and a contribution to recovery of \$1,663.84.
- Staff proposes a Contribution to Recovery in the amount of \$1,663.84. As set forth in the HCP/NCCP, the Conservancy may charge a Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs born by the Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species (as is required because the plan is an NCCP and by state law NCCP’s must contribute to recovery, etc.). Given the overall scale and proposed ground disturbing impacts associated with the First Amendment, staff proposes a \$1,663.84 Contribution to Recovery. This amount is equal to the amount of the mitigation fees required for the impacts and staff believes this is consistent with the amount charged for the original Project (which set the Contribution to Recovery at 100% of the development fees) as well as previous Participating Special Entity projects.

- The table below summarizes the HCP/NCCP fee summary for the Project, including Addendum 1.0:

	Development Fee	Wetland Fee	Contribution to Recovery	Total
Original PSR	\$699.16	\$953.52	\$1,652.67	\$3,305.34
Addendum 1.0	\$111.47	\$1,552.37	\$1,663.84	\$3,327.68
Total				\$6,633.02

Next steps: If the Conservancy Governing Board authorizes staff to execute an Amendment to the PSE Agreement, key next steps in granting take coverage would be as follows:

- Chevron signs the First Amendment.
- Staff will ask the Wildlife agencies to review the First Amendment and Addendum 1.0 and to concur that the First Amendment and Addendum 1.0 includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on Chevron, to implement them. If, and only if, the Wildlife Agencies concur with the Project as described in the First Amendment and Addendum 1.0, the Executive Director of the Conservancy will sign the First Amendment. Note: Participating Special Entity Agreements and any amendments thereof, unlike the granting of take authorization by a participating City or County, require Wildlife Agency concurrence.
- Chevron pay’s all administrative costs, as outlined in the First Amendment.
- The Conservancy issues Chevron an updated Certificate of Inclusion consistent with the First Amendment. Take authorization would then be in effect, subject to the terms of the PSE Agreement, First Amendment, and Certificate of Inclusion.
- Chevron conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Chevron develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Chevron implements the Project subject to the terms of the First Amendment.

Attachments:

- **Attachment A:**
 - **PSE Agreement First Amendment, including:**
 - Main body of amendment
 - Addendum 1.0
 - Main body of addendum
 - Fee Calculator (Exhibit 1)
 - Updated Impact and Land Cover Map and Project Comparison Maps

FIRST AMENDMENT

TO THE PARTICIPATING SPECIAL ENTITY AGREEMENT OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN/ NATURAL COMMUNITY CONSERVATION PLAN AND GRANTING TAKE AUTHORIZATION

Between

**the EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, the Implementing
Entity, and CHEVRON PIPE LINE COMPANY, a Participating Species Entity**

RECITALS

The Participating Special Entity Agreement between the East Contra Costa County Habitat Conservancy (“Conservancy”) and Chevron Pipe Line Company (“Participating Special Entity” or “PSE”) was entered into April 2, 2014 (the “PSE Agreement”).

The PSE Agreement provides, in Section 10.4, that it may be amended with the written consent of both parties.

The Conservancy and PSE wish to amend the terms of the PSE Agreement by way of this First Amendment (the “First Amendment”).

AMENDMENT

A. The Conservancy and the PSE agree to amend the PSE Agreement as follows:

1. The attached Chevron Addendum 1.0 is added to and incorporated within Exhibit 1.
2. Section 2.7 of the Agreement is amended as follows:

PSE plans to implement the Chevron Pipeline KLM 32 PIM Repair Project and seeks an extension of the Conservancy’s permit coverage to perform required maintenance at Site 32 on the KLM pipeline in an undeveloped area within the city limits of Brentwood, California. The repair will be performed as part of a pipeline integrity management plan to comply with Department of Transportation hazardous materials and safety regulations, as further described in Exhibit 1 [and Addendum 1.0](#).

3. Section 2.8 of the PSE Agreement is amended as follows:

The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 [and Addendum 1.0](#) and is hereby incorporated into this Agreement by reference.

4. Section 3.1 of the Agreement is amended as follows:

“**Application**” means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, [including Addendum 1.0 which describes minor modifications to the project description at the Project site](#) and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.

5. Section 5.4 is amended as follows:

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of ~~\$6633.02~~ ~~3,305.34~~, which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

Temporary Impact Development Fee: ~~\$810.62~~ ~~699.15~~

Temporary Impact Wetland Mitigation Fee: ~~\$2505.89~~ ~~953.52~~

Contribution to Recovery: ~~\$3316.51~~ ~~1,652.67~~

[To date the Participating Special Entity has submitted payment for \\$3,305.34 in accordance with the PSE Agreement. The additional payment for the First Amendment totals \\$3,327.68. The additional payment for the First Amendment must be paid in full before any ground-disturbance associated with Addendum 1.0 occurs. ~~The payment must be paid in full before any ground-disturbance associated with the Project occurs.~~](#)

Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, ~~2015~~ ~~2014~~ and construction of the Project commences before March 15, ~~2015~~ ~~2014~~, the amount due will be as stated above. If PSE pays on or after March 15, ~~2015~~ ~~2014~~ or construction of the Project does not commence before March 15, ~~2015~~ ~~2014~~, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before

March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

3. Section 7.6 is amended as follows:

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy’s “Administrative Costs”). Conservancy’s Administrative Costs shall not exceed \$~~8,500~~ 5,000 in the aggregate. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy’s discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

This provision is not intended to, and shall not be construed to, limit PSE’s duty to indemnify the Conservancy as provided in Section 7.7 of this Agreement.

- B. This First Amendment may be executed in counterparts.
- C. All other terms and conditions of the PSE Agreement shall remain as originally agreed.
- D. The Conservancy shall issue a Certificate of Inclusion pursuant to Section 6.1 of the PSE Agreement that is revised to incorporate reference to this First Amendment.
- E. This First Amendment shall take effect on the date after both of the following have occurred:
 - 1. The Conservancy and PSE have executed the First Amendment; and
 - 2. The Conservancy has delivered written notice to PSE that the Conservancy has received written concurrence from the Wildlife Agencies regarding the First Amendment in accordance with Section 6.1 of the PSE Agreement.

IN WITNESS WHEREOF, the Conservancy and PSE hereto execute this First Amendment.

**THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

Dated: _____

By: _____
John Kopchik, Executive Director

CHEVRON PIPE LINE COMPANY

Dated: _____

By: _____
Lisa Shreder, Area Manager, Operations West

PSR Addendum

Participating Special Entity Planning Survey Report Addendum 1.0

To Comply with and Receive Permit Coverage under the East Contra Costa Habitat
Conservation Plan and Natural Community Conservation Plan

Chevron Pipe Line Company's KLM 32 Repair Project

June 13, 2014

Submitted to:
East Contra Costa County Habitat Conservancy

Submitted by:



Chevron Pipe Line Company
9525 Camino Media
Bakersfield, CA 93311

Prepared by:



3500 Coffee Road, Suite B
Bakersfield, CA 93308



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1.0 PROPOSED MODIFICATIONS (PSR SECTION I)

1.1 Background Information

Chevron Pipe Line Company (CPL) is required by the U.S. Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration to complete assessments and repairs to its pipelines in accordance with Pipeline Integrity Management (PIM) regulations contained within Title 49, Code of Federal Regulations (CFR), Section 195.569416 (E). CPL owns and operates the KLM crude oil pipeline. The KLM pipeline is a common carrier pipeline system, 192 miles in length that begins at CPL's Kettleman Station and generally extends from south to north, up from the San Joaquin Valley, to CPL's Los Medanos Station, located in Pittsburg, California. The KLM pipeline consists of 18-inch diameter pipe from Kettleman to Los Medanos, except for a nine-mile segment of 20-inch diameter pipe.

In 2012, CPL tested this pipeline and identified several anomalies within the pipeline systems that need to be investigated and possibly repaired to meet DOT standards. The purpose for the BA is to obtain authorization to conduct an exploratory excavation on a specific portion of the KLM pipeline that was identified through the pigging process. Chevron sends what is referred to as a smart pig through all of their pipelines every 3-5 years. The smart pig x-rays the inside of the pipeline and all sleeves, welds, and coatings. The smart pig sends back coordinates on areas that may need to be investigated. These investigations can lead to coating, welding or sleeve repairs.

1.2 PROPOSED PROJECT DESCRIPTION MODIFICATIONS

CPL executed a Participating Special Entity Agreement and subsequently obtained a Certificate of Inclusion from the East Contra Costa County Habitat Conservancy as a Participating Special Entity for take coverage under the HCP/NCP on April 2, 2014, after the project was approved by the Conservancy's Governing Board on February 20, 2014. The Participating Special Entity Agreement covered a repair on the KLM pipeline known as KLM 32. This addendum is to address CPL's request to complete a repair to the coating of the line that was discovered during the initial repair at KLM 32. This coating repair is approximately 15 feet north of the north edge of the original trench (**Figure 1**). CPL is proposing to trench another 20 feet to adjacent to the original trench area to access the line and conduct this repair.

Access

The same access will be used as was done for the original repair site which is located within an undeveloped portion within the city limits of Brentwood, California. Access to the project site will be achieved from Concord Ave, which parallels the KLM pipeline corridor prior to making a 90 degree turn approximately 50 feet from the project site. Immediately south of the project site, is an access road for the residential developments' vineyards. Staging and equipment storage area will occur within the same access road and upland vegetation used for the KLM 32 project site.

Site Conditions

The exact location of the dig site is vegetated with 70 percent salt grass (*Distichlis spicata*) and is adjacent (north) of the KLM 32 Repair Site (**Figure 1**).

Impacts

The KLM 32 Repair Project was just completed in April and the area of excavation encompassed a 20'x10' (approximately 0.005 acre/ 44.44 cubic yards) area of impact in Alkali Wetland (Saltgrass). This additional repair is adjacent to the existing excavation site and will add an impact area of 20'x10' in the Alkali Wetland (0.005 acre/ 44.44 cubic yards) for a total of 0.01 acre and 88.88 cubic yards -of impact to Alkali Wetland impacts for both projects.

The additional impacts, by land cover type, are as follows:

- Alkali saltgrass wetland 0.005 acre

Construction Methods

In order to assess and repair the anomaly, the designated section of the pipeline will be exposed (excavated) at the site to identify the extent of the repair. The repair activity most likely required for this project will be welding a new sleeve around the anomaly in question. To install a new sleeve, a trench of no larger than 10 feet wide by 20 feet long and 4 to 6 feet in depth will be required to access the pipe in a safe manner. A backhoe will excavate and expose the pipeline, stockpiling the first one foot of topsoil and vegetation seed stock adjacent to the dig site in an upland area. The rest of the soil excavated will be stockpiled separately, either adjacent to the topsoil or within a dump truck. Equipment movement and spoils will be located on the pre-disturbed area of the KLM 32 Repair Site.

Once the pipeline is safely exposed, a trench box will be used to insure that the excavated walls will remain in place for safe entry into the trench to examine the pipeline anomaly. After the anomaly is located, the existing coating will be removed and discarded and a new metal sleeve will be welded over the anomaly. Once the sleeve is welded, the pipeline will be recoated and the trench will be backfilled to the existing topography prior to excavation. The topsoil with existing seed stock will be placed over the excavation.

Vehicles to be used at the project site may include a rubber tire backhoe, welding truck, water truck, and contractor pick-up trucks. Minimal equipment is necessary to complete the projects; therefore, a dedicated staging area is not needed. Contractor vehicles will serve as the staging areas, as pumps, generators, and welding equipment is already stored within the vehicles.

2.0 LAND COVER TYPES (PSR SECTION II)

Changes to the land cover types associated with the proposed modifications include the alkali saltgrass wetland cover type for the additional repair. The modification proposed in this Addendum resulted in the addition in acreage. There is an overall net increase of approximately 0.005 acre of alkali saltgrass wetland. The proposed modification would not cause any permanent impacts nor would they change the species-specific planning survey requirements.



Since the repair of the original project occurred, the temporary impacts from the original project have not been restored to pre-project conditions yet pending this additional repair at the site. The same access road and staging area will be used as was covered under the original agreement.

Table 1. Land Use Cover Type Increases Under Amendment 1

Type	Acreage under Agreement	Total Acreage Increase under Amendment 1
Alkali Wetland (Saltgrass)	0.005	0.01
Ruderal (Trench)	0.007	0.007
Ruderal (Access Road)	0.02	0.02
TOTAL	0.032	0.037

Table 2. Revised Land Cover Type Acreages

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Ruderal		0.027		
Jurisdictional wetlands and waters				
<input checked="" type="checkbox"/> Alkali wetland ^a		0.01		
Total Impacted Acres		0.037		

3.0 PRECONSTRUCTION SURVEY RESULTS FOR SELECTED COVERED WILDLIFE (PSR SECTION III)

The additional repair activity proposed with this addendum does not introduce new species that were presented in the original PSR for the KLM 32 Project. During the course of pre-activity surveys for the KLM 32 Project, hydrological monitoring of the site presented evidence that the site does not pond or create suitable habitat for sensitive brachiopod species.

In addition, habitat onsite was deemed unsuitable breeding habitat for California tiger salamander (*Ambystoma californiense*) (CTS) but could offer potential dispersal or nonbreeding habitat for the species. After monitoring construction activities for the initial KLM 32 repair, nonbreeding habitat onsite for CTS is marginal at best. According to CDFW's California Natural Diversity Database (CNDDDB), there are CTS breeding occurrences to the west of the project

site within 0.5-mile. Besides Dry Creek, habitat between the potential breeding occurrences and the repair location is mainly Italian thistle (*Carduus pycnocephalus*) and black mustard (*Brassica nigra*) and is ungrazed creating a partial movement barrier. Although habitat is not unpassable, it would not be preferred for dispersal to the surrounding habitat opposite of the project site.

While the biologist monitored the removal of vegetation at the project site, the saltgrass habitat onsite consisted of extremely dense matting. The density of the matting would be impermeable for a salamander; therefore, eliminating the ability for survival over the dry summer. Additionally, no burrows were observed onsite while conducting pre-construction surveys or while monitoring. In conclusion, the likelihood of CTS occurring onsite during the nonbreeding season would be extremely low. With a biologist monitoring construction activities the risk of injuring a CTS, would be reduced even further.

Surveys conducted for San Joaquin kit fox (*Vulpes macrotis mutica*) and Western burrowing owl (*Athene cunicularia*) prior and during construction of KLM 32 did not present evidence that burrows were being used by either species within or surrounding the KLM 32 Project site. However, the site is located within the known range for kit fox and is suitable habitat for burrowing owls. Pre-construction surveys will be re-conducted prior to repair activities for the proposed additional repair as per PSR Section III.

In addition, rare plant surveys for San Joaquin spearscale (*Atriplex joaquiniana*) and brittlescale (*Atriplex depressa*) were conducted during two visits in July and August 2013. Both species were not observed during 2013 surveys. The site visits in 2013 were not during the appropriate blooming period for alkali milkvetch (*Astragalus tener ssp.tener*); therefore, additional surveys of the site were conducted on March 11 and April 4, 2014. Transects were walked for all three species during the 2014 survey dates. No rare plants were observed during these surveys.

4.0 LANDSCAPE AND NATURAL COMMUNITY-LEVEL AVOIDANCE AND MINIMIZATION MEASURES (PSR SECTION IV)

The proposed modifications would not alter the implementation of the following HCP/NCCP conservation measures listed in the February 2014 PSR.

- Conservation Measure 1.11 – Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds
- Conservation Measure 2.12 – Wetland, Pond, and Stream Avoidance and Minimization
- Conservation Measure 1.6 – Minimize Development Footprint Adjacent to Open Space

5.0 MITIGATION MEASURES (PSR SECTION V)

The temporary impact acreage increased by 0.005 acres. The mitigation fees are \$1,663.84 and the Contribution to Recovery is \$1,663.84 for a total payment owed under the First Amendment in the amount of \$3327.68.

The fee calculation Exhibit 1 is included as an attachment to this addendum.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Chevron Pipe Line Company
 Project Name: Chevron Pipe Line's KLM 32 PIM Repair Project: Addendum for Additional Repair
 APN (s): 007-440-018-5
 Date: June 4, 2014 Jurisdiction: East Contra Costa County Habitat Conservancy

DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

**Acreage of land to be
permanently disturbed (from
Table 1)¹**

	Full Development Fee	x	Fee per Acre (subject to change on 3/15/15 ²)	=	
Fee Zone 1			\$11,146.99		\$0.00
Fee Zone 2	0.005		\$22,293.98		\$111.47
Fee Zone 3			\$5,573.50		\$0.00
Fee Zone 4 ³			\$16,720.49		\$0.00
Development Fee Total =					\$111.47

**WETLAND MITIGATION FEE

	Acreage of wetland	x	Fee per Acre (subject to change on 3/15/15 ²)	=	
Riparian woodland / scrub			\$90,247.12		\$0.00
Perennial Wetland			\$132,594.88		\$0.00
Seasonal Wetland			\$307,364.17		\$0.00
Alkali Wetland	0.005		\$310,474.37		\$1,552.37
Ponds			\$168,201.14		\$0.00
Aquatic (open water)			\$84,100.57		\$0.00
Slough / Channel			\$122,569.82		\$0.00
Linear Feet					
Streams					
Streams 25 Feet wide or less (Fee is per Linear Foot)			\$342.61		\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)			\$513.92		\$0.00
Wetland Mitigation Fee Total =					\$1,552.37

FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee _____
 Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments _____
 Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant _____
Reduction Total = \$0.00

CALCULATE FINAL FEE

Development Fee Total		\$111.47		
Wetland Mitigation Fee Total +		\$1,552.37		
Fee Subtotal		\$1,663.84		
Contribution to Recovery +		\$1,663.84		
TOTAL AMOUNT TO BE PAID = \$3,327.68				

Notes:

1 City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.
 2 The Conservancy Board adopted a periodic fee audit required by the HCP/NCCP on June 27, 2013. The fee schedule listed above is based on the periodic fee audit as adopted on June 27, 2013 and the automatic adjustment on March 15, 2014.
 3 "Fee Zone 4" is not shown on Figure 9.1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (see page 9-21 of the HCP).

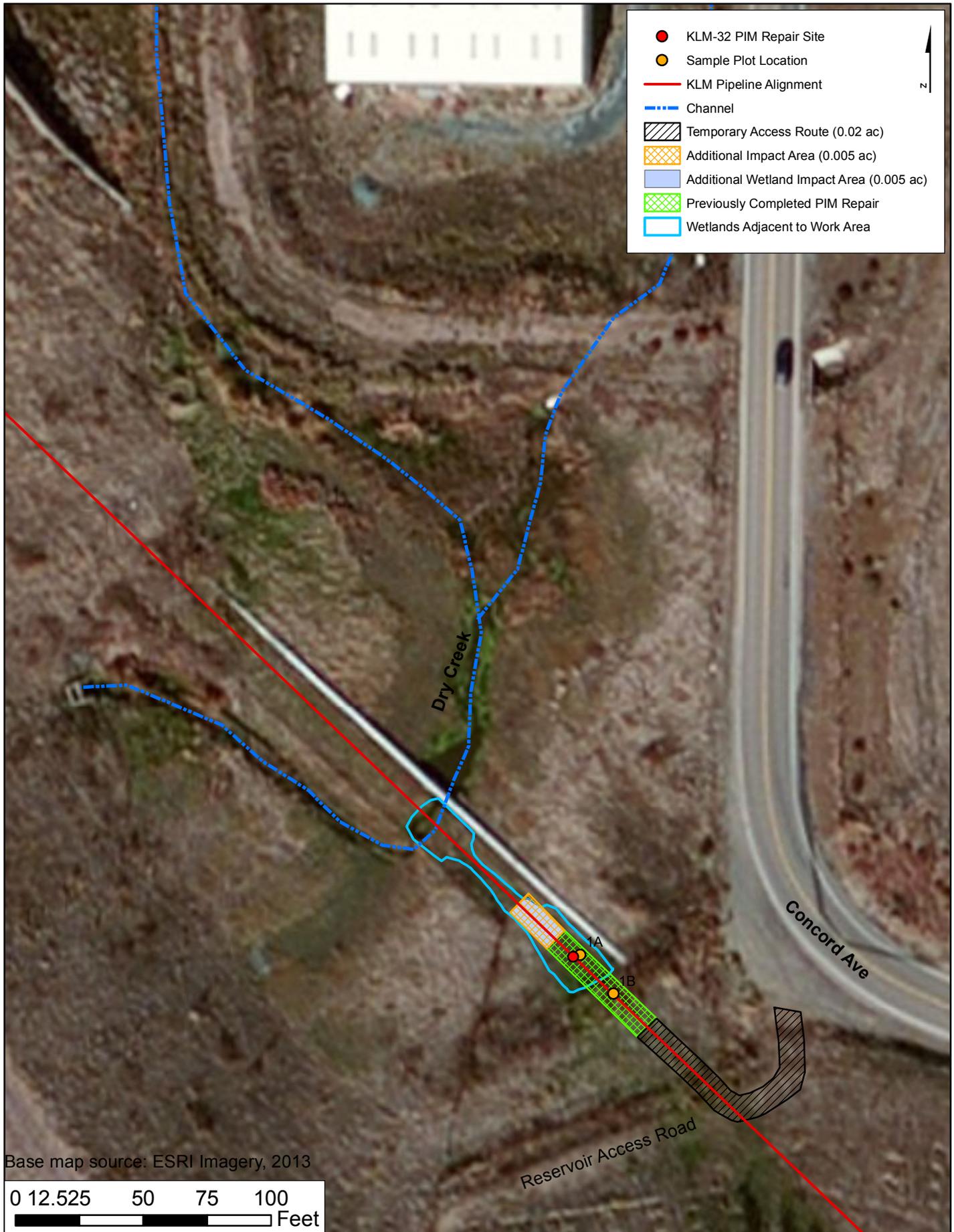


Figure 1
Project Site Plan
KLM-32 PIM Location



RESTORATION AND MONITORING PLAN- As Updated per the First Amendment to the PSE Agreement

Chevron Pipe Line Company's KLM 032 PIM Repair Project



Prepared for:

Chevron Pipe Line Company
9525 Camino Media, Building E
Bakersfield, CA 93311
Contact: Ana Wauthion-Melgar

Prepared By:

Padre Associates, Inc.
5500 Ming Ave., Suite 250
Bakersfield, California 93309

June 2014

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Table 1. Performance Criteria for Wetland Restoration

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1.0 INTRODUCTION AND PURPOSE

This Restoration and Monitoring Plan (RMP) has been prepared for Chevron Pipe Line Company (CPL) as a revegetation plan for the temporary disturbance of vegetation communities at the Kettleman to Lost Medanos (KLM) Chevron Pipe line (CPL) Company's pipeline in the city of Brentwood, California known as KLM-032 and additional repair site.

2.0 PROJECT DESCRIPTION

2.1 Project Purpose

CPL is required by the Department of Transportation (DOT) and Resource and Special Programs Administration's Office of Pipeline Safety to complete assessments and repairs to its pipelines. CPL owns and operates the KLM crude oil pipeline. The KLM pipeline is a common carrier pipeline system, 192 miles in length that begins at CPL's Kettleman Station and generally extends from south to north, up from the San Joaquin Valley, to CPL's Los Medanos Station, located in Pittsburg, California. The KLM pipeline consists of 18-inch diameter pipe from Kettleman to Los Medanos, except for a nine-mile segment of 20-inch diameter pipe.

In 2012, CPL tested this pipeline and identified several anomalies within the pipeline systems that need to be investigated and possibly repaired to meet DOT standards. The purpose for the BA is to obtain authorization to conduct an exploratory excavation on a specific portion of the KLM pipeline that was identified through the pigging process. Chevron sends what is referred to as a smart pig through all of their pipelines every 3-5 years. The smart pig x-rays the inside of the pipeline and all sleeves, welds, and coatings. The smart pig sends back coordinates on areas that may need to be investigated. These investigations can lead to coating, welding or sleeve repairs.

2.2 Project Description

The repair activity occurs within an undeveloped portion within the city limits of Brentwood, California (**Figure 1 and 2**). The repair activity most likely required for this project will be welding a new sleeve around the anomaly in question. To install a new sleeve, a trench with a maximum disturbance of 10 feet wide by 20 feet long will be required to access the pipe in a safe manner. A backhoe will excavate and expose the pipeline, stockpiling the first one foot of topsoil and vegetation seed stock adjacent to the dig site in an upland area. The rest of the soil excavated will be stockpiled separately, either adjacent to the topsoil or within a dump truck. Once the pipeline is safely exposed, a trench box will be used to insure that the excavated walls will remain in place for safe entry into the trench to examine the pipeline anomaly. After the anomaly is located, the existing coating will be removed and discarded and a new metal sleeve will be welded over the anomaly. Once the sleeve is welded, the pipeline will be recoated and the trench will be backfilled to the existing topography prior to excavation. The topsoil with existing seed stock will be placed over the excavation.

UPDATE: After completing the first repair, it was noted that coating was not adhering to the pipe as it should. CPL was concerned that the coating on the next joint would be the same and applied for an amendment to the original scope. A new trench with a maximum disturbance of 10 feet wide by 20 feet long will be excavated adjacent to the initial repair trench area. This would encompass a total surface impact of 400 square feet or 0.01 acre.



The site is located immediately adjacent to a Contra Costa County detention basin and levee that contains a culvert with an associated channel. The channel and anomaly location is located between two residential developments, known as the *Vineyards*. As the name indicates the developments have vineyards and olive trees associated with them to aid in a Mediterranean ambiance. The new anomaly location and initial anomaly location is approximately 40 to 60 feet, respectively, from Dry Creek that flows from the detention basin. Dry Creek contains typical emergent vegetation such as California bulrush (*Schoenoplectus californicus*) and broad-leaved cattail (*Typha latifolia*). The exact location of the dig site is located partially within Alkali wetland and vegetated with 70 percent saltgrass (*Distichlis spicata*), and partially within ruderal habitat, consisting of mostly non-native plant species.

2.2.1 Construction Methods, Access, and Impacts.

Access to the project site will be achieved from Concord Ave, which parallels the KLM pipeline prior to making a 90 degree turn approximately 50 feet from the project site. Immediately south of the project site, is an access road for the residential developments' vineyards. Staging and equipment storage area will occur within the access road and upland vegetation immediately south of the project site. Vegetation will be mowed along the access route to facilitate vehicle and equipment access.

In order to assess and repair the anomalies (**Figure 3**), a section of the pipeline will be exposed (potholed) at the site to identify the extent of the anomaly. If necessary, a trench with a total maximum length of 40 feet, a width of 10 feet and an approximate depth of 4 to 6 feet will be excavated to completely expose and repair the anomaly for this site. This trench size will allow for proper trench-shoring procedures, as well as allow workers to conduct the necessary repairs to the pipeline, which includes, but is not limited to, the placement of sleeves on thin-walled areas or completely replacing small sections of pipe. Equipment movement and spoils will disturb an additional 30-foot-wide area south of the trench for a total impact area of 70 feet by 10 feet.

2.2.2 Construction Equipment.

The project would be implemented in its entirety within one construction phase. To perform the repair activities, the following equipment is anticipated.

- | | |
|---------------------------------------|--------------------------|
| Backhoe | Sandblasting machine |
| Generator | Contractor's vehicles |
| Vibratory soil compactor | Excavator (if necessary) |
| Portable vegetation removal equipment | |

3.0 VEGETATION TYPES

The project sites occurs within ruderal and salt grass flats habitat types but freshwater emergent wetland occurs adjacent (40 feet north) to the project site within Dry Creek; therefore, it will be discussed also. These habitats are discussed below.

3.1 Ruderal Areas.

Ruderal vegetation is found in disturbed areas throughout the project area. Vegetation within this cover type consists of non-native herbaceous species. Plant species seen onsite include bristly ox-tongue (*Helminthotheca echioides*), black mustard (*Brassica nigra*), yellow star-thistle (*Centaurea solstitialis*), vetch (*Vicia* sp.), and milk thistle (*Silybum marianum*). Within the project site Italian thistle (*Carduus pycnocephalus*) is the dominant plant within the upland portion making up 85 percent of the vegetation.

3.2 Saltgrass Flats.

This habitat type occurs within coastal salt marshes and inland habitats that include playas, swales, and terraces along washes. Soils are often deep and alkaline. Soils may have an impermeable layer making them poorly drained. Holland (1986) notes that this herbaceous alliance is referred to as alkali meadow. Within this alliance, saltgrass must make up more than 50 % of the relative cover (Sawyer and Keeler-Wolf, 2009). Within the project site the two dominant plant species were saltgrass and alkali heath (*Frankenia salina*), with saltgrass making up 70 percent of the vegetation within this habitat type. Other species present include Mediterranean barley (*Hordeum marinum* ssp. *gussoneanum*) and rye grass (*Festuca perennis*)

3.3 Freshwater Emergent Wetlands. Freshwater emergent wetlands are among the most productive wildlife habitats in California, providing food, cover, and water for over 160 species of birds, and numerous mammals, amphibians, and reptiles (Kramer, 1988). This cover type is typically associated with topographically lower areas. Within the project site, emergent wetlands are located within Dry Creek, which will not be impacted by project activities. Plant species seen onsite include California bulrush, broad-leaved cattail, and saltgrass.

4.0 SITE PREPARATION

After the maintenance activities are completed, inspected, and approved by the qualified biologist, the trench will be backfilled with the material originally excavated from the trench. Subsoil will be replaced in the trench and compacted with machinery. After proper backfilling, the upper six inches of topsoil will be replaced and spread evenly over the trench. Spreading of topsoil will occur immediately following grading. Topsoil will not be mixed with subsoil or used to fill the trench.

Topsoil replacement will assist in the rapid recovery of the vegetative communities. The surface materials contained in the topsoil include seeds, rhizomes, nutrients, and microorganisms necessary for recovery of vegetation in these areas.

If topsoil must be removed because it is contaminated or because it contains the vegetative portions of invasive, non-native weeds, the Contractor will provide replacement material that is void of invasive, non-native weed material. Landform contours and slopes at the sites and along the access routes will be returned as close as possible to pre-disturbance conditions. The right-of-way (ROW) will be returned to approximate pre-construction grade such that the grade does not interrupt or alter the flow of surface hydrology.

Erosion control procedures will be implemented to prevent discharge of soil and backfill material into adjacent sensitive habitats, waterways, or wetlands. These measures will include, but not be limited to silt fences, straw wattles, and sandbag berms.

5.0 REVEGETATION

Pre-existing vegetation types would be re-established through a combination of topsoil replacement, saltgrass plugs and an upland seed mix, as needed. This would be accomplished by replacing the stored topsoil, with its seed bank and rootstock, and the placement of the salvaged vegetation over the topsoil. In areas of high density, saltgrass has been shown to revegetate easily through natural spreading from placement of topsoil and from adjacent rootstock. Although saltgrass can be restored with passive restoration, additional saltgrass plugs will be planted within the impact area.

In addition to saltgrass plugs, upland vegetation disturbed by project construction will be revegetated following maintenance activities and ROW re-contouring. Hydroseeding will be the main method of seed dispersal with hand broadcasting of seed possibly used as a secondary method of seeding if any locations within the restoration sites cannot be accessed by hydroseeding equipment or in the event that a secondary seeding may be needed in locations not germinating properly. Completion of maintenance related activities includes the backfilling of the trench, final grading, and removal of all construction materials, debris, and equipment. Once CPL has designated work in a specific site as complete, revegetation will occur.

5.1 Post Construction Monitoring

Post construction monitoring of the upland access site will be through visual inspection during the first through fifth growing season following construction. Revegetated wetland areas will be monitored for up to five years following construction. Monitoring will include photographic documentation, as well as qualitative and quantitative estimates of plant cover and plant performance. Percent of species composition will also be estimated. During the monitoring surveys, biologists will also note the presence and estimated cover of target invasive species, such as pepperweed (*Lepidium latifolium*).

5.1.1 Percent Cover Estimates and Reference Sites.

One 20-foot transect will be established within the impacted alkali flat (AF-2) area and one within the ruderal habitat (RV-2). To compare cover estimates, two reference transects (one alkali flat (AF-1) and one ruderal vegetation (RV-1)) will be established within un-impacted areas on the north side of the project site (**Figure 4**). These reference sites were established based on similar vegetative cover, hydrology, soils and proximity to the project site. Four one-meter square quadrat sample plots spaced five feet apart will be established along the width of each transect.

A measuring tape will be placed along the length of the transect at each sampling location. Transects will be identified at the beginning and end of the transect using pin flags and a GPS waypoint. The first quadrat of each transect will be placed with the lower corner of the quadrat against the tape beginning at zero feet on the right hand side. Quadrat placement will begin on the right side of each transect and alternated between the right and left side of the tape to the end of the transect. A total of four quadrats will be sampled at each transect location. At each quadrat, the absolute percent cover of each plant species will be estimated and recorded.

5.2 Performance Criteria

To ensure a successful revegetation effort, all plants shall be monitored and maintained as necessary for five years. Table 1 below explains the performance criteria that will be used.



Table 1. Performance Criteria for Wetland Restoration

Year 1	Year 2	Year 3	Year 4	Year 5
<ul style="list-style-type: none"> At least 1 to 3 of the dominant species in the adjacent undisturbed wetlands will be present in the project site. After the completion of the project and during backfill operations, the project site will be restored to preconstruction topography 	Total plant cover is >30% of wetland vegetation cover	Total plant cover is >40% of wetland vegetation cover	Total plant cover is >50% of wetland vegetation cover	<ul style="list-style-type: none"> Total plant cover is >60% of wetland vegetation cover At least 60% hydrophytic vegetation¹ cover relative to the reference transect within the alkali flats vegetation community. Vegetation cover in the temporary disturbed area of the project site shall consist of no more than 5% non-native, invasive species.
<p>1. Hydrophytic vegetation is defined as species with a wetland indicator status of Facultative (Fac), Facultative Wetland (FacW), and/or Obligate (O).</p> <p><i>Note:</i> If the survival and/or cover requirements are not met, replacement planting, additional watering, weeding, invasive species eradication will be performed to meet the above criteria. Replacement plants will be monitored and will follow the same criteria above until success criteria have been met.</p>				

5.3 Annual Reporting

Post-construction reporting will consist of a report documenting the revegetation conditions. During the revegetation effort, CPL will maintain a record which identifies the restoration sites by method of revegetation, acreage treated, dates of backfilling and seeding, and any problem areas and how they were addressed.

The report will include a discussion of maintenance activities performed (if any), methods and dates monitoring was conducted, and a summary with estimates of percent cover following the criteria within Section 5.1 above. The report will also include a discussion of problems encountered, probable reasons for problem areas, and proposed corrective actions. The report will be submitted annually by December 31 to California Department of Fish and Wildlife (CDFW), Army Corp of Engineers (ACOE), Regional Water Quality Control Board

(RWQCB), East Contra Costa County Habitat Conservancy (ECCCHC), and the US Fish and Wildlife Service (USFWS).

5.4 Final Completion Report

If the Project has successfully met the final performance criteria at Year-5 or prior, a final monitoring report will be submitted to CDFW, ACOE, RWQCB, ECCCHC, and USFWS. The final report will describe how and when all performance criteria was met and a request of project completion from the permitting agencies will be made. If performance criterion is met sooner than five years, a final completion report will be submitted early. Within the early completion report, a request will be made to release CPL from further monitoring, if an agency response is not received, CPL will assume that no further vegetation monitoring is required.

6.0 CONTINGENCY MEASURES

Contingency measures are typically implemented when performance criteria are not being met. Fire, fire-break disking, or other unexpected non-project related vegetation disturbances could adversely affect the revegetation efforts by increasing plant mortality. Replanting is the primary contingency measures described in this plan. If any unexpected non-project related event occurs that affects vegetative cover percent onsite and vegetative cover was 50 percent during the previous annual monitoring event, vegetation restoration will be deemed successful and no additional monitoring will be conducted.

If vegetation recruitment has not achieved at least 60 percent of the cover of adjacent reference transects by the end of year-5, revegetation efforts may be re-implemented according to methods described in previous sections. The necessity for augmentation of native plant density will be reviewed each year until it is apparent that native plant recruitment will result in the achievement of revegetation goals.

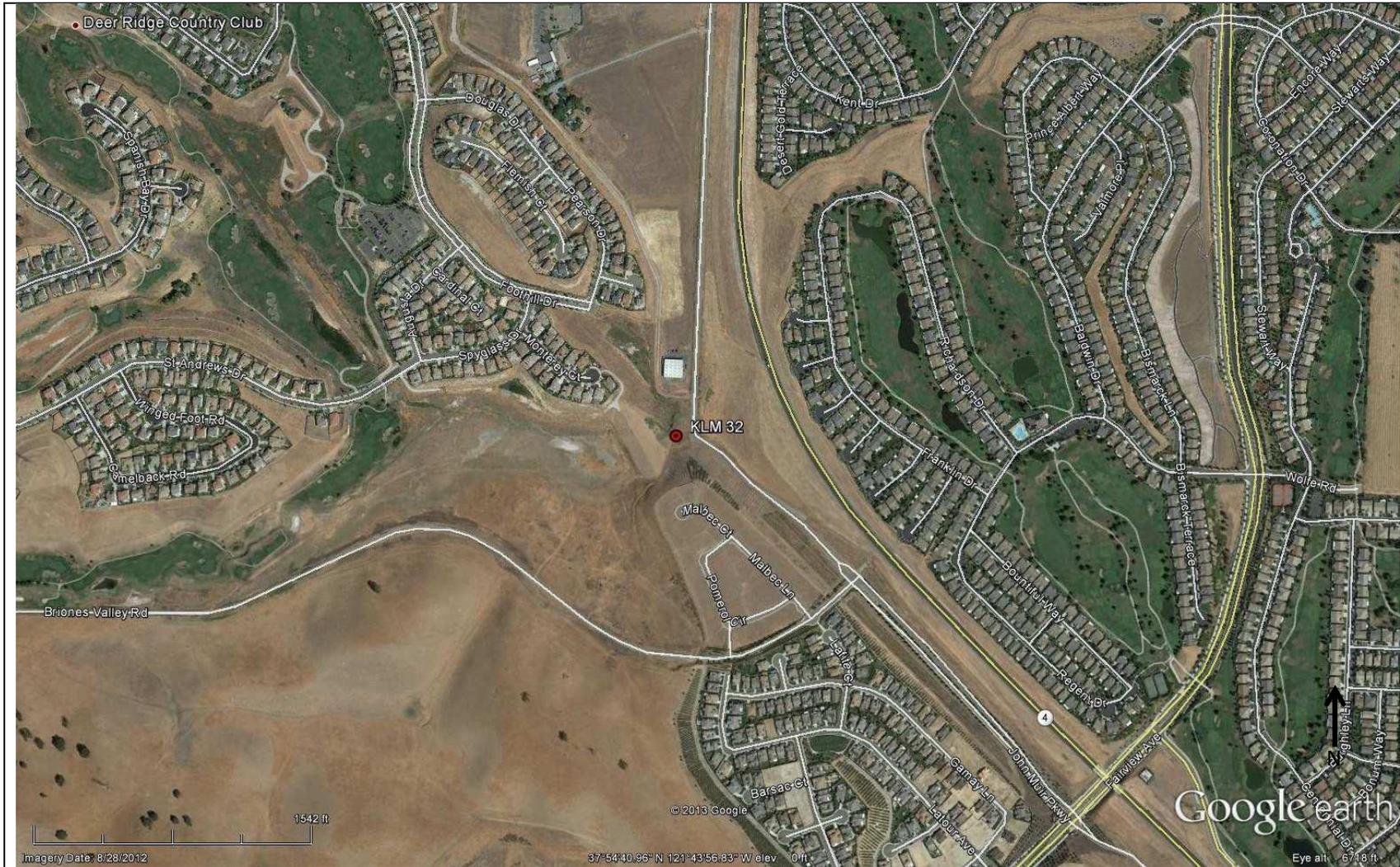
7.0 REFERENCES

- Holland, V.L. and David J. Keil. 1990. California Vegetation, 4th Ed. Biological Sciences Department, California Polytechnic State University. San Luis Obispo, CA.
- Kramer, G. 1988. Fresh Emergent Wetland. In: K.E. Mayer and W.F. Laudenslayer, Jr., eds. *A Guide to Wildlife Habitats of California*. California Department of Forestry and Fire Protection. Sacramento, CA.
- Sawyer, J.O. and T. Keeler-Wolf. 1995. *A Manual of California Vegetation*. California Native Plant Society. Sacramento, CA.



Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, iPC, NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, 2012

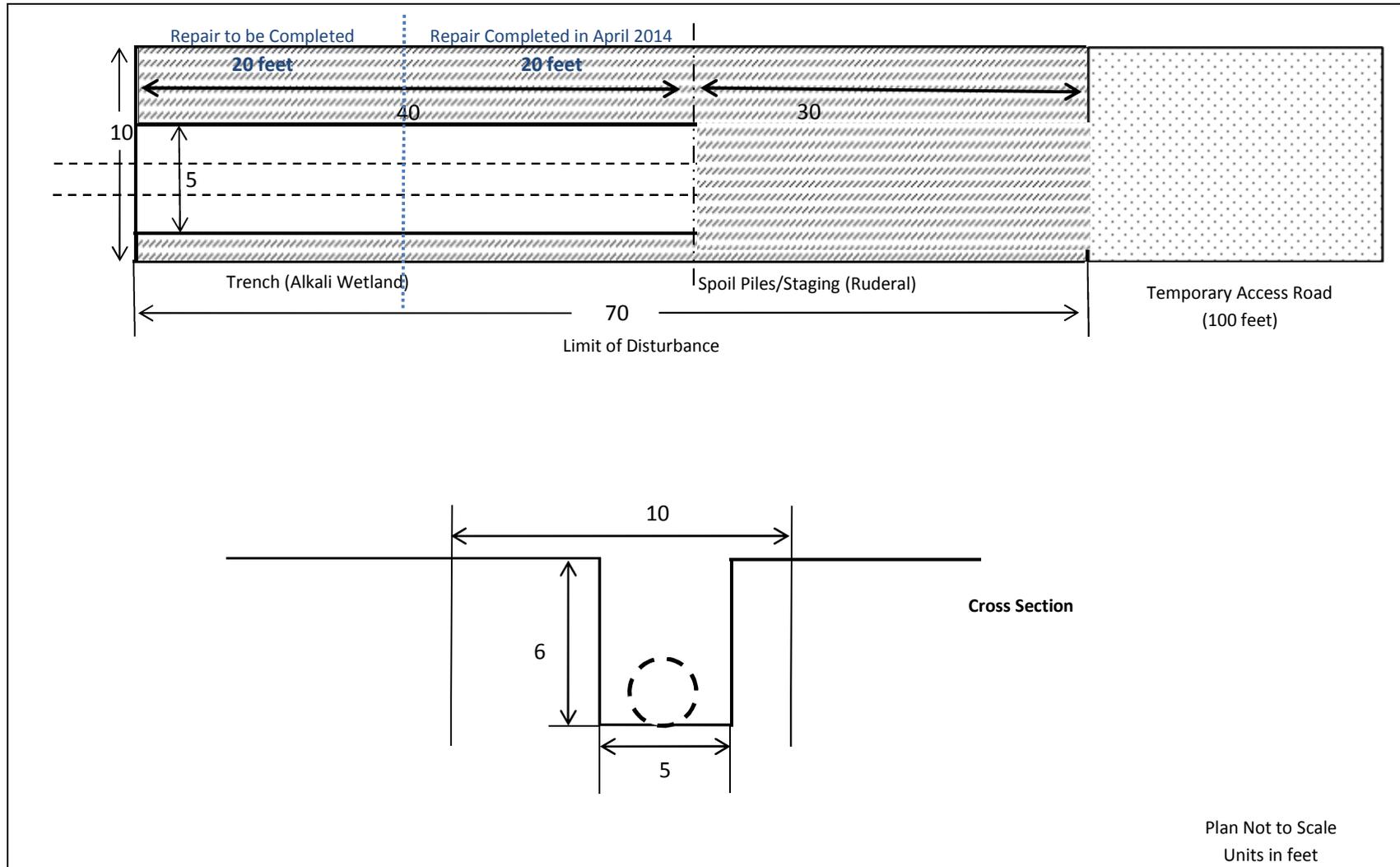
Figure 1
 PIM Repair Location
 Chevron Pipe Line Company



padre
associates, inc.
ENGINEERS, GEOLOGISTS & ENVIRONMENTAL SCIENTISTS

Chevron Pipe Line Company
KLM-32 Repair Site
June 2014

Figure 2
Aerial Site Map





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Chevron Pipe Line Company
KLM-32 Repair Site
June 2014

Figure 4
RMP
Reference Site Map

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 23, 2014
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Agreement with San Pablo Bay Pipeline Company LLC to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to San Pablo Bay Pipeline Company LLC for the Shell Pipeline North 20 ILI Repair Project:

- a. **AUTHORIZE** staff to file a Notice of Exemption with the County Clerk for the project.
- b. **AUTHORIZE** staff to execute a Participating Special Entity Agreement with San Pablo Bay Pipeline Company LLC for the take coverage of the Shell Pipeline North 20 ILI Repair Project

DISCUSSION

ITEM (A). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a Participating Special Entity Agreement and to extend take authorization under the PSE Agreement to San Pablo Bay Pipeline Company LLC for the Shell Pipeline North 20 ILI Repair Project is a public agency action that must comply with CEQA. For purposes of the Project, the Conservancy is the CEQA lead agency. The Conservancy has determined the Project is exempt from CEQA pursuant to a statutory exemption for emergency repairs to public service facilities (Pub. Resources Code section 21080 (b)(2); Cal. Code Regs., tit. 14, §15269 (b)).

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>June 23, 2014</u>	APPROVED AS RECOMMENDED: _____
OTHER _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
___ AYES: _____	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED <i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
___ NOES: _____	
___ ABSENT: _____	
___ ABSTAIN: _____	

ITEM (B). As part of the Shell Pipeline North 20 ILI Repair Project (Project), San Pablo Bay Pipeline Company LLC (“Applicant”) Company is proposing to conduct repairs at one site along their existing Northbound 20-inch crude oil pipeline at Station No. 8312+75. The project site is located north of Marsh Creek Road approximately 2.5 miles southeast of the city of Clayton in Contra Costa County. The existing pipeline easement is located on the Clayton Ranch (part of the Black Diamond Mines Regional Preserve), owned and managed by the East Bay Regional Park District (EBRPD). The Applicant has obtained an encroachment permit from EBRPD for the project (024E-14-102).

The U.S. Department of Transportation (“DOT”) pipeline safety regulations require companies operating pipelines to conduct maintenance repairs to the pipeline within a set timeframe. This action is proposed as part of a pipeline integrity management plan in order for San Pablo Bay Pipeline Company LLC to comply with U.S. Department of Transportation (“DOT”) hazardous materials and safety regulations, and to facilitate the continued safe transportation of petroleum products.

The Project consists of a 0.10 acre repair site that includes a 0.05-acre dig area and a 0.05-acre access path. Pipeline repair work will be conducted by locating and exposing the pipe at Station 8312+75 and identifying the anomaly. The precise location of the anomaly is known based on the distance from nearby weld locations. Because the proposed dig is located on a hillside, a temporary access path will be cut into the slope to provide safe access for the excavator. The repair site is located adjacent to an existing gravel road and is depicted on Figures 2 and 3 of the Planning Survey Report. The applicant will restore all temporary impacts to pre-project conditions.

(See Figure 2 & 3 and the Project Description in the Application and Planning Survey Report for more information on the Project and its location.)

The Applicant is requesting take authorization for the Project through the Conservancy as a Participating Special Entity. Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, may apply directly to the Conservancy for take coverage as a Participating Special Entity (“PSE”) for projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP. The Applicant does not require any city or county land use permits for this Project and is therefore eligible to apply for take coverage as a PSE. As a PSE, the Applicant will obtain authorization for take of HCP/NCCP covered species in accordance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits.

In order to apply for take coverage as a Participating Special Entity, the PSE’s project must be an eligible covered activity or specifically named project under the HCP/NCCP. As set forth in Section 2.3.2 of the HCP/NCCP, certain public and private utility infrastructure projects are an eligible covered activity within the HCP/NCCP inventory area. The Project is an eligible covered activity.

Conservancy staff has prepared a Participating Special Entity Agreement (PSE Agreement) for this Project (attached). Attached as Exhibit 1 to the Agreement is the completed Application and

Planning Survey Report (Report) for the Project, prepared by ICF International, the biological firm hired by the applicant. The Report documents the results of the planning-level surveys conducted at the repair site and describes the specific pre-construction surveys, avoidance/minimization/construction monitoring, and mitigation measures that are required in order for the project to be covered through the HCP/NCCP. The Report contains project vicinity maps, detailed maps showing the activities at impact locations, the land cover and species habitat maps, the Fee Calculator Worksheets.

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type
	Temporary
Annual Grassland	0.10
Ruderal	0.065
Total	0.165

- The Agreement provides that the Applicant will reimburse the Conservancy for staff costs associated with processing Shell’s request for take coverage, up to a maximum reimbursement of \$5,000.
- As set forth in the Agreement, Shell will also pay the Conservancy **\$7,997.25** which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees, contribution to recovery and administrative costs:

PROJECT FEE SUMMARY	
Development fees:	\$3,998.62
Contribution to Recovery for Endangered Species:	\$3,998.62
TOTAL FEES	\$7,997.25
Maximum Administrative Costs	\$5,000.00
MAXIMUM AMOUNT TO BE PAID	\$12,997.25

- The Fees and Administrative Costs must be paid before work commences. The applicant anticipates starting work June 30, 2014.
- Staff proposes a Contribution to Recovery of \$3,998.62. As set forth in the HCP/NCCP, the Conservancy may charge the Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not

included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs of exceeding mitigation requirements and contributing to the recovery of covered species, etc.). For the PG&E CCLP project, PG&E agreed to pay a \$50,000 Contribution to Recovery (10% of the fee amount). All impacts in the PG&E project were temporary impacts and did not count against Conservancy take limits. The eBART project agreed to pay a contribution to recovery equal to the development fees required for impacts (e.g. 100%). This was due to the small scale of the project and fees as compared to the PG&E project. Some of the impacts were permanent but the area was highly disturbed. Given the small scale of the Project, the proposed limited temporary impacts associated with the repair work staff proposes a \$3,998.62 Contribution to Recovery. This amount is equal to the development fees required for impacts and is considered consistent with the amount charged for previous pipeline repair projects with Shell Oil Products.

- The Agreement requires a number of detailed measures to avoid impacts to several covered species including pre-construction surveys for San Joaquin kit fox, Western burrowing owl, and Golden Eagle.
- The Agreement provides a number of detailed measures to avoid impacts to covered plants, including a pre-construction survey for big tarplant. The required rare plant survey for Big tarplant during the blooming season was infeasible prior to submission of the application, therefore if the species is detected during pre-construction surveys the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 “Plant Salvage when Impacts are Unavoidable,” Section 6.31. “Covered and No-Take Plants,” and Table 5-20 “Protection Requirements for Covered Plants” in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

Next steps: If the Conservancy Board authorizes staff to sign the Agreement, key next steps in granting take coverage would be as follows:

- Wildlife agencies review the agreement and are asked to concur with the Conservancy’s determination that the agreement imposes all applicable conditions of the HCP/NCCP onto the project. Note: Participating Special Entity Agreements, unlike the granting of take authorization by a participating City or County, requires wildlife agency concurrence.
- The Applicant pays all required fees.
- The Conservancy issues the Applicant a Certificate of Inclusion. Take coverage would then be in effect, subject to the terms of the Agreement.
- The Applicant conducts pre-construction surveys to determine which species specific avoidance and minimization measures are required to be implemented.
- Before implementing covered activity, the Applicant will develop and submit a construction monitoring plan to the Conservancy.
- The Applicant constructs the project subject to the terms of the Agreement.

Attachments:

- PSE Agreement, including:
 - Main body of agreement
 - Exhibit 1: Planning Survey Report
 - Main body of planning survey report
 - Fee Calculator (Exhibit 1 within planning survey report)
 - Project Vicinity Map, Land Cover Maps, Species Habitat Maps

PARTICIPATING SPECIAL ENTITY AGREEMENT

Between

**THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
and the
SAN PABLO BAY PIPELINE COMPANY LLC**

1.0 PARTIES

This Agreement is made and entered into by the East Contra Costa County Habitat Conservancy (“Conservancy”) and San Pablo Pipeline Company LLC (“Participating Special Entity” or “PSE”) as of the Effective Date.

2.0 RECITALS

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1** The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP,” or “Plan”) is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the Plan is to provide comprehensive species, wetlands, and ecosystem conservation and contribute to recovery of endangered and threatened species within East Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on Covered Species and their habitats while allowing for certain development and other activities in selected regions of the County and the Cities of Pittsburg, Clayton, Oakley, and Brentwood.
- 2.2** The Conservancy is a joint powers authority formed by its members, the County of Contra Costa (“County”), the City of Pittsburg (“Pittsburg”), the City of Clayton (“Clayton”), the City of Oakley (“Oakley”) and the City of Brentwood (“Brentwood”), to implement the HCP/NCCP.
- 2.3** The HCP/NCCP covers approximately one-third of the County, or 174,082 acres, all in East Contra Costa County, in which impacts from certain development and other activities are evaluated, and in which conservation will occur.
- 2.4** The area covered by the HCP/NCCP has been determined to provide, or potentially provide, habitat for twenty-eight (28) species that are listed as endangered or threatened, that could in the future be listed as endangered

or threatened, or that have some other special status under federal or state laws.

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for the Shell Pipeline North 20 ILI Repair Project and seeks extension of the Conservancy’s permit coverage to perform required repairs and maintenance to Shell/San Pablo Bay Pipe Line Company’s 20-inch crude oil pipeline at Station No. 8312+75.
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and DFG under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 **“Agreement”** means this Agreement, which incorporates the IA, the HCP/NCCP, the Permits, and the Application by reference.
- 3.2 **“Application”** means the application submitted by the PSE in accordance with Chapter 8.4 of the HCP/NCCP, and which is attached hereto as Exhibit 1. The Application contains a cover sheet, the results of required planning surveys and the avoidance, minimization and mitigation measures that will be a condition of the PSE using Conservancy’s Permits.
- 3.3 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Conservancy pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to the Conservancy pursuant to California Fish and Game Code section 2835.

- 3.4 **“CDFG”** means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.5 **“CESA”** means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.6 **“Changed Circumstances”** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.7 **“Covered Activities”** means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.8 **“Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.3 and the IA.
- 3.9 **“Effective Date”** means the date when this Agreement is fully executed.
- 3.10 **“Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.11 **“Federal Permit”** means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.12 **“FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.13 **“Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.

- 3.14 “HCP/NCCP” or “Plan”** means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.15 “Implementing Agreement” or “IA”** means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated January 22, 2007.
- 3.16 “Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.17 “Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.18 “NCCPA”** means the Natural Community Conservation Planning Act (Fish & G. Code, § 2800 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.19 “Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.20 “Party” or “Parties”** means any or all of the signatories to this Agreement.
- 3.21 “Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.22 “Permits”** means the Federal Permit and the State Permit.
- 3.23 “Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.24 “Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.

- 3.25 “Project”** means the Shell Pipeline North 20 ILI Repair Project, as described in Section 2.7.
- 3.26 “Regional General Permit 1”** means activities authorized under the Regional General Permit 1 with the U.S. Army Corps of Engineers covering the Plan Area of the HCP/NCCP.
- 3.27 “State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.
- 3.28 “Take”** has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.29 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.30 “USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.31 “Wildlife Agencies”** means USFWS and CDFG.

4.0 PURPOSES

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Proposed Activities, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are to ensure implementation of each of the terms and conditions of this Agreement, and the relevant terms of the IA, the HCP/NCCP, and the Permits, and to describe remedies and recourse should either Party fail to perform its obligations as set forth in this Agreement.

5.0 AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS

5.1 General Framework

As required by FESA and NCCPA, the HCP/NCCP includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Chapter 6 of the HCP/NCCP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. PSE shall implement all applicable avoidance and minimization measures as required by the HCP/NCCP, including but not limited to those identified in Chapter 6, as described in the Application and this Agreement.

5.2 Surveys and Avoidance Measures

Planning surveys are required prior to carrying out any Covered Activity for which a fee is collected or land in lieu of a fee is provided. PSE has submitted a planning survey report for approval by the Conservancy in accordance with Chapter 6.2.1 of the HCP/NCCP. This planning survey report is contained within the Application, which describes the results of the planning survey and describes in detail the pre-construction surveys, construction monitoring, avoidance measures and mitigation measures that apply to the Proposed Activities and shall be performed by PSE. Based on the Application, the Conservancy has determined that PSE will implement and comply with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

5.3 No Take of Extremely Rare Plants or Fully Protected Species

Nothing in this Agreement, the HCP/NCCP or the Permits shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the HCP/NCCP (“No-Take Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. PSE shall avoid Take of these species.

5.3.1 Golden Eagle

The Permits do not authorize Take of the golden eagle and PSE shall avoid Take of any golden eagle. The avoidance measures set forth in the HCP/PCCP, including but not limited to Conservation Measure 1.11, should be adequate to prevent Take of golden eagles, but the Conservancy shall notify PSE in writing of any additional or different conservation measures that are designed to avoid Take of these species and that apply to PSE. PSE shall implement all such avoidance measures to avoid Take of golden eagles.

5.4 Fees and Dedications

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of \$ **\$7,997.25**, which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

Development Fee: \$3,998.62

Contribution to Recovery: \$3,998.62

The payment must be paid in full before any ground-disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2015 and construction of the Project commences before March 15, 2015, the amount due will be as stated above. If PSE pays on or after March 15, 2015 or construction of the Project does not commence before March 15, 2015, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

6.0 TAKE AUTHORIZATION

6.1 Extension of Take Authorization to PSE

As provided in Chapter 8.4 of the HCP/NCCP, after execution of this Agreement, payment of fees or dedication of land as set forth in Section 5.6, and receipt of the Wildlife Agencies’ written concurrence that the Proposed Activity complies with the HCP/NCCP, the Permits and the IA, the Conservancy shall issue a Certificate of Inclusion to PSE that specifically describes the Authorized Take and required conservation measures and extends Take authorization under the Permits to PSE. PSE is ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the IA, the HCP/NCCP and the Permits.

6.2 Duration of Take Authorization

Once the Take authorization has been extended to the Proposed Activities, it shall remain in effect for a period of 15 years, unless and until the Permits are revoked by USFWS or CDFG, in which case the Take authorization may also be suspended or terminated.

6.3 Section 7 Consultations with USFWS

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with USFWS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)). The PSE acknowledges that, if the Proposed Activities are authorized, funded, or carried out by a federal agency, the federal agency and the Proposed Activities must also comply with Section 7. As provided in Section 16.1 of the IA, USFWS has made a commitment that, unless otherwise required by law or regulation, it will not require any measures under Section 7 that are inconsistent with or exceed the requirements of the HCP/NCCP and the Permits for activities covered by the HCP/NCCP and the Permits.

7.0 RIGHTS AND OBLIGATIONS OF PSE

7.1 Rights

Upon the Conservancy's issuance of a Certificate of Inclusion to PSE, PSE may Take the Covered Species while carrying out the Proposed Activities in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the IA, the HCP/NCCP, and the Permits. The authority issued to PSE applies to all of the elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents who engage in any Proposed Activity. PSE shall periodically conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and PSE shall be responsible for supervising their compliance with those terms and conditions. All contracts between PSE and such persons and entities shall require their compliance with the Permits.

7.2 General Obligations

The PSE will fully and faithfully perform all obligations assigned to it under this Agreement, the IA, the HCP/NCCP, the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 6.0 (Conditions on Covered Activities), Chapter 8.4 (Participating Special Entities), and Chapter 9.0 (Funding). PSE shall implement all measures and adhere to all standards included in the Application, and PSE shall reserve funding sufficient to fulfill its obligations under this Agreement, the IA, the HCP/NCCP and the Permits throughout the term of this Agreement. PSE will promptly notify the Conservancy of any material change in its financial ability to fulfill its obligations under this Agreement.

7.3 Obligations In The Event of Suspension or Revocation

In the event that USFWS and/or CDFG suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of the IA, PSE will remain obligated to fulfill its mitigation, enforcement, management, and monitoring obligations, and its other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all Proposed Activities implemented prior to the suspension or revocation.

7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, PSE will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described below at Section 15.2.2 and Section 15.3.2, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless PSE consents to do so.

7.5 Obligations In The Event Of Changed Circumstances

Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP, and PSE shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of this Agreement.

7.6 Obligation to Compensate Conservancy for Expenses Incurred

PSE shall compensate the Conservancy for its direct costs associated with this Agreement, including but not limited to, staff, consultant and legal costs incurred as a result of the review of the Application, drafting and negotiating this Agreement, monitoring and enforcement of this Agreement, and meetings and communications with PSE (collectively, Conservancy's "Administrative Costs"). Conservancy's Administrative Costs shall not exceed \$5,000. Conservancy shall provide PSE with invoices detailing its Administrative Costs monthly or quarterly, at Conservancy's discretion. PSE shall remit payment of each invoice within thirty (30) days of receiving it.

8.0 REMEDIES AND ENFORCEMENT

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. PSE shall defend, indemnify, protect, and hold harmless the Conservancy from and against any claim, loss, damage, cost, expense, or liability directly or indirectly arising out of or resulting from (i) PSE's breach of this Agreement or the inaccuracy of any representation or warranty made by PSE in this Agreement, or (ii) PSE's, performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, including without limitation claims caused by or arising out of the negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that

therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

9.0 FORCE MAJEURE

In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of Party (“Force Majeure”), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize either Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within seven (7) days after the occurrence of the Force Majeure, the Party invoking this section shall give the Conservancy written notice describing the particulars of the occurrence;
- The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and
- When the Party is able to resume performance of their obligations, it shall give the other Party written notice to that effect.

10.0 MISCELLANEOUS PROVISIONS

10.1 Calendar Days

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

10.2 Notices

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as follows:

John Kopchik
East Contra Costa County Habitat Conservancy
c/o Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Email: john.kopchik@dcd.cccounty.us
Phone: 925-674-7819

Michael Elmore
Equilon Enterprises dba Shell Oil Products US
20945 S. Wilmington Avenue
Carson, CA 90810
Email: Michael.Elmore@shell.com
Phone: 310-816-2208

Notices shall be transmitted so that they are received within the specified deadlines. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

10.3 Entire Agreement

This Agreement, together with the IA, the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

10.4 Amendment

This Agreement may only be amended with the written consent of both Parties.

10.5 Attorneys' Fees

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the Conservancy shall be able to recover its attorneys' fees and costs if it prevails.

10.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

10.7 Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

10.8 Relationship to the FESA, CESA, NCCPA and Other Authorities

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal law.

10.9 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

10.10 References to Regulations

Any reference in this Agreement, the IA, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

10.11 Applicable Laws

All activities undertaken pursuant to this Agreement, the IA, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

10.12 Severability

In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.

10.13 Due Authorization

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

10.14 No Assignment

The Parties shall not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity.

10.15 Headings

Headings are using in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
JOHN KOPCHIK, Executive Director

DATE: _____

SAN PABLO BAY PIPELINE COMPANY LLC

By: _____
M.L. ELMORE, attorney-in-fact

DATE: _____



**EAST CONTRA COSTA
COUNTY HABITAT
CONSERVANCY**

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

Application Form and Planning Survey Report to Comply with and Receive Permit Coverage under the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan

Project Applicant Information:

Project Name: Shell Pipeline North 20 ILI Repair Project

Project Applicant's Company/Organization: Shell Pipeline Company & Westside Construction

Contact's Name: Michael Elmore

Contact's Phone: (310) 816-2208 Fax: N/A

Contact's Email: Michael.Elmore@shell.com

Mailing Address: Michael Elmore
Shell Pipeline Company
123 South Front
Memphis, TN 38103

Project Description:

Lead Planner: Krystal Hinojosa

Project Location: The Project is located within the Clayton U.S. Geological Survey (USGS) 7.5-minute quadrangle. The proposed dig site is north of Marsh Creek road approximately 2.5 miles southeast of the City of Clayton, Contra Costa County.

Project APN(s) #: 078-280-002

Number of Parcels/Units: The Project site is within a single parcel.

Size of Parcel(s): 220 acres

Project Description/Purpose (Brief): Shell Pipeline Company is proposing to conduct repairs at one site along their existing Northbound 20-inch crude oil pipeline.

Biologist Information:

Biological/Environmental Firm: ICF International

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East Contra Costa County HCP/NCCP Planning Survey Report for Shell Pipeline North 20 ILI Repair Project Participating Special Entity

I. Project Overview

Project proponent: Shell Pipeline Company & Westside Construction

Project Name: Shell Pipeline North 20 ILI Repair Project

Application Submittal Date: 6/06/2014

Jurisdiction: Contra Costa County Participating Special Entity¹
 City of Oakley
 City of Pittsburg
 City of Clayton
 City of Brentwood

Check appropriate Development Fee Zone(s): Zone I Zone IV
 Zone II
 Zone III

See Figure 9-1 of the Final HCP/NCCP for a generalized development fee zone map. Detailed development fee zone maps by jurisdiction are available from the jurisdiction or at www.cocohcp.org.

Total Parcel Acreage: 220 acres

Acreage of land to be permanently disturbed²: All disturbed land will be restored to pre-project conditions and no permanent effects on habitat are anticipated.

Acreage of land to be temporarily disturbed³: Area of temporary disturbance totals 0.165 acre (dig area is 0.05 acre, temporary access route is 0.05 acre, and soil stockpile area is 0.065 acre).

¹ *Participating Special Entities* are organizations not subject to the authority of a local jurisdiction. Such organizations may include school districts, water districts, irrigation districts, transportation agencies, local park districts, geologic hazard abatement districts, or other utilities or special districts that own land or provide public services.

² *Acreage of land permanently disturbed* is broadly defined in the HCP/NCCP to include all areas removed from an undeveloped or habitat-providing state and includes land in the same parcel or project that is not developed, graded, physically altered, or directly affected in any way but is isolated from natural areas by the covered activity. Unless such undeveloped land is dedicated to the Preserve System or is a deed-restricted creek setback, the development fee will apply. The development fees were calculated with the assumption that all undeveloped areas within a parcel (e.g., fragments of undisturbed open space within a residential development) would be charged a fee; the fee per acre would have been higher had this assumption not been made. See Chapter 9 of the HCP/NCCP for details.

³ *Acreage of land temporarily disturbed* is broadly defined in the HCP/NCCP as any impact on vegetation or habitat that does not result in permanent habitat removal (i.e. vegetation can eventually recover).

Project Description

Concisely and completely describe the project and location. Reference and attach a project vicinity map (Figure 1) and the project site plans (Figure 2) for the proposed project. Include all activities proposed for site, including those disturbing ground (roads, bridges, outfalls, runoff treatment facilities, parks, trails, etc.) to ensure the entire project is covered by the HCP/NCCP permit. Also include proposed construction dates. Reference a City/County application number for the project where additional project details can be found.

City/County Application Number:

Anticipated Construction Date:

Project Description:

Shell Pipeline proposes to conduct repairs and maintenance to Shell/San Pablo Bay Pipe Line Company's 20-inch crude oil pipeline at Station No. 8312+75. The project site is located north of Marsh Creek Road approximately 2.5 miles southeast of the city of Clayton in Contra Costa County (Figure 1). The existing pipeline easement is located on the Clayton Ranch (part of the Black Diamond Mines Regional Preserve), owned and managed by the East Bay Regional Park District (EBRPD). Shell Pipeline has obtained an encroachment permit from EBRPD for the project (024E-14-102).

Pipeline repair work will be conducted by locating and exposing the pipe at Station 8312+75 and identifying the anomaly. The precise location of the anomaly is known based on the distance from nearby weld locations. Because the proposed dig is located on a hillside, a temporary access path will be cut into the slope to provide safe access for the excavator. The repair site is located adjacent to an existing gravel road and is depicted on Figures 2 and 3. The 0.10 acre repair site includes a 0.05-acre dig area and a 0.05-acre access path.

During initial excavation of the site, the upper 3 inches of topsoil will be stockpiled separate from the rest of the excavated soil. Once construction is complete and the excavation pit is backfilled, the topsoil will be evenly spread across the exposed soil and seeded as described below under *General Construction Best Management Practices (BMPs)*.

The location of the repair site (steep slope) does not allow sufficient space to stockpile soil, therefore soil will be stockpiled in a previously disturbed area (0.065 acre) east of the repair site and adjacent to a CCWD facility (Figures 2 and 3). Soil will be stockpiled on a previously disturbed area currently used by cattle as a laydown area and parking area for CCWD. Erosion control coir wattles will be placed around the perimeter of the stockpiled soil to ensure that the soil is contained and does not leave the stockpile area. All soil and wattles will be completely removed from the area after construction is complete.

The proposed project lies within the East Contra Costa County Habitat Conservation Plan (HCP) Inventory Area. As outlined in Section 2.3.3 of the HCP, the routine and emergency operations and maintenance (O&M) of utility lines in the inventory area and outside the urban limit line are considered covered activities under the HCP.

The Project Vicinity (Figure 1), Project Site Plan (Figure 2), and Land Cover Types (Figure 3) maps are located at the end of this Planning Survey Report.

General Construction Best Management Practices

Shell Pipeline or its contractor will implement the following BMPs prior to and during ground-disturbing activities to protect sensitive biological resources.

- A qualified biologist will train all project staff on the identification of special-status species and required practices before the start of ground-disturbing activities. The training will include the general measures that are being implemented to protect and conserve species as they relate to the project, and the boundaries of the approved work area. Upon completing training, employees will sign a form stating that they attended the training and understand all the conservation and protection measures.
- A qualified biologist will monitor all ground-disturbing activities (i.e., grading, vegetation removal). The USFWS-approved biologist will complete a daily log summarizing activities and environmental compliance.
- Ground disturbance will be minimized to the maximum extent practicable and confined to the designated project site.
- All construction activities will cease 0.5 hour before sunset and will not begin prior to 0.5 hour before sunrise.
- To prevent inadvertent entrapment of special-status wildlife during construction, all excavated, steep-walled holes or trenches more than 6 inches deep will be provided with one or more escape ramps constructed of earth fill or wooden planks and will be inspected by a qualified biologist prior to being filled.
- The onsite biological monitor will inspect open trenches, pits, and under construction equipment and material left onsite in the morning and evening to look for special-status wildlife that may have become trapped or are seeking refuge.
- No canine or feline pets or firearms (except those accompanying federal, state, or local law enforcement officers and security personnel) will be permitted at the project site.
- No monofilament plastic mesh or line will be used for erosion control.
- All vehicle parking will be restricted to previously determined areas or existing roads within the designated work area.
- All workers will ensure their food scraps, paper wrappers, food containers, cans, bottles, and other trash from the project area are deposited in covered or closed trash containers to avoid attracting predators. The trash containers will be removed from the project area at the end of each working day.

Restoration of Temporary Impacts

Once the pipeline repair is complete, the repair site will be re-contoured and re-compacted to its original condition, the 3-inch salvaged topsoil will be replaced (without compaction) and all disturbed areas will be hydroseeded with the native hydroseed mix prescribed below:

<u>Seed Type</u>	<u>Approximate Seeding Rate</u>
California brome (<i>Bromus carinatus</i>)	15 lbs/acre
Idaho fescue (<i>Festuca idahoensis</i>)	15 lbs/acre
Creeping wild rye grass (<i>Elymus triticoides</i>)	5 lbs/acre
Small Fescue (<i>Festuca microstachys</i>)	5 lbs/acre

Purple needle grass (<i>Stipa pulchra</i>)	10 lbs/acre
Meadow barley (<i>Hordeum brachyantherum</i>)	12 lbs/acre

Seed mix shall be applied at a minimum rate of 60 pounds per acre (seeds above can be adjusted in proportion, or as seed availability dictates). Note: California brome and Idaho Fescue are fixed, non-adjustable prescriptions. Others may be adjusted to meet 60 pounds per acre.

Fertilizer shall be 16-20-0 with 13% sulfur and applied at a rate of 250 pounds per acre.

Jute matting and/or straw shall be placed over hydroseed mix on slopes greater than 5 percent to prevent winter erosion. The straw shall be applied at a rate of 2 tons per acre.

II. Existing Conditions and Impacts

Land Cover Types

In completing the checklist in Table 1, click in the appropriate fields and type the relevant information. Please calculate acres of terrestrial land cover types to nearest tenth of an acre. Calculate the areas of all jurisdictional wetlands and waters land cover types to the nearest hundredth of an acre. If the field is not applicable, please enter N/A. The sum of the acreages in the *Acreage of land to be “permanently disturbed”* and *“temporarily disturbed”* by project column should equal the total impact acreage listed above.

Land cover types and habitat elements identified with an ^(a) in Table 1 require identification and mapping of habitat elements for selected covered wildlife species. In Table 2a and 2b below, check the land cover types and habitat elements found in the project area and describe the results. Insert a map of all land cover types present on-site and other relevant features overlaid on an aerial photo below as Figure 3.

Table 1. Land Cover Types on the Project Site as Determined in the Field and Shown in Figure 3.

Land Cover Type (acres, except where noted)	Acreage of Land to be “Permanently Disturbed” by Project ^b	Acreage of Land to be “Temporarily Disturbed” by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Annual grassland		0.10		
<input type="checkbox"/> Alkali grassland				
<input checked="" type="checkbox"/> Ruderal		0.065		
<input type="checkbox"/> Chaparral and scrub				
<input type="checkbox"/> Oak savanna ^a				
<input type="checkbox"/> Oak woodland				
Jurisdictional wetlands and waters				
<input type="checkbox"/> Riparian woodland/scrub				
<input type="checkbox"/> Permanent wetland ^a				
<input type="checkbox"/> Seasonal wetland ^a				
<input type="checkbox"/> Alkali wetland ^a				
<input type="checkbox"/> Aquatic (Reservoir/Open Water) ^a				
<input type="checkbox"/> Slough/Channel ^a				
<input type="checkbox"/> Pond ^a				
<input type="checkbox"/> Stream (acres) ^{a, d}				
<input type="checkbox"/> Total stream length (feet) ^{a, d}				
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> > 25 feet wide				
Stream length by type and order ^e				
<input type="checkbox"/> Perennial				
<input type="checkbox"/> Intermittent				
<input type="checkbox"/> Ephemeral, 3 rd or higher order				
<input type="checkbox"/> Ephemeral, 1 st or 2 nd order				
Irrigated agriculture^a				
<input type="checkbox"/> Cropland				
<input type="checkbox"/> Pasture				
<input type="checkbox"/> Orchard				
<input type="checkbox"/> Vineyard				
Other				
<input type="checkbox"/> Nonnative woodland				
<input type="checkbox"/> Wind turbines				
Developed				
<input type="checkbox"/> Urban				
<input type="checkbox"/> Aqueduct				
<input type="checkbox"/> Turf				
<input type="checkbox"/> Landfill				
Uncommon Vegetation Types (subtypes of above land cover types)				
<input checked="" type="checkbox"/> Purple needlegrass grassland		0.10		
<input type="checkbox"/> Wildrye grassland				
<input type="checkbox"/> Wildflower fields				
<input type="checkbox"/> Squirreltail grassland				
<input type="checkbox"/> One-sided bluegrass grassland				
<input type="checkbox"/> Serpentine grassland				
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)				
<input type="checkbox"/> Alkali sacaton bunchgrass grassland				
<input type="checkbox"/> Other uncommon vegetation types (please describe)				
Uncommon Landscape Features or Habitat Elements				

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Rock outcrop				
<input type="checkbox"/> Cave ^a				
<input type="checkbox"/> Springs/seeps				
<input type="checkbox"/> Scalds				
<input type="checkbox"/> Sand deposits				
<input type="checkbox"/> Mines ^a	—	—		—
<input type="checkbox"/> Buildings (bat roosts) ^a	—	—		—
<input type="checkbox"/> Potential nest sites (trees or cliffs) ^a	—	—		—
Total (Impacted Acres)	0	0.165		

^a Designates habitat elements that may trigger specific survey requirements and/or best management practices for key covered wildlife species. See Chapter 6 in the HCP/NCCP for details.

^b See Section 9.3.1 of the HCP/NCCP for a definition of "permanently disturbed" and "temporarily disturbed." In nearly all cases, all land in the subject parcel is considered permanently disturbed.

^c Dedication of land in lieu of fees must be approved by the local agency and the Implementing Entity before they can be credited toward HCP/NCCP fees. See Section 8.6.7 on page 8-32 of the Plan for details on this provision. Stream setback requirements are described in Conservation Measure 1.7 in Section 6.4.1 and in Table 6-2.

^d Specific requirements on streams are discussed in detail in the HCP/NCCP. Stream setback requirements pertaining to stream type and order can be found in Table 6-2. Impact fees and boundary determination methods pertaining to stream width can be found in Table 9-5. Restoration/creation requirements in lieu of fees depend on stream type and can be found in Tables 5-16 and 5-17.

^e See glossary (Appendix A) for definition of stream type and order.

Field-Verified Land Cover Map

Insert field-verified land cover map. The map should contain all land cover types present on-site. The map should be representative of an aerial photo. Identify all pages of the field-verified land cover map as **(Figure 3a)**. **Please attach representative photos of the project site (Figure 3b).**

Jurisdictional Wetlands and Waters

Jurisdictional wetlands and waters are defined on pages 1-18 and 1-19 of the Final HCP/NCCP as the following land cover types: permanent wetland, seasonal wetland, alkali wetland, aquatic, pond, slough/channel, and stream. (It should be noted that definitions of these features differ for state and federal jurisdictions.) If you have identified any of these land cover types to be present on the project site in Table 1, complete the section below.

Indicate agency that certified the wetland delineation:

USACE, RWQCB, or the ECCC Habitat Conservancy.

Wetland delineation is attached (Jurisdictional Determination)

Provide any additional information on Impacts to Jurisdictional Wetland and Waters below.

There are no jurisdictional wetlands or waters within proposed disturbance areas.

Species-Specific Planning Survey Requirements

Based on the land cover types found on-site and identified in Table 1, check the applicable boxes in Table 2a then provide the results of the planning surveys below. In Table 3 check corresponding preconstruction survey or notification requirements that are triggered by the presence of particular landcover types or species habitat elements as identified in Table 2a. The species-specific planning survey requirements are described in more detail in Section 6.4.3 of the HCP/NCCP.

Table 2a. Species-Specific Planning Survey Requirements Triggered by Land Cover Types and Habitat Elements in the project area based on Chapter 6 of the Final HCP/NCCP.

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
<input checked="" type="checkbox"/> Grasslands, oak savanna, agriculture, ruderal	San Joaquin kit fox	Assumed if within modeled range of species	Identify and map potential breeding and denning habitat and potential dens if within modeled range of species (see Appendix D of HCP/NCCP).
	Western burrowing owl	Assumed	Identify and map potential breeding habitat.
<input type="checkbox"/> Aquatic (ponds, wetlands, streams, slough, channels, & marshes)	Giant garter snake	<input type="checkbox"/> Aquatic habitat accessible from San Joaquin River	Identify and map potential habitat.

Land Cover Type in the project area?	Species	Habitat Element in the project area?	Planning Survey Requirement
	California tiger salamander	<input type="checkbox"/> Ponds and wetlands in grassland, oak savanna, oak woodland <input type="checkbox"/> Vernal pools <input type="checkbox"/> Reservoirs <input type="checkbox"/> Small lakes	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
	California red-legged frog	<input type="checkbox"/> Slow-moving streams, ponds, and wetlands	Identify and map potential breeding habitat. Document habitat quality and features. Provide Implementing Entity with photo-documentation and report.
<input type="checkbox"/> Seasonal wetlands	Covered shrimp	<input type="checkbox"/> Vernal pools <input type="checkbox"/> Sandstone rock outcrops <input type="checkbox"/> Sandstone depressions	Identify and map potential breeding habitat.
Any	Townsend's big-eared bat	<input type="checkbox"/> Rock formations with caves <input type="checkbox"/> Mines <input type="checkbox"/> Abandoned buildings outside urban areas	Map and document potential breeding or roosting habitat.
	Swainson's hawk	<input type="checkbox"/> Potential nest sites (trees within species' range usually below 200')	Inspect large trees for presence of nest sites.
	Golden eagle	<input checked="" type="checkbox"/> Potential nest sites (secluded cliffs with overhanging ledges; large trees)	Document and map potential nests.

^a Vernal pool fairy shrimp, vernal pool tadpole shrimp, longhorn fairy shrimp, and midvalley fairy shrimp.

Results of Species-Specific Planning Surveys Required in Table 2a

1. Describe the results of the planning survey conducted as required in Table 2a. Planning surveys will assess the location, quantity, and quality of suitable habitat for specified covered wildlife species on the project site. Covered species are assumed to occupy suitable habitat in impact areas and mitigation is based on assumption of take.

2. Reference and attach the Planning Survey Species Habitat Maps as required in Table 2a (Figure 4).

In accordance with the planning survey requirements, ICF biologists conducted biological resource surveys at the project site that included a reconnaissance-level wildlife survey and a spring botanical survey. Prior to field surveys, the biologists reviewed the most recent (2014) California Natural Diversity Database (CNDDDB), California Native Plant Society (CNPS), and U.S.

Fish and Wildlife (USFWS) databases and species lists. Additionally, they consulted the East Contra Costa County HCP to develop a focal list of special-status species that have potential to occur at the project site.

Wildlife Survey: ICF wildlife biologist Angela Alcala conducted a reconnaissance-level field survey of the project site and approximately 500 feet around the project site on April 22, 2014. The survey focused on evaluating biological communities within the survey area for their ability to support special-status wildlife species. During the survey, Ms. Alcala was accompanied by EBRPD project manager Nate Luna and Shell Pipeline Project Manager Bob Lucido. At the time of the survey, Mr. Lucido confirmed that the limits of disturbance were delineated by orange stakes.

Botanical Survey: ICF botanist Robert Preston conducted a spring botanical survey on April 25, 2014. The survey was performed by walking meandering transects throughout the repair site and within 200 feet of the repair site and identifying all plant species encountered. The survey was conducted during the appropriate identification periods for many of the special-status plants with potential habitat in the project area. A list of all plant species observed on the project site is included in Attachment A. Mr. Preston also identified vegetation communities and potential waters of the United States in and surrounding the project site.

Existing Habitat Conditions

The project site is on a south-facing, moderately steep slope adjacent to an existing paved access road owned by the Contra Costa Water District (CCWD) (Figure 3a). Vegetation at the proposed repair site consists of grassland dominated by nonnative grasses, including wild oats (*Avena fatua*), Italian ryegrass (*Lolium multiflorum*), and soft chess (*Bromus hordeaceus*). A few clumps of purple needlegrass (*Nassella pulchra*), a native bunchgrass, were present. Common forbs included rose clover (*Trifolium hirtum*), white-stemmed filaree (*Erodium moschatum*), bur-clover (*Medicago polymorpha*), and hairy lotus (*Lotus suavelolens*). Of the seventeen plant species observed on the site (Attachment A), only two were natives. Surrounding habitat consists of grassland and oak woodland. No wetlands or other waters are present within or adjacent to the project site; however, a CCWD reservoir (Divide Reservoir) is present approximately 0.2 mile to the east and an intermittent drainage flows westward approximately 500 feet to the northwest.

A temporary soil stockpile area is proposed east of the project site within an existing CCWD facility (Figure 3a). The potential stockpile area is 0.065 acre in size and is heavily disturbed by cattle use. The area supports little vegetation, consisting predominantly of ruderal species (soft chess and white-stemmed filaree).

Representative photographs of the repair site and potential stockpile area are provided as Figure 3b.

Special-Status Wildlife Survey Results

Grassland on the project site provides potential upland habitat for several special-status and HCP-covered wildlife species, including San Joaquin kit fox, burrowing owl (HCP Appendix D-05c), California tiger salamander, and California red-legged frog. Based on HCP modeled habitat, the project site is also within an area identified as movement habitat for Alameda whipsnake. Potential nesting habitat for golden eagle is absent from the project site but the species could use oak woodlands surrounding the project site as nest sites. A discussion of special-status wildlife that could be affected by project construction is provided below.

San Joaquin Kit Fox

Based on HCP modeled habitat for San Joaquin kit fox (HCP Appendix D-02c), the project site is within suitable low-use habitat for the species. The closest documented occurrence is 4.75 miles to the north within the Black Diamond Mines Regional Preserve, based on two separate observations of a foraging adult in 1992 (California Department of Fish and Wildlife 2014). The

Project site supports suitable upland denning habitat for the species; however, no potential dens were observed on or near the project sites. Overall, there is a low likelihood of encountering a San Joaquin kit fox during project activities. This conclusion is based on the low incidence of sightings in proximity to the site; lack of burrows of sufficient size (burrow entrance of at least 4 inches in diameter) that could be used by kit foxes at or within 500 feet of the project site; limited project duration (approximately 2 weeks), and a small disturbance area (0.165 acre).

California Tiger Salamander and California Red-Legged Frog

The project site is within potential migration and aestivation habitat for California tiger salamander (HCP Appendix D-11c) and California red-legged frog (HCP Appendix D-12c). The closest potential breeding habitat for these species is 0.4 mile northeast of the project site in a seasonal cattle pond and 0.2 mile to the east in a perennial reservoir. California tiger salamander have been previously documented in the above referenced cattle pond and California red-legged frogs have been detected in a similar-sized reservoir 1.1 mile to the southeast (California Department of Fish and Wildlife 2014). Proposed pipeline repair work will not affect aquatic breeding habitat for these species. Based on topographic constraints around the dig site, a separate soil stockpiling area will be necessary. A potential soil stockpile area is proposed within a flat, disturbed area next to the nearby Divide Reservoir and tank owned and operated by the CCWD (Figures 2 and 3).

Temporary ground disturbance associated with the project will occur during the dry season (generally May 1 through October 15) and so will minimize potential encounters with migrating California tiger salamander and California red-legged frog. However, excavation within suitable upland habitat could unearth salamanders that may occupy underground burrows on or adjacent to the project site. At the time of the April 22, 2014 survey, three ground squirrel burrows were observed within the area proposed for ground disturbance and several additional burrows are present in grassland habitat to the north and east of the site. Since the HCP/NCCP only requires the implementation of the minimization measure for CTS and CRLF when suitable breeding habitat is impacted by a project, nothing further is required for these species under the HCP/NCCP.

Alameda Whipsnake

Grassland on the project site is mapped as movement habitat for Alameda whipsnake (HCP Appendix D-08c), a no-take species. The project site is within a linkage corridor between Mount Diablo State Park and the Black Diamonds Mines Regional Preserve known to support populations of Alameda whipsnake. The closest known occurrences for Alameda whipsnake are 1.8 miles to the north and 4 miles to the southwest (California Department of Fish and Wildlife 2014). Alameda whipsnake is a no-take species under the HCP. Conservation measures implemented for covered species discussed above will also ensure that the project does not result in take of Alameda whipsnake.

Based on the lack of core habitat (low-growing shrub communities) in or near the project site, the short duration of construction activities (approximately 2 weeks), limited area of disturbance (0.09 acre), and installation of exclusion fencing around the project site, there is a low likelihood of encountering Alameda whipsnakes during construction. If an Alameda whipsnake is observed during preconstruction surveys or during construction monitoring, all ground disturbing activities will cease until the animal voluntarily leaves the work area.

Burrowing Owl

The project site occurs within the HCP/NCCP's Modelled Habitat Distribution for burrowing owl (Appendix D-05c of the HCP/NCCP). Grassland on and adjacent to the project site provides suitable nesting and wintering habitat for burrowing owls. Several ground squirrel burrows that could be used by burrowing owls are present on and adjacent to the project site. No evidence of burrowing owl use (i.e., white wash, pellets, feathers, remains) was observed at potential burrows and no burrowing owls were seen at the time of the April 22, 2014 survey.

Covered and No-Take Plants

On suitable land cover types, surveys for covered and no-take plants must be conducted using approved CDFG/USFWS methods during the appropriate season to identify any covered or no-take plant species that may occur on the site (see page 6-9 of the Final HCP/NCCP). Based on the land cover types found in the project area and identified in Table 1, check the applicable boxes in Table 2b and provide a summary of survey results as required below. If any no-take plants are found in the project area, the provisions of Conservation Measure 1.11 must be followed (see Avoidance and Minimization Measures below).

Table 2b. Covered and No-Take Plant Species, Typical Habitat Conditions, and Typical Blooming Periods

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
<input type="checkbox"/> Oak savanna	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
<input type="checkbox"/> Oak woodland	Brewer’s dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Chaparral and scrub	Brewer’s dwarf flax (<i>Hesperolinon breweri</i>)	C		May–Jul
	Diablo Helianthella (<i>Helianthella castanea</i>)	C	Elevation above 650 feet ^b	Mar–Jun
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr–Sep; uncommonly Nov–Dec.
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 feet ^b	Apr–Jun
	Mount Diablo Manzanita (<i>Arctostaphylos auriculata</i>)	C	Elevation between 700 and 1,860 feet; restricted to the eastern and northern flanks of Mt. Diablo ^b	Jan–Mar
<input type="checkbox"/> Alkali grassland	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May–Oct

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	Caper-fruited tropidocarpum (<i>Tropidocarpum capparideum</i>)	N		Mar-Apr
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar-Jun
	Recurved larkspur (<i>Delphinium recurvatum</i>)	C		Mar-Jun
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr-Oct
<input type="checkbox"/> Alkali wetland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar-Jun
	Brittlescale (<i>Atriplex depressa</i>)	C	Restricted to soils of the Pescadero or Solano soil series; generally found in southeastern region of plan area ^b	May-Oct
	San Joaquin spearscale (<i>Atriplex joaquiniana</i>)	C		Apr-Oct
<input checked="" type="checkbox"/> Annual grassland	Alkali milkvetch (<i>Astragalus tener</i> ssp. <i>tener</i>)	N		Mar-Jun
	Big tarplant (<i>Blepharizonia plumosa</i>)	C	Elevation below 1500 feet ^b	Jul-Oct
	Brewer's dwarf flax (<i>Hesperolinon breweri</i>)	C	Restricted to grassland areas within a 500+ buffer from oak woodland and chaparral/scrub ^b	May-Jul
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar-Jun
	Diamond-petaled poppy (<i>Eschscholzia rhombipetala</i>)	N		Mar-Apr
	Large-flowered fiddleneck (<i>Amsinckia grandiflora</i>)	N		Apr-May
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr-Sep; uncommonly Nov-Dec
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 ^b	Apr-Jun

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	Round-leaved filaree (<i>California macrophylla</i>) ¹	C		Mar–May
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Seasonal wetland	Adobe navarretia (<i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i>)	C	Generally found in vernal pools ^b	Apr–Jun
	Alkali milkvetch (<i>Astragalus tener</i> sp. <i>tener</i>)	N		Mar–Jun
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun

^a From California Native Plant Society. 2007. *Inventory of Rare and Endangered Plants* (online edition, v7-07d). Sacramento, CA. Species may be identifiable outside of the typical blooming period; a professional botanist shall determine if a covered or no take plant occurs on the project site.

^b See Species Profiles in Appendix D of the Final HCP/NCCP.

Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b

Describe the results of the planning survey conducted as required in Table 2b. Describe the methods used to survey the site for all covered and no-take plants, including the dates and times of all survey’s conducted (see Tables 3-8 and 6-5 of the HCP/NCCP for covered and no-take plants). In order to complete all the necessary covered and no-take plant surveys, both spring and fall surveys are required, check species survey requirements below.

If any covered or no-take plants were found, include the following information in the results summary:

- Description and number of occurrences and their rough population size.
- Description of the “health” of each occurrence, as defined on pages 5-49 and 5-50 of the HCP/NCCP.
- A map of all the occurrences.
- Justification of surveying time window, if outside of the plant's blooming period.
- The CNDDDB form(s) submitted to CDFG (if this is a new occurrence).
- A description of the anticipated impacts that the covered activity will have on the occurrence and/or how the project will avoid impacts to all covered and no-take plant species. All projects must demonstrate avoidance of all six no-take plants (see table 6-5 of the HCP/NCCP).

Special-Status Plant Survey Results

Grassland at the project site has the potential to support 10 HCP covered and no-take plant species, including big tarplant (*Blepharizonia plumosa*), Contra Costa goldfields (*Lasthenia conjugens*), showy madia (*Madia radiata*), large-flowered fiddleneck (*Amsinckia grandiflora*), alkali milkvetch (*Astragalus tener* var. *tener*), round-leaved filaree (*California macrophylla*), Mt. Diablo fairy lantern (*Calochortus pulchellus*), Brewer's dwarf flax (*Hesperolinon breweri*), diamond-petaled California poppy (*Eschscholzia rhombipetala*), and Mt. Diablo buckwheat (*Eriogonum truncatum*).

A search of the CNDDDB identifies a total of 35 special-status plants that have been previously documented in the Clayton and Antioch quadrangles. Habitat at the project site is not suitable for most of these species because they occur in non-grassland habitat types or are endemic to specific substrates, such as serpentine soils, alkaline soils, or rock outcrops. Soils at the project site are mapped as Los Gatos loam, a variant of Los Gatos clay loam, a neutral to slightly acid soil derived from sedimentary rock.

No special status shrubs or perennials or evidence of other spring-blooming special-status annual plants, such as Contra Costa goldfields, large-flowered fiddleneck, round-leaved filaree, diamond-petaled poppy, alkali milkvetch, Mt. Diablo fairy lantern, showy golden madia, Brewer's dwarf flax, or Mt. Diablo buckwheat were found on the site during the April 25, 2014 botanical survey, which coincided with the species' identification period. Given the small area of proposed disturbance and ruderal nature of the vegetation, the site would be highly unlikely to support any special-status plants. One special-status plant has been recorded from very near the project site. Big tarplant, which has a California Rare Plant Rank of 1B.1 and is a HCP-covered species, was collected north of the project site, near the summit. No evidence of this species was found on the site. Although big tarplant blooms during October, other evidence for the species that would be identifiable in April would be old stems from the previous fall and rosettes from this year's generation.

As Shell Pipeline Company is on an urgent timeline to complete the repair work, the necessary Big Tarplant surveys were not conducted with the typical blooming period for this species. To ensure no impacts will occur to this species, Shell will conduct a rare plant survey within the project footprint, and within a 200 foot buffer around the project footprint during the correct blooming period for this species, even if it is post project. In the unlikely event that a rare plant does occur within the project footprint, it would likely be part of a larger population that extends beyond the project footprint. This larger population would be detectable during the surveys in the typical blooming period for the species. Conducting these rare plant surveys will provide an accurate assessment of impacts to special-status plant species.

To further minimize impacts to rare plants, the applicant will salvage and stockpile the topsoil of the repair area. The topsoil would be replaced over the project after ground-disturbing activities are completed to replace the existing seed bank. Please refer to the avoidance measures below for additional details on soil stockpiling.

A rare plant survey report shall be submitted to the East Contra Costa County Conservancy by September 30, 2014. If special-status plant species are identified on or within 200 feet of the repair areas and access areas, the applicant will be required to meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 "Plant Salvage when Impacts are Unavoidable," Section 6.31. "Covered and No-Take Plants," and Table 5-20 "Protection Requirements for Covered Plants" in the HCP/NCCP as well as be required to comply with several additional measures to avoid and minimize impacts in order to ensure that this species is protected.

Avoidance Measures for Special-Status Plant Species

Out of an abundance of caution, to ensure that no repair-related impacts occur to special-status plants in the project area, the applicant will implement the following avoidance measures:

- All plants and their associated bulbs, seed and soil will be salvaged from the project site footprints prior to construction by a qualified botanist. Any topsoil removed will be stored separately from the subsoil. The salvaged topsoil will be replaced over the disturbed area after the ground-disturbing activities are completed. Finally, the area will be re-seeded/vegetated with any salvaged seeds/blubs.

III. Species-Specific Monitoring and Avoidance Requirements

This section discusses subsequent actions that are necessary to ensure project compliance with Plan requirements. Survey requirements and Best Management Practices pertaining to selected covered wildlife species are detailed in Section 6.4.3, Species-Level Measures, beginning on page 6-36 of the Final HCP/NCCP.

Preconstruction Surveys for Selected Covered Wildlife

If habitat for selected covered wildlife species identified in Table 2a was found to be present in the project area. In Table 3, identify the species for which preconstruction surveys or notifications are required based on the results of the planning surveys. Identify whether a condition of approval has been inserted into the development contract to address this requirement.

Table 3. Applicable Preconstruction Survey and Notification Requirements based on Land Cover Types and Habitat Elements Identified in Table 2a.

Species	Preconstruction Survey and Notification Requirements
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are in the project area. Provide written preconstruction survey results to FWS within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water's edge. Document any sightings of garter snake.
<input type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> Covered shrimp species	Document and evaluate use of all habitat features (e.g.,

(p. 6-47)	vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend's big-eared bat (p. 6-37)	Determine if site is occupied or shows signs of recent occupation (guano).
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Determine whether nests are occupied.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.
Note: Page numbers refer to the HCP/NCCP.	

Preconstruction Surveys as Required for Selected Covered Wildlife in Table 3

Describe the preconstruction survey's or notification conditions applicable to any species checked in Table 3. All preconstruction surveys shall be conducted in accordance with the requirements set forth in Section 6.4.3, Species-Level Measures, and Table 6-1 of the HCP/NCCP.

Conditions of approval will be added to the construction documents to address the required surveys.

Conduct a Preconstruction Survey for San Joaquin Kit Fox#

Prior to any ground disturbance related to covered activities, a qualified biologist will conduct a preconstruction survey in areas that planning surveys identify as supporting suitable breeding or denning habitat for San Joaquin kit fox. The surveys will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction surveys will be conducted within 30 days before ground disturbance. On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. Adjacent parcels under different land ownership will not be surveyed. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities.

If San Joaquin kit foxes and/or suitable dens are identified in the survey area, the avoidance and minimization measures described below will be implemented.

Conduct a Preconstruction Survey for Burrowing Owl#

Prior to any ground disturbance related to covered activities, a qualified biologist will conduct a preconstruction survey in areas the planning surveys identify as having potential burrowing owl habitat. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFW survey guidelines (California Department of Fish and Game 1995).

On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1–August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the nonbreeding season (September 1–January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

Conduct a Preconstruction Survey for Golden Eagles#

Prior to implementing covered activities, a qualified biologist will conduct a preconstruction survey to establish whether nests of golden eagles are occupied. If nests are occupied, minimization requirements and construction monitoring will be required.

Construction Monitoring & Avoidance and Minimization Measures for Selected Covered Species

If preconstruction surveys for key covered wildlife species establish the presence of any such species, construction monitoring will be necessary. In Table 4, check the boxes for the species that will be assessed during the preconstruction surveys (see Table 3). A summary of the construction monitoring requirements for each species is provided in Table 4 and these measures must be implemented in the event that preconstruction surveys described in Table 3 detect the covered species. A summary of avoidance measures is also provided in Table 4 and these measures must be implemented if construction monitoring detects the species or its sign. These construction monitoring and avoidance requirements are described in detail in Section 6.4.3, Species-Level Measures, of the Final HCP/NCCP.

Construction Monitoring Plan Requirements in Section 6.3.3. Construction Monitoring, of the Final HCP/NCCP:

- Before implementing a covered activity, the applicant will develop and submit a construction-monitoring plan to the Implementing Entity⁴ for approval.**

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input checked="" type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

⁴ The East Contra Costa County Habitat Conservancy and the local land use Jurisdiction must review and

approve the plan **prior** to the commencement of all covered activities (i.e. construction).

Construction Monitoring & Avoidance and Minimization Measures as Required for Selected Covered Wildlife in Table 4

Describe the construction monitoring and avoidance and minimization measures applicable to any species checked in Table 4. A summary of avoidance measures is provided in Table 4, these measures must be implemented if construction monitoring detects the presence of the species. The construction monitoring & avoidance and minimization measures requirements are described in detail in Section 6.4.3, Species-Level Measures, of the HCP/NCCP.

Implement Avoidance and Minimization Requirements for San Joaquin Kit Fox, as Applicable

If a San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS/CDFW-approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.

- Unoccupied dens should be destroyed immediately to prevent subsequent use.
- If a natal or pupping den is found, USFWS and CDFW will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFW.
- If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

Conduct Construction Monitoring and Establish Exclusion Zones for San Joaquin Kit Fox Dens, as Applicable

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances will be demarcated. The configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones. Exclusion zone radii for potential dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

Implement Avoidance and Minimization Measures for Burrowing Owl and Conduct Construction Monitoring, as Applicable

If burrowing owls are found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishing a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds

have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1–January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include establishing a buffer zone (described below).

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

Implement Avoidance and Minimization Measures for Golden Eagle, as Applicable

Covered activities will be prohibited within 0.5 mile of active nests. Nests can be built and active at almost any time of the year, although mating and egg incubation occurs late January through August, with peak activity in March through July. If site-specific conditions or the nature of the covered activity (e.g., steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be appropriate or that a larger buffer should be implemented, the implementing entity will coordinate with USFWS/CDFW to determine the appropriate buffer size.

Conduct Construction Monitoring for Golden Eagles, as Applicable

Construction monitoring will focus on ensuring that no covered activities occur within the buffer zone established around an active nest. Although no known golden eagle nest sites occur within or near the project site, construction monitoring will ensure that direct impacts on golden eagles are minimized.

IV. Landscape and Natural Community-Level Avoidance and Minimization Measures

Describe relevant avoidance and minimization measures required to address the conservation measures listed below. If a conservation measure is not relevant to the project, explain why.

For All Projects

HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion

Briefly describe how the project complies with this measure. See page 6-21 of the Final HCP/NCCP for details.

Repair Site:

During initial excavation of the site, the upper 3 inches of topsoil will be stockpiled separate from the rest of the excavated soil. Once the pipeline repair is complete, the repair site will be re-contoured and re-compacted to its original condition, the 3-inch organic horizon salvaged topsoil will be replaced (without compaction) and all disturbed impacted areas will be hydroseeded with the native hydroseed mix prescribed below:

Seed Type	Approximate Seeding Rate
California brome (<i>Bromus carinatus</i>)	15 lbs/acre
Idaho fescue (<i>Festuca idahoensis</i>)	15 lbs/acre
Creeping wild rye grass (<i>Elymus triticoides</i>)	5 lbs/acre
Small Fescue (<i>Festuca microstachys</i>)	5 lbs/acre
Purple needle grass (<i>Stipa pulchra</i>)	10 lbs/acre
Meadow barley (<i>Hordeum brachyantherum</i>)	12 lbs/acre

Seed mix shall be applied at a minimum rate of 60 pounds per acre (seeds above can be adjusted in proportion, or as seed availability dictates). Note: California brome and Idaho Fescue are fixed, non-adjustable prescriptions. Others may be adjusted to meet 60 pounds per acre.

Fertilizer shall be 16-20-0 with 13% sulfur and applied at a rate of 250 pounds per acre.

Jute matting and/or straw shall be placed over hydroseed mix on slopes greater than 5 percent to prevent winter erosion. The straw shall be applied at a rate of 2 tons per acre.

Soil Stockpile Area:

Within the soil stockpile area, erosion control coir wattles will be placed around the perimeter of the stockpiled soil to ensure that the soil is contained and does not leave the stockpile area. All soil and wattles will be completely removed from the area after construction is complete.

HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds

Briefly describe how the project complies with this measure. See page 6-23 of the Final HCP/NCCP for details.

Extremely Rare Plants

Extremely rare plants or suitable habitat for rare plants has not been previously documented (CNDDDB 2014) on the project site and no rare plants were observed during the April 2014 botanical survey conducted for the project.

Fully Protected Wildlife Species and Covered Migratory Birds

Grassland at the project site provides ground-nesting habitat for migratory birds. No active nests were observed at the project site during the April 22, 2014 survey that coincided with the nesting season of most migratory birds (generally February through August); however, ground nests could be established during the remainder of the nesting season. Vegetation removal and other construction activities during the breeding season could result in the mortality or disturbance of nesting birds in and adjacent to the construction area.

Conduct a Preconstruction Survey for Ground-Nesting Birds

Prior to implementing covered activities occurring between February 1 and August 31, a qualified biologist will conduct a preconstruction nesting bird survey. The survey will be conducted within 10 days prior to start of construction in or adjacent to nesting habitat. Surveys will include a search of all suitable nesting habitat (e.g., annual grassland) in the construction area. In addition, a 500-foot area around the project site will be surveyed for nesting raptors, and a 50-foot buffer area will be surveyed for other nesting birds. If no active nests are detected during these surveys, no additional measures are required.

Implement Avoidance and Minimization Measures for Nesting Birds

If active bird nests are found in the survey area, a minimum 50-foot no-disturbance buffer for song birds and a minimum 300-foot buffer for raptors will be established around the nest sites to avoid disturbance or destruction of the active nest until the end of the breeding season (approximately September 1) or until a qualified wildlife biologist determines that the young have fledged and moved out of the project area (this date varies by species). The extent of the buffers will be determined by the biologists in coordination with EBRPD and will depend on the level of noise or construction disturbance, line-of-sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. Suitable buffer distances may vary among species. Where construction activities must encroach upon established buffers, additional protection measures may be necessary to avoid take. These could include periodic nest monitoring, installation of visual screens, and restrictions on construction timing to allow birds to resume normal activities during certain portions of the day.

For Projects on or adjacent to Streams or Wetlands

HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks

Briefly describe how the project complies with this measure. See page 6-15 and Table 6-2 of the Final HCP/NCCP for details. For questions on the stream setback requirements, please contact the Conservancy.

No streams or wetlands occur on or adjacent to the project site.

HCP/NCCP Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization

Briefly describe how the project complies with this measure. See page 6-33 of the Final HCP/NCCP for details.

To avoid potential indirect impacts to the nearby stockpond, Shell Pipeline will implement the following HCP/NCCP conservation measures to protect the stock pond located near the stockpile area.

- Personnel conducting ground-disturbing activities within or adjacent to the buffer zone of wetlands, ponds, streams, or riparian woodland/scrub will be trained by a qualified biologist in these avoidance and minimization measures and the permit obligations of project proponents working under this HCP/NCCP. Vehicles and equipment will be parked on pavement, existing roads, and previously disturbed areas.
- Trash generated by covered activities will be promptly and properly removed from the site.
- No construction or maintenance vehicles will be refueled within 200 feet of wetlands, ponds, streams, or riparian woodland/scrub unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
- Appropriate erosion-control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) will be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub.
- Filter fences and mesh will be of material that will not entrap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians.
- Erosion-control measures will be placed between the outer edge of the buffer and the project site.
- Fiber rolls used for erosion control will be certified as free of noxious weed seed.

For Projects adjacent to Protected Natural Lands (existing and projected)

Covered activities adjacent to permanently protected natural lands will require a variety of special considerations to address issues associated with characteristics of the urban-wildland interface. These considerations are intended to minimize the impacts of development on the integrity of habitat preserved and protected under the terms of the Plan. Permanently protected natural lands are defined as any of the following (see the latest Preserve System map on the Conservancy web site, www.cocohcp.org).

- Publicly owned open space with substantial natural land cover types including but not limited to state and regional parks and preserves and public watershed lands (local and urban neighborhood parks are excluded).
- Deed-restricted private conservation easements.
- HCP/NCCP Preserve System lands.
- Potential HCP/NCCP Preserve System lands (see Figure 5-3 in the HCP/NCCP).

HCP/NCCP Conservation Measure 1.6. Minimize Development Footprint Adjacent to Open Space

Briefly describe how the project complies with this measure. See page 6-14 of the Final HCP/NCCP for details.

The project site is located on the Clayton Ranch (part of the Black Diamond Mines Regional Preserve), owned and managed by EBRPD. Because the project is a maintenance/repair activity within an existing utility easement, no new permanent impacts are anticipated. Temporary impacts will be small (0.165 acre) and disturbed habitat will be restored to pre-project conditions following construction.

HCP/NCCP Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property

Briefly describe how the project complies with this measure. See page 6-18 of the Final HCP/NCCP for details.

The proposed project does not involve the development of any new or permanent features. Therefore, Conservation Measure 1.8 is not applicable to the Project.

HCP/NCCP Conservation Measure 1.9. Incorporate Urban-Wildland Interface Design Elements

Briefly describe how the project complies with this measure. See page 6-20 of the Final HCP/NCCP for details.

The proposed project does not involve the development of any new or permanent features. Therefore, Conservation Measure 1.9 is not applicable to the Project.

For Rural Infrastructure Projects

Rural infrastructure projects provide infrastructure that supports urban development within the urban development area. Such projects are divided into three categories: transportation projects, flood protection projects, and utility projects. Most rural road projects covered by the Plan will be led by Contra Costa County. All flood protection projects covered by the Plan will be led by the County Flood Control District. Utility projects will likely be led by the private companies that own the utility lines. A complete discussion of rural infrastructure projects is presented in Section 2.3.2 of the Final HCP/NCCP beginning on page 2-18.

HCP/NCCP Conservation Measure 1.12. Implement Best Management Practices for Rural Road Maintenance

Briefly describe how the project complies with this measure. See page 6-25 of the Final HCP/NCCP for details.

The Project is not a rural road project. Therefore, Conservation Measure 1.12 is not applicable to the Project.

HCP/NCCP Conservation Measure 1.13. Implement Best Management Practices for Flood Control Facility Maintenance

Briefly describe how the project complies with this measure. See page 6-26 of the Final HCP/NCCP for details.

The Project is not a flood control project. Therefore, Conservation Measure 1.13 is not applicable to the Project.

HCP/NCCP Conservation Measure 1.14. Design Requirements for Covered Roads outside the Urban Development Area

Briefly describe how the project complies with this measure. See page 6-27 of the Final HCP/NCCP for details.

The Project is not a rural road project. Therefore, Conservation Measure 1.12 is not applicable to the Project.

V. Mitigation Measures

Complete and Attach Exhibit 1 (Permanent Impact Fees) and/or Exhibit 2 (Temporary Impact Fees) Fee Calculator(s) for Permanent and Temporary Impacts.

- Briefly describe the amount of fees to be paid and when.
- See Section 9.3.1 of the HCP/NCCP for details. If land is to be dedicated in lieu of fees or if restoration or creation of jurisdictional wetlands or waters is to be performed in lieu of fees, summarize these actions here and attach written evidence that the Conservancy has approved these actions in lieu of fees.

Although all impacts are temporary, the applicant is planning to mitigate for the 0.165 acre of temporary impacts by paying the full development fee, which is provided as an option in the HCP/NCCP in lieu of calculating the area of indirect effects, in order to determine a project impact area subject to the temporary fee. Please refer to Exhibit 1: HCP/NCCP Fee Calculator Worksheet, attached.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Shell Pipeline Company & Westside Construction
 Project Name: Shell Pipeline North 20 ILI Repair Project
 APN (s): 078-280-002
 Date: June 13, 21014 Jurisdiction: Participating Special Entity

DEVELOPMENT FEE (see appropriate ordinance or HCP/NCCP Figure 9-1 to determine Fee Zone)

Acreage of land to be permanently disturbed (from Table 1)¹

	Full Development Fee		Fee per Acre (subject to change on 3/15/15 ²)	
Fee Zone 1		x	\$12,117.05 =	\$0.00
Fee Zone 2	0.165	x	\$24,234.09 =	\$3,998.62
Fee Zone 3		x	\$6,059.03 =	\$0.00
Fee Zone 4 ³		x	\$18,175.57 =	\$0.00
Development Fee Total =				\$3,998.62

**WETLAND MITIGATION FEE

	Acreage of wetland		Fee per Acre (subject to change on 3/15/15 ²)	
Riparian woodland / scrub		x	\$69,690.65 =	\$0.00
Perennial Wetland		x	\$95,366.15 =	\$0.00
Seasonal Wetland		x	\$206,626.66 =	\$0.00
Alkali Wetland		x	\$195,622.87 =	\$0.00
Ponds		x	\$103,924.65 =	\$0.00
Aquatic (open water)		x	\$52,573.65 =	\$0.00
Slough / Channel		x	\$118,596.37 =	\$0.00

Linear Feet

Streams				
Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$568.17 =	\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$855.85 =	\$0.00

Wetland Mitigation Fee Total = \$0.00

FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee _____
 Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments _____
 Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant _____

Reduction Total = \$0.00

CALCULATE FINAL FEE

Development Fee Total	\$3,998.62
Wetland Mitigation Fee Total +	\$0.00
Fee Subtotal	\$3,998.62

Contribution to Recovery + \$3,998.62

TOTAL AMOUNT TO BE PAID = \$7,997.25

Notes:

1 City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

2 The Conservancy is currently conducting the periodic fee audit required by the HCP/NCCP which could result in further adjustment to some or all fees in 2014.

3 "Fee Zone 4" is not shown on Figure 9.1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (see page 9-21 of the HCP).

Template date: March 15, 2014

Path: K:\Projects_1\EBRPD\00242_14_Shell_Pipeline_North20\LI\mapdoc\Site_plan_20140514.mxd; User: 28266; Date: 6/13/2014

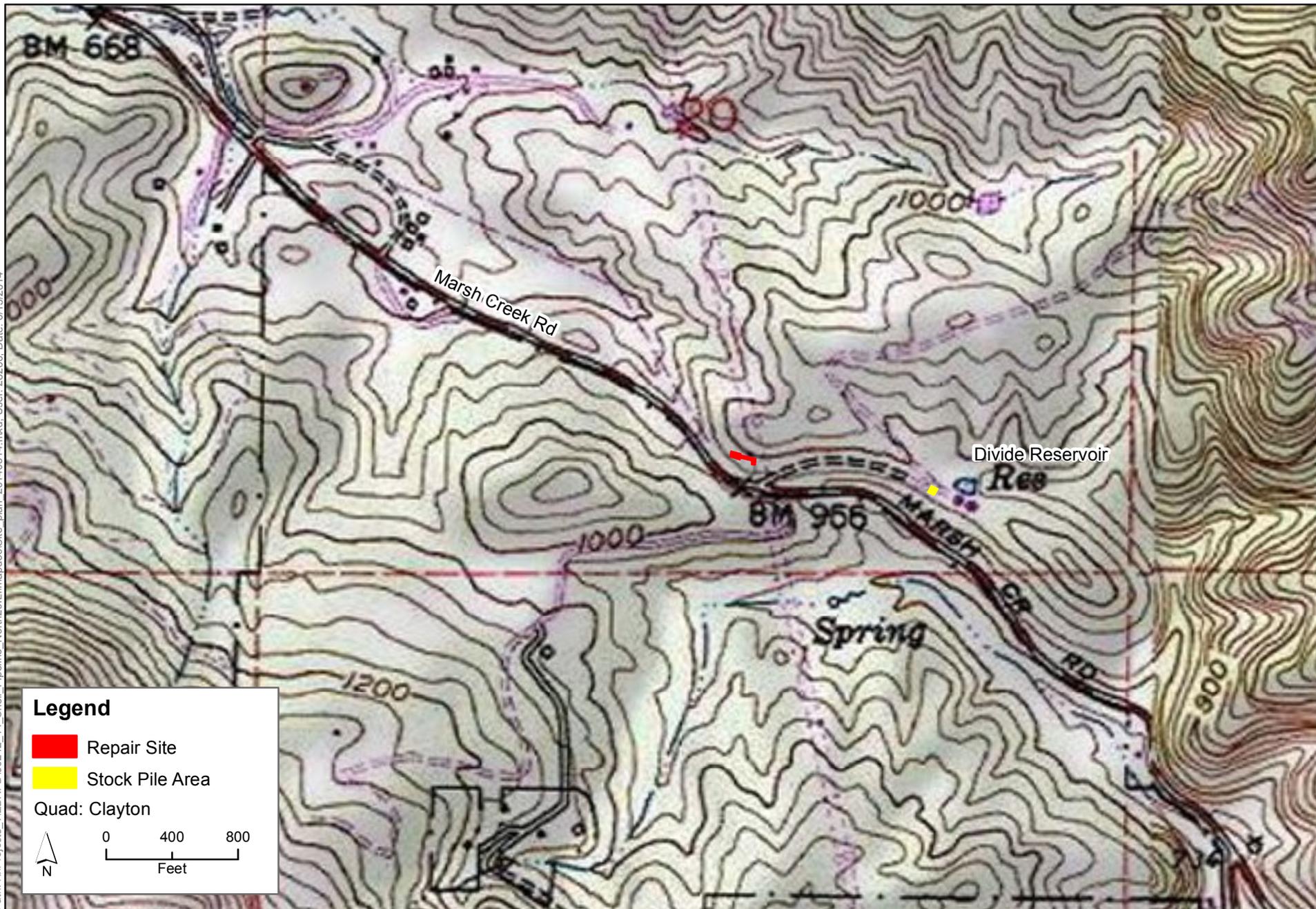


Figure 2
Project Site Plan
Shell Pipeline North 20 ILI Repair Project on East Bay Regional Park District

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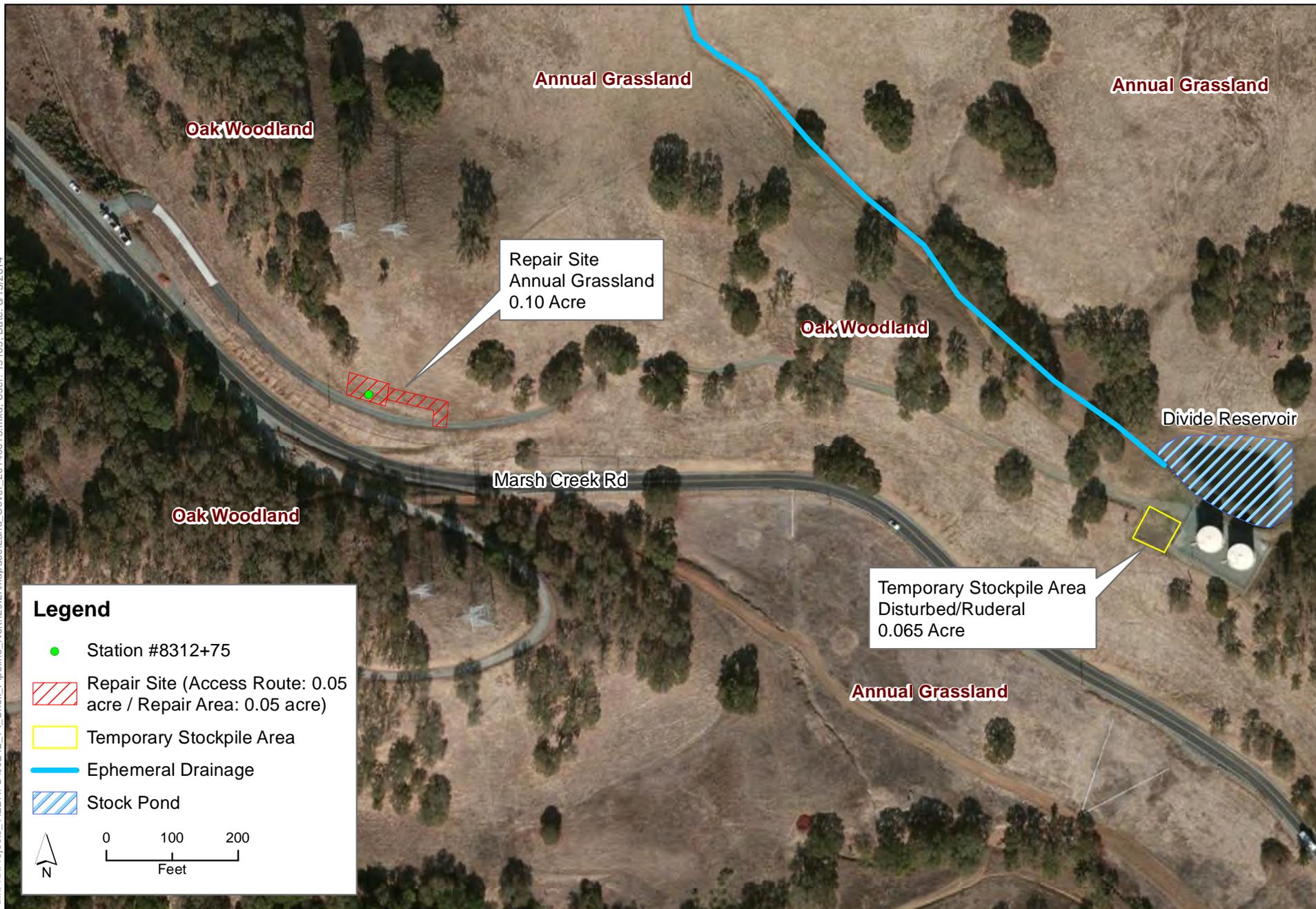


Figure 3a
Land Cover Map
Shell Pipeline North 20 ILI Repair Project on East Bay Regional Park District

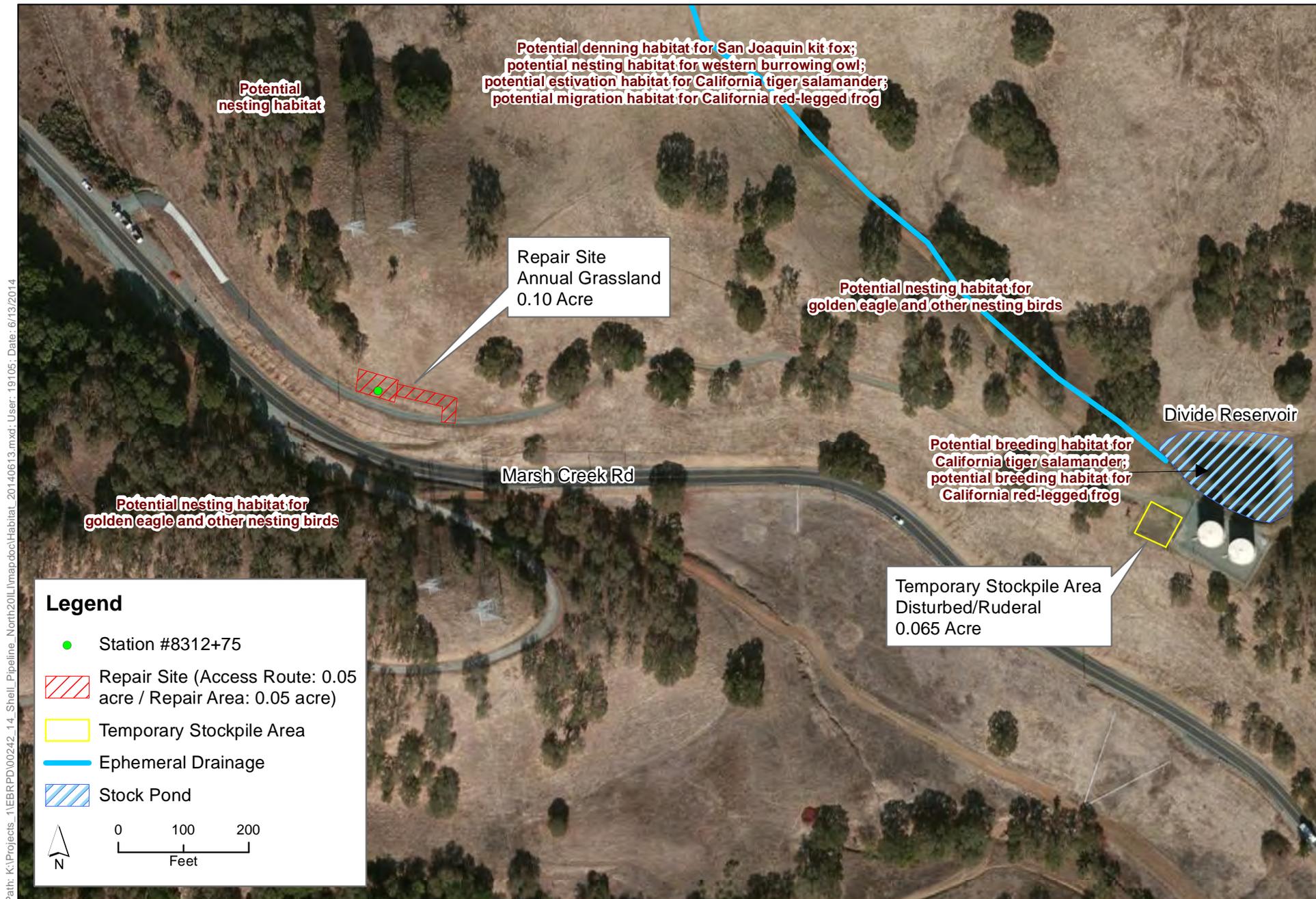


Figure 4
Habitat Map
Shell Pipeline North 20 ILI Repair Project on East Bay Regional Park District