



**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 22, 2015
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.

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, Contra Costa County, CA.

Agency Negotiators: John Kopchik, Abigail Fateman and Joanne Chiu
Negotiating Parties: Conservancy and East Bay Regional Park District
Under Negotiation: Price and payment terms

Reconvene Open Session. Will not start before 2:30 p.m.

- 1) Report on any actions taken in Closed Session.**
- 2) Introductions.**
- 3) Public Comment on items that are not on the agenda** (public comment on items on the agenda will be taken with each agenda item).
- 4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 27, 2015.**

- 5) Consider **APPOINTING one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association Governing Board.** (Abigail Fateman)
- 6) Consider **ACCEPTING the revised audited financial statements and related documents for the Year Ending December 31, 2014.** (Abigail Fateman)
- 7) Consider **the following items related to Conservancy finances:**
 - a) ACCEPT the mid-year status report on finances and the 2015 Conservancy Budget.
 - b) AUTHORIZE staff to execute a cost-sharing agreement with the East Bay Regional Park District for \$200,000 for land acquisition through December 2016.
 - c) AUTHORIZE staff to execute a second amendment to the existing contract (#2012-10, Amendment 1 for golden eagle research with the East Bay Regional Park District to extend the term from December 31, 2015 to June 30, 2016.(Abigail Fateman)
- 8) Consider **AUTHORIZING staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement with the California Wildlife Conservation Board (“WCB”) for state funds, and one federal subgrant agreement with WCB for federal funds for acquisition of the Nunn Property (APNs 020-171-001 and 020-172-004); 8831 Byron Highway, Contra Costa County, CA).** (Joanne Chiu)
- 9) Consider **ACCEPTING update on concept of a Marsh Creek Trail (along Marsh Creek Road) and DIRECTING staff to report back at the next Conservancy Board meeting with a policy proposal on this matter.**
- 10) **Adjourn. The next Governing Board meeting is August 24, 2015.**

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 22, 2015
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for April 27, 2015

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of April 27, 2015.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 22, 2015 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

 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

*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Monday, April 27, 2015
City of Pittsburg

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
Howard Geller	City Council, City of Clayton
Mary Piepho	Contra Costa County Board of Supervisors
Randy Pope (Chair)	City Council, City of Oakley
Salvatore Evola	City Council, City of Pittsburg

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

None

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). There were no public comments.
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of February 23, 2015.** The meeting record was approved with the addition of Jim Gwerder to the list of attendees at the meeting. (4-0: Pope, Evola, Geller, Bryant)
- 4) **Consider ACCEPTING the audited financial statements and related documents for the Year Ending December 31, 2014.** (Abigail Fateman) This item was continued to the June 22, 2015 meeting. (4-0: Pope, Evola, Geller, Bryant)
- 5) **Consider ACCEPTING update on activities to implement the 2015 Legislative Platform.** (Abigail Fateman) Ms. Fateman provided an overview of activities to implement the 2015 Legislative Platform. The item was approved as recommended. (4-0: Pope, Evola, Geller, Bryant)
- 6) **Consider the following actions related to the Conservancy’s 2014 Annual Report:** (Abigail Fateman)
 - a) REVIEW and APPROVE the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2014 Annual Report.

- b) DIRECT staff to prepare the East Contra Costa County Habitat Conservancy 2014 Year in Review summary document.

Ms. Fateman provided an overview of the Draft 2014 Annual Report. Item 6a was approved and the Governing Board authorized staff to update and refine text and financial reporting as necessary to finalize the 2014 Annual Report. Item 6b was approved as recommended. (4-0: Pope, Evola, Geller, Bryant)

7) Consider APPROVING the revised report entitled “Assessment of Plan Effects on California Environmental Quality Act (CEQA) Species”. (Abigail Fateman) Ms.

Fateman provided an overview of the change made to the revised report. The item was approved as recommended. (4-0: Pope, Evola, Geller, Bryant)

8) Consider the following items related to the Conservancy finances:

(Abigail Fateman)

- a. AUTHORIZE staff to execute an amendment to the existing contract with Vollmar Natural Lands Consulting, to extend the payment limit by \$65,000 from \$12,000 to \$77,000 and to extend the term of the contract to December 2015.
- b. AUTHORIZE staff to execute an amendment to the existing contract with Monk and Associates by \$30,000 from \$40,000 to \$70,000.
- c. AUTHORIZE staff to execute an amendment to the existing contract with Restoration Resources by \$50,000 from \$50,000 to \$100,000.

Ms. Fateman provided an overview on the various contracts related to Item 8. Items 8a, 8b, and 8c were approved as recommended. (4-0: Pope, Evola, Geller, Bryant)

9) Consider DIRECTING the Public Advisory Committee (PAC) to provide suggestions for involving individuals, educational organizations, and other public organizations in research opportunities in the Preserve System. (Abigail Fateman) Ms. Fateman

provided an overview of the item. The item was approved with the addition from Supervisor Piepho that Conservancy staff reach out to Alameda County Staff and District Supervisors regarding research opportunities. (5-0: Pope, Evola, Geller, Bryant, Piepho)

The Board announced adjournment to Closed Session.

10) Report on any actions taken in Closed Session. There were no actions to report.

11) Adjourn. The next Governing Board meeting is June 22, 2015.

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 22, 2015
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: **Appoint a Board Member to the East County Water Management Association Governing Board.**

RECOMMENDATION

APPOINT one Conservancy Board Member as the primary representative and one as the alternate to the East County Water Management Association Governing Board.

DISCUSSION

In December 2010, the Conservancy Governing Board approved joining the East County Water Management Association (ECWMA). Membership and participation in ECWMA will enable the Conservancy to receive future allocations from grants to the East Contra Costa County Integrated Water Management Plan (IRWMP), grants that are applied for and managed by ECWMA.

As an official member of ECWMA, the Conservancy needs to appoint a Board Member to the ECWMA Governing Board. In January 2013, the Conservancy Board appointed Randy Pope as the primary representative and Hank Stratford as the alternate. Since Mr. Stratford is no longer on the Conservancy Board, a new appointment is needed.

Additional Background: The East County Water Management Association (ECWMA) is a Joint Exercise of Powers Authority formed in 1997 by eleven member agencies: Cities of Brentwood, Antioch, and Pittsburg; Contra Costa County Water Agency (which is overseen by the County

CONTINUED ON ATTACHMENT: <u>Yes</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>June 22, 2015</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	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>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i> BY: _____, DEPUTY
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	

Board of Supervisors), Byron-Bethany Irrigation District, Delta Diablo Sanitation District, Contra Costa County Sanitation District 19, Diablo Water District, East Contra Costa Irrigation District, Ironhouse Sanitary District and Contra Costa Water District (CCWD). These agencies came together to form the ECWMA in order to facilitate communication, cooperation, and education between member agencies regarding matters affecting the existing and potential water supplies of eastern Contra Costa County. The ECWMA Governing Board does not have a regular meeting schedule, however, the member agencies meet periodically at the staff level to coordinate activities that will provide long-term water supplies and treatment facilities in a cost effective, reliable, implementable, and cooperative manner while maintaining institutional independence. The East Contra Costa County Habitat Conservancy joined the ECWMA in 2011. Since then, the ECWMA Board has typically met on a biannual basis.

In recent years the ECWMA has become the coordinating body for the development and implementation of the East Contra Costa County Integrated Regional Water Management Plan (IRWMP). An IRWMP is a required document for a region to implement in order to be eligible to apply for and receive State grants that are funded through Proposition 50 and Proposition 84. It is expected that future bond funding will require regions to have such plans. The Conservancy has benefited from past grant rounds awarded to the East County Region. In prior grant rounds, \$2,150,000 has been awarded to Conservancy projects through ECWMA.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 22, 2015
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: Audited Financial Statements for 2014

RECOMMENDATION

ACCEPT the revised audited financial statements and related documents for the Year Ending December 31, 2014.

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 2014.

The three reports prepared by Maze and Associates are listed on Page 2 and are attached. The single audit reports found the Conservancy to be in compliance with the requirements of each of its major federal programs for the year ended December 31, 2014, but does present one finding. The Memorandum on Internal Control documents one finding resulting from Conservancy staff oversight in tracking expected fee revenues from member agencies, resulting in the need to revise the financial statements. Additionally, staff submitted the audit documents to state and federal agencies prior to their final Board approval. Conservancy staff is now aware of needing additional communication with the co-permittees in insuring that all fee revenue is documented and transferred to the Conservancy in a timely manner. Additionally, the state and federal submission process has been clarified to prevent a future confusion.

Tim Kirsch and Cody Smith from Maze and Associates will be in attendance at the Governing Board meeting and will be available to answer questions.

CONTINUED ON ATTACHMENT: Yes

ACTION OF BOARD ON: June 22, 2015

APPROVED AS RECOMMENDED: _____

OTHER: _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

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ATTESTED

*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY*

BY: _____, DEPUTY

Attachments:

- Basic Financial Statements (Revised) for the year ending December 31, 2014
- Memorandum on Internal Controls and Required Communications (Revised) for the Year ending December 31, 2014
- Single Audit Report (Revised) for the Year ending December 31, 2014

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 22, 2015
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: Mid-year 2015 Budget Status and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) ACCEPT the mid-year status report on finances and the 2015 Conservancy Budget.
- b) AUTHORIZE staff to execute a cost-sharing agreement with the East Bay Regional Park District for \$200,000 for land acquisition through December 2016.
- c) AUTHORIZE staff to execute a second amendment to the existing contract (#2012-10, amendment 1) for golden eagle research with the East Bay Regional Park District to extend the term from December 31, 2015 to June 30, 2016.

DISCUSSION

Item (a): Attached please find a table entitled, “Mid-Year Budget Status: Conservancy's 2015 Budget” which provides a status report on Conservancy expenditures to date in 2015. Information on revenue to date is also provided. As of June 8, 2015, the Conservancy is estimated to have spent \$2,306,397 and have received \$3,318,181 in revenues. Some invoices for work performed in May and June are not reflected in these figures. Therefore, the figures presented in the table represent activity for about 40% of the fiscal year. As further discussed below, expenditures in most budget categories as well as revenues do not occur at a steady pace. Based on Conservancy staff’s knowledge of upcoming expenditures for the remainder of the year of fees and grants approved but not yet paid, staff anticipates that both expenditures and revenues will occur at a relatively faster pace in the second half of the year.

As shown in the attached 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.

CONTINUED ON ATTACHMENT: <u>Yes</u>		
ACTION OF BOARD ON: <u>June 22, 2015</u>	APPROVED AS RECOMMENDED: _____	
OTHER: _____		
 <u>VOTE OF BOARD MEMBERS</u>		
<input type="checkbox"/> UNANIMOUS		
AYES: _____	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>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>	
NOES: _____		
ABSENT: _____		
ABSTAIN: _____		
	BY: _____, DEPUTY	

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, 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 2015). With 65% of the Program Administration remaining, staff anticipate coming under budget at the end of this year.

The budget for Monitoring, Research, and Adaptive Management is being spent at the second-fastest pace relative to the other categories (on a percentage basis) with over 80% 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. Watering of the recently completed Hess Creek Channel Restoration plantings started early (due to low rainfall amounts since January 2015) and will continue through the year. No budget adjustment is recommended at this time for Monitoring, Research, and Adaptive Management.

Expenditures for Land Acquisition include two acquisition projects, with much of the budgeted amount still remaining. The Conservancy and the East Bay Regional Park District (EBRPD) closed on two acquisition properties in April – the Viera/Perley Property and the Clayton Radio Property. The Conservancy contributed the majority of funding (mostly grant funding) to both acquisitions. Staff had anticipated these acquisitions in setting the budget for this category. There are a few acquisition opportunities that staff is currently working on with the East Bay Regional Park District. A majority of the budgeted amount still remains, but given that land acquisition expenditures this year will almost entirely be covered by grants, coupled with the Conservancy's aggressive work plan with respect to land acquisition, no budget adjustment is recommended at this time.

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, Planning and Design, and Habitat Restoration/Creation, can vary greatly throughout the year as most expenses occur in discrete increments or phases. No budget adjustments are recommended for any of the other categories.

Attachment:

- 2015 Conservancy Budget: Mid-Year Budget Status Report

Item (b):

The East Bay Regional Park District has acquired approximately 12,000 acres of land for the HCP/NCCP Preserve System, and anticipates completing a number of important acquisitions in the next 18 months. Conservancy and EBRPD staff work together to identify and pursue acquisition opportunities and to develop funding strategies. The EBRPD land acquisition team has the expertise to negotiate and complete these acquisition transactions.

The Conservancy Governing Board has authorized a series of cost-sharing agreements with EBRPD to fund land acquisition activities. The chart below summarizes the history of such agreements.

Year	Amount	Purpose	Comment
2007	\$120,000	Land Acquisition	Cost-share for 2007/2008
2009	\$100,000	Land Acquisition	Cost-share for 2009/2010
2010	\$100,000	Land Acquisition	Not executed - deemed unnecessary by Conservancy and EBRPD
2011	\$100,000	Land Acquisition	Cost-share for 2011/2012
2015	\$200,000	Land Acquisition	Under Consideration for 2015/2016

The proposed 2015 Agreement would provide EBRPD with \$200,000 for land acquisition services (commissioning and reviewing appraisals, preliminary title reports, Phase 1 environmental assessments, crafting purchase and sale agreements, negotiating with property owners and performing due diligence on the properties). Of this amount, the Conservancy will forward \$100,000 to EBRPD within 25 business days following full execution of this Agreement, and another \$100,000 by January 31, 2016.

The Agreement is nearly identical to prior agreements. The draft agreement reflects the following general parameters: (1) land acquisition due diligence would be shared approximately evenly overall, though the specific arrangements would vary case by case depending upon the extent of the park and open space value presented by the property, (2) costs to both parties to administer the reimbursements terms of the agreement would be kept to a bare minimum. Attached is a draft of the agreement for \$200,000 that staff is recommending the Board authorize staff to finalize and execute.

The cost share agreement was anticipated in and is consistent with the Conservancy's approved Budget for 2015.

Attachment:

- Draft Cost-share Agreement

Item (c):

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. At the June 23, 2014 meeting of the Conservancy Governing Board, the Board approved a one-year contract extension through December 31, 2015. Staff is recommending that the Board approve an additional six-month contract extension, as one of the deliverables for the contract is a published document. Due to the timing related to wrapping up research and finalizing the publication staff recommends that the Conservancy extend the contract through June 30, 2016. No additional funds are being requested.

Mid-Year Budget Status: Conservancy's 2015 Budget

	EXPENDITURES ¹			
	<i>Approved 2015 Conservancy Budget</i>	<i>Expenditures as of 6/8/15²</i>	<i>Budget Amount Remaining</i>	<i>Percent Remaining</i>
Program Administration and Permitting Program	\$788,992	\$278,387	\$510,604	65%
Land Acquisition	\$11,446,312	\$1,875,137	\$9,571,175	83.6%
Planning and Design - Management, Restoration, and Recreation	\$402,364	\$36,960	\$365,405	91%
Habitat Restoration/Creation	\$356,352	\$51,336	\$305,016	86%
Environmental Compliance	\$154,286	\$11,082	\$143,204	93%
HCP/NCCP Preserve Management and Maintenance	\$373,727	\$2,476	\$371,251	99%
Monitoring, Research, and Adaptive Management	\$267,727	\$51,021	\$216,706	81%
Remedial Measures	\$6,000	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$117,172	\$0	\$117,172	100%
TOTAL EXPENDITURES	\$13,912,931	\$2,306,397	\$11,606,534	83%
Fee Revenues as of 6/8/15		\$1,130,769		
Grant Revenues as of 6/8/15		\$2,187,412		
TOTAL REVENUES as of 6/8/15¹		\$3,318,181		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES		\$1,011,784		
ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, JUNE 8, 2015³		\$3,120,000		

¹ Expenditures and revenues include Conservancy's own funds as well as grant funds passed through the Conservancy. 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 May 2015 are not reflected.

³ 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 \$4M.

COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** (the “**Agreement**”), dated January 1, 2015 for reference purposes only, is by and between **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY**, a joint exercise of powers authority (“**Conservancy**”), and **EAST BAY REGIONAL PARK DISTRICT**, a California special district (“**District**”). Hereafter, Conservancy and District are sometimes individually referred to herein as a “**Party**” and are sometimes collectively referred to herein as the “**Parties.**”

Recitals

A. The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 2006 (“**HCP/NCCP,**” or “**Plan**”), prepared by the East Contra Costa Habitat Conservation Planning Association and approved by United States Fish and Wildlife Service (“**USFWS**”) and by California Department of Fish and Game (“**DFG**”), 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 eastern 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 those species covered by the Plan and their habitats while allowing for the urban development in selected regions of Contra Costa County (“**County**”) and the cities of Pittsburg, Clayton, Oakley, and Brentwood (“**Cities**”).

B. Conservancy is a joint powers authority formed by its members, the County and the Cities, to implement the Plan.

C. District manages approximately 119,000 acres of parkland, wilderness, shorelines, preserves and land banks in Alameda and Contra Costa Counties.

D. Conservancy, District, County, Cities, Contra Costa County Flood Control and Water Conservation District, USFWS and DFG have entered into that certain Implementing Agreement, dated January 22, 2007 (the “**Implementing Agreement**”), which defines the roles and responsibilities of the parties to such agreement with regards to implementation of the Plan.

E. The Implementing Agreement contemplates, among other things, Conservancy’s creation of a Preserve System through acquisition and dedication in perpetuity of fee and conservation easement interests in lands intended to meet the preservation, conservation, enhancement, and restoration objectives of the “**Conservation Strategy**” of the Plan.

F. Conservancy and District desire to work together to identify, negotiate and execute fee and/or conservation easement acquisitions consistent with the Implementing Agreement and to share costs and expenses incurred in connection with such joint acquisition and management activities and efforts, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties hereby agree as follows:

1. Joint Projects. Conservancy and District shall cooperate and collaborate in identifying land and conservation easement acquisition opportunities to jointly pursue that are consistent with the Plan and the Implementing Agreement (“**Joint Acquisition Projects**”). The Parties expect that they will identify and pursue five to ten separate Joint Acquisition Projects during the term of this Agreement. The Parties intend and expect that District will take the lead in performing customary pre-acquisition and property due diligence activities reasonably advisable for any Joint Acquisition Project, including, without limitation, preliminary discussions and negotiations with landowners; obtaining and reviewing appraisals, environmental reports, and engineering reports; and obtaining and reviewing preliminary title reports and title documents and identifying and clearing title issues.

2. Shared Costs. Subject to the terms, conditions and procedures set forth below, Conservancy and District shall each share out-of-pocket pre-acquisition and due diligence costs and expenses incurred or to be incurred in connection with the Joint Acquisition Projects, including, without limitation, the following costs and expenses (collectively, the “**Shared Costs**”):

- (a) Appraisal costs and District’s staff expenses related directly to commissioning the appraisal;
- (b) Title costs, including preparation of preliminary title reports, title searches, and clearing title exceptions;
- (c) Phase one environmental site assessments for hazardous materials, and any recommended follow-up environmental testing or clean-up work;
- (d) Engineering and structural integrity studies;
- (e) Water rights searches and assessments, and water quality testing;
- (f) Baseline documentation of natural and cultural resources, as necessary, to support land acquisition;
- (g) Deposits, earnest money, option consideration and/or extension fees due sellers, to the extent such amounts are approved in advance by the Parties (collectively, “**Approved Deposits**”);
- (h) District’s staff expenses related directly to performing other technical land acquisition duties agreed upon by the Parties;
- (i) Closing costs and escrow fees; and
- (j) Other non-reimbursable, out-of-pocket costs reasonably agreed to by the Parties.

Notwithstanding anything to the contrary in this Agreement, the Shared Costs shall specifically *not* include the Parties' soft costs consisting of staff time and in-kind expenses not expressly described above, except that costs to secure the property may be considered shared costs if reasonably agreed to by the Parties. The Shared Costs shall also not include any pre-acquisition biological surveys required under the Plan, which shall be paid fully by Conservancy.

3. Conservancy's Shared Costs Amount. Conservancy and District estimate that Conservancy's portion of the Shared Costs for the Joint Acquisition Projects from the period commencing January 1, 2015 through December 31, 2016 is Two Hundred Thousand Dollars (\$200,000) ("**Conservancy's Total Shared Costs**"), as described as follows:

(a) One-Hundred Thousand Dollars (\$100,000) of Conservancy's Total Shared Costs represent Conservancy's equal share of the total estimated Shared Costs District is expected to incur for Joint Acquisition Projects during the 2015 calendar year ("**Conservancy's Estimated 2015 Shared Land Acquisition Costs**").

(b) One-Hundred Thousand Dollars (\$100,000) of Conservancy's Total Shared Costs represent Conservancy's equal share of the total estimated Shared Costs District is expected to incur for Joint Acquisition Projects during the 2016 calendar year ("**Conservancy's Estimated 2016 Shared Land Acquisition Costs**").

4. Payment of Conservancy's Total Shared Costs. Conservancy shall pay Conservancy's Estimated 2015 Shared Land Acquisition Costs within twenty-five business days of the Effective Date. Conservancy shall forward to District cash in the amount equal to One-Hundred Thousand Dollars (\$100,000) ("**Conservancy's Estimated 2015 Funds**") which shall represent Conservancy's payment of Conservancy's Estimated 2015 Shared Costs for the 2015 calendar year. By January 31, 2016 the Conservancy shall forward to the District cash in the amount equal to One-Hundred Thousand Dollars (\$100,000) ("**Conservancy's Estimated 2016 Funds**") which shall represent Conservancy's advance payment of Conservancy's Estimated 2016 Shared Land Acquisition Costs for the 2016 calendar year. District shall be entitled to use Conservancy's Estimated 2015 and 2016 Funds to pay Conservancy's Estimated Shared Costs during the term of this Agreement.

District shall directly fund District's portion of the Shared Costs incurred by District for the Joint Acquisition Projects from the period commencing January 1, 2015 through December 31, 2016. If the number of Joint Acquisition Projects far exceeds the number expected, as detailed above, the Parties shall meet and confer to discuss increasing the amount of the Conservancy's Total Shared Costs; provided, however, Conservancy will not be required to fund any Shared Costs in excess of the Conservancy's Total Shared Costs identified herein unless and until Conservancy and District agree in writing on a revised cost estimate that reflects such increase in the

number of Joint Acquisition Projects and a schedule for additional payments due from Conservancy to District in connection with such revised cost estimate.

5. Reporting. Within 30 days of a request by Conservancy, District shall provide to Conservancy copies of all reports, documents, analysis and evaluations obtained or generated by District with respect to the Joint Acquisition Projects and paid for by any Conservancy Funds. District and Conservancy shall meet and confer regularly, at least on a monthly basis, to discuss the status and results of District’s pre-acquisition and due diligence activities and efforts for the Joint Acquisition Projects, and the appropriate future direction and next steps for such Joint Acquisition Projects as relates to the Plan and the Implementing Agreement.

6. Accounting. On or before November 30, 2016, District shall deliver to Conservancy a preliminary written accounting estimating all Shared Costs actually incurred as of that date for use in discussing cost share arrangements for future years. On or before March 1, 2017, District shall deliver to Conservancy the following: (a) a preliminary written accounting detailing all Shared Costs actually incurred and paid by District during the term of the Agreement for each Acquisition Project, Conservancy’s portion of such Shared Costs, and all Conservancy Funds used to pay such Shared Costs; and (b) cash in the amount equal to the difference, if any, between the Conservancy Funds and the Total Conservancy Shared Costs.

7. Term. The term of this Agreement shall commence on the Effective Date and shall terminate on December 31, 2016.

8. Notices. Any notice, demand, request, consent or approval that either Party desires or is required to give to the other Party under this Agreement shall be in writing and shall be sent to the following relevant address:

If to Conservancy:

East Contra Costa County Habitat
 Conservancy
 30 Muir Road

 Martinez, CA 94553
 Attention: Abigail Fateman
 Facsimile: (925) 674-7250

If to District:

East Bay Regional Park District
 2950 Peralta Oaks Court
 Oakland, CA 94605
 Attention: Liz Musbach
 Facsimile: (510) 569-1417

9. Miscellaneous Provisions.

(a) Effective Date. The Parties’ rights and obligations set forth in this Agreement shall be effective (the “**Effective Date**”) the first date upon which both Parties shall have executed this Agreement.

(b) **Counterparts.** This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

(c) **Successors and Assigns.** This Agreement may not be assigned, in full or in part, by either Party without the prior written consent of the other Party. Subject to the foregoing provision, this Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement and their respective successors and assigns.

(d) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the agreements set forth herein and supersedes any and all prior written and oral understandings relating thereto. Any representations, amendments or modifications concerning this Agreement shall be of no force or effect unless confirmed in a writing signed by the Parties.

(e) **Governing Law.** This Agreement shall be governed by, construed in accordance with, and interpreted under, the internal laws of the State of California.

(f) **Drafting.** Each of the Parties hereto acknowledge that such Party and its counsel have reviewed, revised (where it was deemed appropriate), and approved this Agreement, and that no rule of construction that ambiguities are to be resolved against the drafting Party shall be employed in the interpretation of this Agreement.

(g) **Invalidity.** If any provision of this Agreement or the application thereof to any person(s) or circumstance(s) shall to any extent be held to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, and provided that the essential agreement of the Parties to this Agreement is not materially altered as a result of such holding: (i) neither the remainder of this Agreement nor the application of such provision to any person(s) or circumstance(s), other than those as to whom or which it is held to be invalid or unenforceable, shall be affected thereby; (ii) this Agreement shall be construed as though such invalid, illegal or unenforceable provision had never been contained in this Agreement; and (iii) every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision is so stricken from this Agreement, the Parties agree to negotiate in good faith any modifications that may be required to effectuate the intent of this Agreement.

(h) **Performance and Waiver.** Time is of the essence in the performance of each of the obligations of the Parties under this Agreement, but no failure of a Party to this Agreement to insist upon the timely performance of any obligation by another Party shall constitute a waiver of the right to require performance of such obligation, or act as a waiver of the right to require the performance of any other obligation of such Party (or any other party).

(i) **Attorneys' Fees.** In the event of any litigation or arbitration between the Parties to this Agreement in connection with the interpretation of this Agreement, or the enforcement of any right or obligation under this Agreement, the Party

prevailing in such litigation or arbitration shall be entitled to payment by the other Party of the court costs and reasonable attorneys' fees and expenses incurred by the prevailing Party in connection with such litigation or arbitration (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administration body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such litigation or arbitration.

(j) Due Authorization. Each Party represents and warrants to the other Party as to the following: (1) such Party's 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, shall be necessary in order to enable such party to enter into this Agreement and comply with the terms hereof; and (3) the person executing this Agreement on behalf of such party has all requisite power and authority to legally bind such Party.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the Effective Date.

CONSERVANCY:

EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY, a joint
exercise of powers authority

Date: _____

By: _____

Name: Abigail Fateman
Title: Executive Director

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special district

Date: _____

By: _____

Name: Robert E. Doyle
Title: General Manager

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 22, 2015
TO: Governing Board
FROM: Conservancy Staff (Joanne Chiu)
SUBJECT: Nunn Property Acquisition

RECOMMENDATION

AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (“EBRPD”), one state grant agreement with the California Wildlife Conservation Board (“WCB”) for state funds, and one federal subgrant agreement with WCB for federal funds for acquisition of the Nunn Property (APNs 020-171-001 and 020-172-004); 8831 Byron Highway, Contra Costa County, CA).

DISCUSSION

Overview of Property and Potential Acquisition:

The Nunn property (“Property”) totals approximately 646 acres and is located on Byron Highway in Brentwood, Ca. Photos and maps showing the Property, its location and condition are provided in the attached Pre-Acquisition Assessment.

The Property is currently owned by Ronald Nunn Family Limited Partnership (“Seller”). EBRPD and the Seller have reached an agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed September 12, 2014 and established the fair market value of the Property at \$6,072,000. An update to the appraisal was completed May 13, 2015, and concluded the same value of \$6,072,000, which is also the purchase price. EBRPD’s purchase is contingent on support from the Conservancy.

CONTINUED ON ATTACHMENT: <u>Yes</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>June 22, 2015</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	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>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
BY: _____, DEPUTY	

Proposed Funding Plan: The proposed funding plan for the acquisition of the Property is provided in Table 1 below. None of the Conservancy’s own funds are proposed.

Table 1. Proposed Funding for Purchase of Property

Source	Total
EBRPD	\$607,200
Federal Section 6 HCP Land Acquisition Grant	\$2,732,400
WCB Proposition 84 Grant	\$2,732,400
Total	\$6,072,000

The Federal Section 6 funds necessary to implement the Proposed Funding Plan are available through previously approved grant awards to the State for implementation of the ECCC HCP/NCCP. The Property is an eligible property under these approved awards. A subgrant agreement with WCB is necessary to expend the federal funds (see additional information on necessary agreements below). The Proposition 84 funds necessary to implement the Proposed Funding Plan have already been appropriated by the Legislature to be available to Delta County NCCPs, but a grant agreement with WCB is necessary to expend these funds. EBRPD would provide its contribution through Measure WW Bond Funds (Measure WW was approved by the voters in 2008). No Conservancy funds would be contributed to the purchase.

Staff recommends the proposed funding plan because:

- The Funding Plan should rely most on those funding sources that are nearest to expiring or otherwise being lost. Conservancy staff has requested one-year extensions for two Section 6 grants (totaling \$5.46 million) and will need to spend those grant funds before they expire in 2016. Proposition 84 grant funds are distributed on a first-come-first-serve basis, but Conservancy staff has been informed funding from Proposition 84 grant funds will start to become more limited (the Nunn Property acquisition will not be affected). The Funding Plan relies most heavily on these two sources.
- The Conservancy’s direct contribution is \$0.

Would acquisition of the property help the Conservancy achieve the conservation goals of the HCP/NCCP?

Yes. Conservancy staff prepared a Pre-Acquisition Assessment of the Property to examine and document the biological resources and restoration potential on the Property and to assess the ability of the Property to meet the conservation requirements of the HCP/NCCP. The following excerpts from the Pre-Acquisition Assessment provide a summary of the Property (the full report is attached). Table 2 provides a summary of the collective acres of land cover that would be protected by this acquisition (which are unknown at this time).

The Property is unique in its potential contributions to the Plan’s conservation strategy. While acquisition of the Nunn Property does not fit all the typical criteria of an acquisition property for the HCP/NCCP, the property offers a variety of conservation and restoration opportunities which are detailed below:

Zone 6

The entire property is located in Zone 6 (East County Agriculture) and would be the first acquisition in this zone. Within Zone 6, the Property lies within Subzone 6a. The Property is comprised of cropland (540.61 acres), pasture (78.01 acres), slough/channel (2.03 acres), wetland (11.44 acres), and urban land cover types. It currently provides suitable habitat for a variety of covered wildlife including foraging habitat for Swainson's hawk, giant garter snake, and silvery legless lizard. Cropland and pasture also provide secondary habitat for western burrowing owl (breeding and foraging) and tricolored blackbird (foraging). Within Zone 6, specific targets exist for land cover and species habitat. Acquisition priorities in the ECCC HCP/NCCP for Zone 6 are as follows:

- *Acquiring fee title or conservation easements on cropland or pasture along Marsh Creek or Kellogg Creek that provide outstanding opportunities for riparian restoration along the creeks to enhance suitable habitat for covered wildlife species such as Swainson's hawk and to protect foraging habitat for Swainson's hawk.*
- *Acquiring fee title or conservation easements on most of the alkali grassland and alkali wetland land cover types in Zone 6.*
- *Land acquisition and wetland and upland restoration in Subzone 6a to support and augment the Dutch Slough restoration project.*

The acquisition requirements for Zone 6 are specific, requiring that land acquisition within Subzone 6a to be located immediately east of the Dutch Slough project that contain restoration opportunities. Despite being located within Subzone 6a, the acquisition of the Nunn Property is neither adjacent nor immediately east of the Dutch Slough project; however, the Property contains a similar mixture of significant restoration opportunities similar to the Dutch Slough Project that will augment the habitat enhancements in the region for HCP/NCCP listed species. Furthermore, the Plan allows the Conservancy to retain flexibility in determining where to acquire land because the Plan depends on willing sellers. Other opportunities for acquisition on Dutch slough and adjacent lands have not surfaced since Plan implementation, and the Nunn Property presents a willing seller on a property that contains suitable habitat for covered species and significant opportunities for wetland restoration.

Prior to completion of the acquisition, staff will confirm with the Wildlife Agencies how preservation and restoration activities will meet Plant requirements.

Historical Ecology and Restoration

The Nunn Property is a unique acquisition opportunity because it would be acquired primarily for restoration purposes. To meet regulatory requirements and to contribute to the recovery of covered species, habitat enhancement, restoration, and creation are also important components of the conservation strategy. Restoration of the Nunn Property would be additive and would supplement preservation to adequately mitigate the loss of vegetation communities or land cover types.

The East Contra Costa County Historical Ecology Study, developed by the San Francisco Estuary Institute and Contra Costa County, in cooperation with the Conservancy in 2011, mapped historical land cover in the area for the first time and led to some surprising findings related to Nunn Property. The maps within the study showed that the Property, which is now almost entirely cultivated land, once contained a large areas of tidal and alkali wetland, alkali grassland, oak savanna and rare interior sand dune. A feasibility study was also commissioned by the Conservancy and conducted by ESA in 2013, describing the methods and results of the Property for potential to enhance or restore habitats that historically were found on site and to provide natural storm water treatment for the community of Knightsen. Out of that feasibility study, it

was determined that while it may not be possible to restore this property to pre-settlement conditions, there is potential for extensive restoration that could include multiple types of restored wetlands as well as restored dunes and oak savanna. Overall, the existing site topography, soils, and existing vegetation indicate the Property is well suited to accommodate the full range of historical habitats from tidal marsh to upland habitats. The site topography has been not greatly altered from natural elevations, sites soils have been only slightly modified and the potential hydrological parameters are available. With a low gradient slopes and elevations suitable to support tidal marsh to upland habitats, minimal site grading would be required. The site is suitable not only for the target habitats in the short term, but also over the long term. Certain agricultural land cover could also satisfy Plan goals and is an option to be considered in restoration planning.

Storm Water Quality Treatment Facility

The feasibility study also discusses opportunities and constraints of providing storm water treatment. Storm water draining large areas of east Contra Costa County generally flows generally from inland areas toward Delta water ways, making the site a potential capture area from storm water flow from Knightsen. Additional constructed constraints in the region including roads and railroad tracks have further concentrated flows into this area, creating an ongoing flood issue for Knightsen. The Property was identified as a preferred location for treatment wetlands or biofilter swales. The feasibility study determined that biofiltration opportunities on the Nunn Property could occur in conjunction with restoration on site. The Knightsen Town Community Services District could be a potential partner in this aspect of the project.

Other Restoration Opportunities

The eastern portion of the Property may be restored to tidal marsh, and may provide opportunities to partner with other agencies that may need mitigation for impacts to tidal marsh habitat. Partners seeking tidal marsh mitigation would need to work with the Conservancy and East Bay Regional Park District to integrate their interests into future plans for the Property and would presumably need to provide reimbursement for the use of a portion of the land.

Public Access Opportunities

The Property is also positioned to provide some recreation opportunities in the area. The Property's access to No Name Slough could potentially serve as water access for non-motorized watercraft. The water trail could connect to boat launches to the north at Big Break/Dutch Slough and to the south toward other EBRPD acquisitions/Discovery Bay and planned regional trails. The property also could support some trail access/connections providing expanded opportunities in this area of the County.

Species-Specific Considerations

The HCP/NCCP requires acquisition in Zone 6 to be focused on land suitable for restoration as habitat for tri-colored blackbird, western burrowing owl, Swainson's hawk, and giant garter snake.

Swainson's hawk

One of the objectives for the goal of maintaining or increasing Swainson's hawk population size and distribution is to acquire at least 3,600 acres of modeled suitable foraging habitat for Swainson's hawk near Kellogg Creek, Marsh Creek, adjacent to Dutch Slough, or in suitable grassland areas. The Nunn Property is located within the modeled suitable foraging habitat for Swainson's hawk; however, the site is not near Kellogg Creek, Marsh Creek, nor adjacent to Dutch Slough.

Swainson’s hawk nest trees

The Nunn Property could be a site for mitigating loss of non-riparian Swainson’s hawk nest trees. As required by the plan, nest trees, including non-native trees, lost to covered activities will be mitigated by the project proponent by on-site planting (15 saplings for every tree lost), and either 1) paying the Conservancy additional fees to purchase, plant, maintain, and monitor saplings within the Preserve System or 2) themselves plant, maintain, and monitor saplings on a site approved by the Conservancy within the Preserve System or existing open space linked to the Preserve System. Trees planted in the HCP/NCCP preserves or other approved offsite location will occur within the known range of Swainson’s hawk in the inventory area and as close as possible to high-quality foraging habitat. The Nunn Property is within the modeled range of foraging habitat, and may be a suitable site for tree plantings to offset loss of non-riparian Swainson’s hawk nest trees due to covered activities.

Giant garter snake

The biological goal for giant garter snake is to compensate for temporary and permanent loss of giant garter snake habitat, either by replacing suitable upland aquatic habitat or contributing/augmenting the restoration of suitable habitat for giant garter snake on Dutch Slough. Restoration activities are prioritized for Dutch Slough and adjacent to Dutch Slough to benefit giant garter snake. Sloughs and drainage network associated with agricultural fields in the northeast and eastern section of the County are modeled as suitable habitat. Although not adjacent to Dutch Slough, the Nunn Property could be of benefit to giant garter snake and be a suitable restoration site.

Silvery legless lizard

Though not originally mapped in the Plan as suitable habitat for silvery legless lizard, subsequent investigations have identified remnant dune habitat that if managed appropriately has potential to function as habitat for the species. Detailed studies of legless lizard habitat requirements need to be conducted to determine the distribution and ecological needs of this species more precisely. However, the sandy soils of stabilized dunes seem to be especially favorable habitat for silvery legless lizard. Surveys on lands acquired to date have not identified sandy soils of this quality.

Table 2. Land Cover Types on Property

Land Cover Type (acres)	Nunn	HCP Land Acquisition Requirements (acres)	Percent of Land Acquisition Requirements
Cropland and Pasture	618.62	400	*
Slough/Channel	2.03	36	*
Wetland	11.44	75	*
Urban	7.22	-	-

* The Nun Property’s contribution to land acquisition requirements is unknown at this time.

Deadline: The parties hope the transaction can close by January 31, 2016. The principal timing constraints will be the timing of the Conservancy’s state and federal funds.

Conservancy costs and funding sources: The Conservancy’s total out-of-pocket contribution to the acquisition would be \$0. The Conservancy would arrange for its grant funds to cover \$5,464,800.

Future Conservancy actions: The Board would need to approve a Management Plan that covers the Property and funding agreements for management.

Agreements: The Funding Agreement with EBRPD, the Grant Agreement with WCB, and the Subgrant Agreement¹ with WCB would follow the general form shown in the attached templates, with funding amounts matching the Funding Plan described above.

Reasons for recommendation: Staff recommends the purchase of the Property for the following reasons:

- The Property has demonstrated willing sellers. Land acquisition under the HCP/NCCP is on a willing seller basis and must seize opportunities when presented.
- The Property is located in a lower priority acquisition subzone and will be the first acquisition in Zone 6, however, its preservation is important to the overall HCP/NCCP Preserve-System, and contains great restoration opportunities.
- The Property is located in an area eligible for funding from the Conservancy's approved federal Section 6 grants and is also eligible for WCB funding. The Property can be acquired to meet the goals of the HCP/NCCP without expenditure of the Conservancy's own funds.
- The HCP/NCCP conservation requirements have a time element and all of the grant funds have a deadline for expenditure. The Conservancy shouldn't rush into acquisitions or choose speed over quality, but when presented with affordable opportunities to acquire lands that contribute HCP/NCCP conservation requirements, staff believes it is prudent for the Conservancy to act affirmatively.

Attachments:

- Pre-Acquisition Assessment for Nunn
- EBRPD Funding Agreement template
- WCB Grant Agreement (state funds) template
- WCB Subgrant Agreement (federal funds) template

¹ Conservancy staff anticipates relying on funding from the 2011 federal grant award.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 22, 2015
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: Marsh Creek Trail

RECOMMENDATION

ACCEPT update on concept of a Marsh Creek Trail (along Marsh Creek Road) and DIRECT staff to report back at the next Conservancy Board meeting with a policy proposal on this matter.

BACKGROUND

Marsh Creek Road is a major thoroughfare that connects Central County and East County. Currently, a significant number of bicycle trips take place on Marsh Creek Road, in spite of the high number of accidents and the lack of bicycle paths. Marsh Creek Road within Clayton has an existing Class II bicycle lane, which connects to Clayton’s extensive trail network. In East County, the Marsh Creek Trail currently runs from the Big Break Regional Shoreline in Oakley to the southern city limits of Brentwood. The East Bay Regional Park District plans to extend the Marsh Creek Trail from the Brentwood city limits along Marsh Creek Road to the Round Valley Regional Reserve. (See page 2 of attached informational sheet).

The new multi-use path would create a new major non-motorized east-west thoroughfare for expanded commuting or recreational opportunities. It would provide non-motorized access to Downtown Clayton, Diablo View Middle School, Mount Diablo, Round Valley Regional Reserve, and the Marsh Creek Trail. Once this path and adjacent paths are completed, there will be one continuous non-motorized path from Downtown Concord to Oakley. The trail could possibly be located on the opposite side of the creek from the road or immediately adjacent to the road itself. Construction of the trail could be performed in conjunction with restoration of Marsh

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: June 22, 2015 APPROVED AS RECOMMENDED: _____
 OTHER: _____

VOTE OF BOARD MEMBERS

 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

*John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY
 HABITAT CONSERVANCY*

BY: _____, DEPUTY

Creek, as anticipated in the East Contra Costa County HCP/NCCP, and be constructed in a sensitive manner that reflects the scenic and natural resources of the area.

A trail along Marsh Creek is compatible with the HCP/NCCP Preserve System and may assist the Conservancy in finding partners in acquisition who will cost share on operation and maintenance of the trail and acquired preserve properties.

ATTACHMENTS:

- 9a: Marsh Creek Corridor Multi-Use Path Information sheet



Marsh Creek Corridor Multi-Use Path

Project Description: Plan, design, and construct an approximately 15-mile long multi-use path along the Marsh Creek Corridor between the City of Clayton and the City of Brentwood.

Background: Marsh Creek Road is a major thoroughfare that connects Central County and East County. Currently, a significant number of bicycle trips take place on Marsh Creek Road, in spite of the high number of accidents and the lack of bicycle paths. Marsh Creek Road within Clayton has an existing Class II bicycle lane, which connects to Clayton's extensive trail network. In East County, the Marsh Creek Trail currently runs from the Big Break Regional Shoreline in Oakley to the southern city limits of Brentwood. The East Bay Regional Park District plans to extend the Marsh Creek Trail from the Brentwood city limits along Marsh Creek Road to the Round Valley Regional Reserve. An approximately 11-mile gap in the bicycle path would still exist between Clayton and the proposed terminus of the Marsh Creek Trail at the Round Valley Regional Preserve.

Benefits: The new multi-use path would create a new major non-motorized east-west thoroughfare for expanded commuting or recreational opportunities. It would provide non-motorized access to Downtown Clayton, Diablo View Middle School, Mount Diablo, Round Valley Regional Reserve, and the Marsh Creek Trail. Once this path and adjacent paths are completed, there will be one continuous non-motorized path from Downtown Concord to Oakley. The trail could possibly be located on the opposite side of the creek from the road or immediately adjacent to the road itself. Construction of the trail could be performed in conjunction with restoration of Marsh Creek, as anticipated in the East Contra Costa County HCP/NCCP, and be constructed in a sensitive manner that reflects the scenic and natural resources of the area.

Policies: Both the County's General Plan and Contra Costa Transportation Authority's Countywide Bicycle and Pedestrian Plan call for bicycle facilities along Marsh Creek Road. The County's adopted precise alignment for Marsh Creek Road in this area has sufficient right-of-way for expansion.

Cost: TBD

Marsh Creek Bike Path Study Area

