



EAST CONTRA COSTA
COUNTY HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

PRE-ACQUISITION ASSESSMENT EAST CONTRA COSTA COUNTY HCP/NCCP PRESERVE SYSTEM

SITE IDENTIFICATION

Site Name: Nunn Property

Site Address/Location: 8331 Byron Highway, Contra Costa County, CA 94513

Property APNs: 020-171-001 and 020-172-004

Size of Property: 645.95 acres

Survey Overview:

The pre-acquisition assessment on potential preserve lands evaluates whether these lands will meet the requirements of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan. The assessment includes the location, quantity, quality, and type of habitats and natural communities on the site, as well as other site conditions and infrastructure that would benefit or conflict with the preserve system's biological goals and objectives. This survey will help the East Contra Costa County Habitat Conservancy prioritize acquisition of preserve lands based on their relative contribution toward meeting the biological goals and objectives.

Photo-documentation:

Photographs of landscape features and other aspects of the site are attached as Appendix A.

Figures:

The following figures are attached as Appendix B.

- Regional Context (Figure 1)
- Consistency with HCP/NCCP Acquisition Priorities (Figure 2)
- Ortho Photo of Parcel (Figure 3)
- Terrestrial and Aquatic Land Cover Types (Figure 4a)
- Historical Land Cover Types (Figure 4b)
- Ownership of Adjacent Properties (Figure 5)

Feasibility Study:

Describes the methods and results of a restoration feasibility study of the parcel for potential to enhance or restore habitats that historically were found on site and to provide storm water quality treatment.

LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

I. Overview and Regional Context (Figures 1, 2 and 3)

The Nunn Property (Property) is located in the northeastern region of the HCP/NCCP's inventory area in unincorporated Contra Costa County, partially in the community of Knightsen. The Property lies approximately a quarter of a mile south of the Oakley urban limit line.

The Property is comprised of two parcels. The larger parcel (APN 020-172-004; approximately 565.95 acres) is irregularly shaped and comprised of rectangular blocks used in connection with farming activities. The smaller northern parcel (APN 020-171-001; 80 acres) lies north of Delta Road and is rectangular in shape. Delta road separates the parcels.

The Property and surrounding areas have historically been used for agricultural purposes. Most of the Property is actively used for row crops and planted in alfalfa, field corn, and tomatoes in the recent past. The northern 84-acre portion of the Property has not been farmed and is in a fallow state, and historically been utilized for grazing purposes.

Topography of the Nunn Property is very slightly down sloping from northwest to southeast, with elevations ranging from 18 feet in the northwest corner to just above sea level in the southeastern corner of the Property. There are numerous irrigation ditches and drainage ways in connection with agricultural use of Property. The southeastern edge of the property is adjacent to No Name Slough.

Nunn Property and the HCP/NCCP Conservation Strategy

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 ECCP 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.

II. Existing Land Cover Types (Figure 4a)

Land Cover Type (see Chapter 3 of the HCP/NCCP for definitions)	Area (acres)
Terrestrial Land Cover Types	
Cropland	540.61
Pasture	78.01
Urban	7.22
Total area of terrestrial land cover	625.84
Aquatic Land Cover Types	
Slough/Channel	2.03
Wetland	11.44
Total area of aquatic land cover	13.47

IV. Proximity to Development (see Figure 1)

Type of Development (urban, suburban, rural, commercial, etc.)	Distance from Site (miles)	General description of development and influence on site.
Urban development	0.25 mile to the north, 2.2 miles to the west	Urban development is located approximately 0.25 mile to the north to the Summer Lake development in the City of Oakley. 2.2 miles west of the Property is the City of Brentwood
Rural residential development	Adjacent	The Property is surrounded in the north, west, and south by rural residential development in the community of Knightsen

V. Requirements in Specific Acquisition Analysis Zones and Sub-Zones

This property’s value to the Plan and achieving conservation goals is in the restoration of habitats for covered species. Investigations into the restoration potential suggest that a large acreage of wetlands, alkali grassland could be restored to the parcel. Restoring these habitats is critical to Plan restoration goals. The tables below illustrate the pre-restoration acreage contributions, and are not reflective of the acquisition’s expected contribution to Plan success.

The site occurs in Conservation Analysis Zone(s) (see HCP Chapter 5, Figure 5-1):

- 1 2 3 4 5 6

Contribution to Acquisition Analysis Zone Requirements

Subzone Requirement	Total Requirement (MUDA acres)	Contribution by this Acquisition (acres)	% of Requirement Met by Acquisition
Acquire alkali grassland Subzone 6d/6e	300	*	*
Acquire alkali wetland in Subzone 6d/6e	40	*	*
Acquire cropland or pasture in 6a/6b/6c/6f	400	*	*
Zone 6	740	*	*

* The Nunn Property’s contribution to acquisition analysis zone requirements is unknown at this time.

Contribution to Overall Terrestrial Land Cover Acquisition Requirements

Land-Cover Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	% of Requirement Met by Acquisition
Preserve-wide Cropland and Pasture	400	Depends upon restoration	Depends upon restoration

Contribution to Overall Estimated Aquatic Acquisition Requirements

Jurisdictional Wetland and Waters Requirement	Total Requirement (acres)	Contribution by this Acquisition (acres)	% of Requirement Met by Acquisition
Preserve-wide Slough/Channel	72	Depends upon restoration	Depends upon restoration
Preserve-wide Wetland	85	Depends upon restoration	Depends upon restoration

V. Site Conformance with Preserve Design Principles

The following is a subset¹ of conservation biology principals that guide the design of HCP/NCCP Preserve System. This section briefly describes how design principles are addressed on site or how acquisition of this site could contribute to the Preserve System given the landscape context described in Section I. Not all design principals may be applicable or be evaluated at this time.

- **Size:** site has potential to contribute habitat for covered species and/or is large enough to maximize protection of species sensitive to disturbances from adjacent land use.
- **Linkage to other preserves:** site provides links to existing and proposed open spaces, parks, etc. Small and isolated preserves are necessary to protect isolated features or populations with high biological importance (e.g., covered plant species populations, unique or especially diverse land cover types such as alkali wetlands).
- **Buffers urban impacts:** site includes buffer land within its boundaries that could minimize indirect effects from urban development.
- **Minimizes edge effects:** site shares a minimum amount of edge (i.e., should have the greatest possible area-to-perimeter ratio) with non-preserve land, especially urban development. Preserves with low area-to-perimeter ratios may be appropriate to protect linear features with high biological value, such as streams, riparian woodland, valley bottoms, or ridgelines essential to wildlife movement.
- **Fully represents environmental gradients:** includes or connects to open space/parks with a range of environmental gradients, such as topography, elevation, soil types, geologic substrates, slopes, and aspects.
- **Watershed protection:** site contributes to the protection of watersheds, subwatersheds, and headwater streams that are not already in protected status.
- **Management considerations:** desired management treatments such as livestock grazing, prescribed burning, exotic species control, and restoration should be feasible on site.

The property's large size (645.95 acres) has potential to contribute habitat for covered species and is large enough to maximize protection of species sensitive to disturbances from adjacent land use.

The property does not currently provide any link to existing Preserve System lands or other open space. However, in some cases, small and isolated preserves are necessary to protect isolated features or populations with high biological importance. The Nunn Property once contained an alkali meadow. With restoration efforts, this land cover type could be brought back. An acquisition in this area of the HCP/NCCP inventory area will be beneficial in establishing protected land with high biological importance.

The Property does not include buffer land within its boundaries. However, because it is surrounded by agricultural land and rural development, includes buffer land adjacent to its boundaries that could minimize indirect effects from urban development.

¹ The design principles of high-quality communities and full ecological diversity within communities were excluded from the list due to the need for field verification by a qualified biologist and/or botanist.

The Nunn Property's configuration comprised of rectangular blocks, and therefore shares a minimum amount of edge (large area-to-perimeter ratio) with non-preserve land. This will minimize the indirect effects of adjacent land uses on the preserve resources and to minimize management costs. The Property is bordered by rural residential and agricultural land uses to the north, south, east and west. Larger lot holdings are located to the east and southeast of the Property.

The Preserve System is currently comprised of a range of environmental gradients and the Nunn Property will significantly expand the range. The Nunn Property topography is has a very slight fall from the northwest to the southeast. Elevations range from about 18 feet in the southwest corner to just above sea level in the northeastern corners; APN 020-171-001 has minor variations in elevation due to the fact that this parcel has lain fallow for a number of years.

The Property contributes to the protection of watersheds and is part of the East County Delta Drainages. The Property is located at the western limits of the California Delta (Sacramento-San Joaquin River delta), and is the bottom of the watershed for parts of east Contra Costa County that drains to No Name Slough. Restoration of this property may allow for treatment wetlands to improve water quality before drains to the network of sloughs that feed the Delta.

The Property will be manageable. The majority of the site is currently used for agricultural purpose, but restoration is feasible and planned for the Property.

BUILT FEATURES AND SITE CONSTRAINTS

I. Describe evidence in the field of current and past land uses on the site (e.g. grazing; grading, earthwork, and construction; infrastructure; industry; etc.) and locate on the aerial:

The site has been used primarily and historically for agricultural purposes. All but the 84-acre portion of the Property to the north of Delta Road (APN 020-171-001) has been actively row cropped and planted in alfalfa, field corn, and tomatoes in the recent past and its condition is typical for such a use. The northern portion of the Property has not been farmed and is in a fallow state, but has been used for grazing in the past.

II. Describe the type and quantity of structures and impervious surfaces on the property and map on an aerial. This includes houses, barns, sheds, roads, etc.:

There is an old deteriorated 1,570 square foot single family residence (3-bed, 2-bath) and an agricultural equipment shed now utilized as a garage, are located in the southwestern corner of the Property. An abandoned pump house structure is also located in the same area. These structures are in poor condition.

Delta road, a public roadway, crosses through the Property; the 80-acre parcel is north of Delta Road.

III. Map any ruderal areas (defined as disturbed areas characterized by sparse nonnative, typically weedy vegetation) and describe their condition:

No ruderal lands occur on the Property.

IV. Discuss any management constraints that you have observed on this site (e.g. interior access roads, gates, fencing, boundary/edge issues, etc.):

There are no obvious management constraints on the site.

V. Describe land uses adjacent to the property that could influence the site's potential as a preserve (e.g., influence the ability to manage or restore the site):

The site is located within an area of Contra Costa County that is currently and historically used for rural agricultural purposes. There were very few residential ranchette properties in the immediate surrounding area. Since the 1960s, a number of smaller agricultural residential lots have been created, mostly by minor subdivision. With adoption of a County General Plan in the mid-1990s that discouraged minor subdivisions on properties classified as Agricultural Lands, as well as a lessening of market demand, new lots being created currently are pretty limited. The closest incorporated community is the City of Oakley, which is about a quarter of a mile to the north of the Property.

VI. Describe any populations of invasive plant species on site:

Surveys in 2012 conducted for the feasibility study found non-native invasive grass species on the parcel north of Delta Road. Perennial pepperweed (*Lepidium latifolium*) was also observed on site. As with the other acquisition properties, field surveys will be conducted after close of escrow to identify any additional invasive plants on site.

VII. Discuss any other possible constraints on this site as a potential preserve (water availability, habitat degradation, etc.):

Electrical and telephone utilities are available and are extended into the Property to serve the residence. No sanitary sewer or municipal treated water is available to the Property. There is a functional well located in the southwest corner of the property serving the residence. There is also a second failed well in the same area that is capped. The Property requires significant fresh water for irrigation. The property owner obtains water from No-Name Slough from a siphon pump located in the southeast area of the property where the property boundary includes a portion of this slough. This water is conveyed to a system of open ditches across APN 020-172-004 where it is dispersed to the various agricultural tracts by means of gravity flow. There is also a capped well on 84-acre parcel to north of Delta Road. High voltage power lines traverse the Property and could cause avian impacts.

Appendix A



Looking west, with Mount Diablo in the background. In the left part of the image is one of the many drainage ditches within the Property.



Looking at one of the many drainages on the Property and one of the lots Property used for row crops.



Jim Gwerder

View of cropland looking east from the Byron Highway.



Jim Gwerder

No-Name Slough and pump along the southern boundary of the property. View is looking east along Eagle Lane.



Abigail Fateman

View of cropland looking north from interior road near No Name Slough.

Figure 1: Nunn Parcel - Regional Context

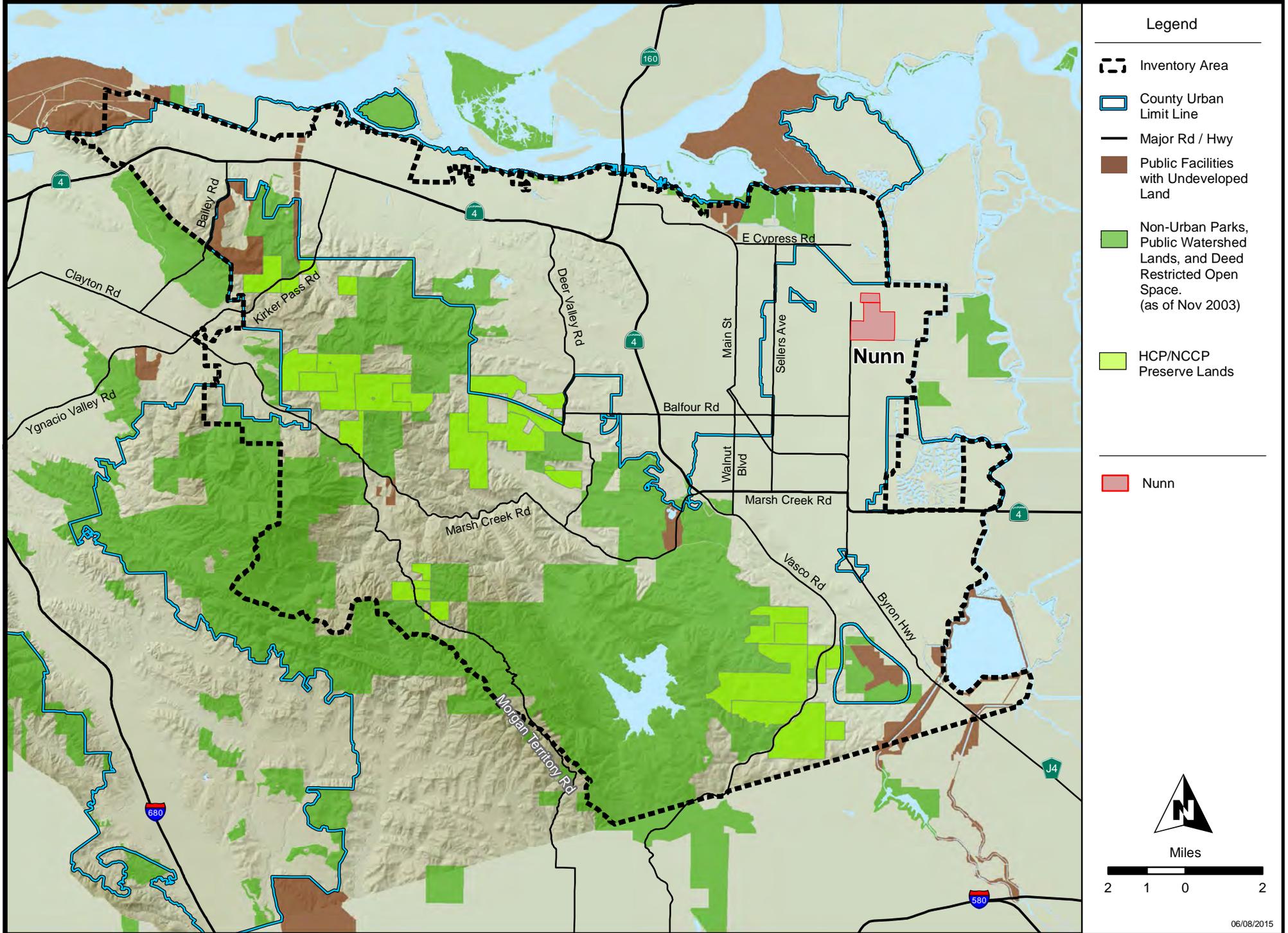


Figure 2: Nunn Parcel - Consistency with HCP/NCCP Acquisition Priorities Under Maximum Urban Development Area Scenario

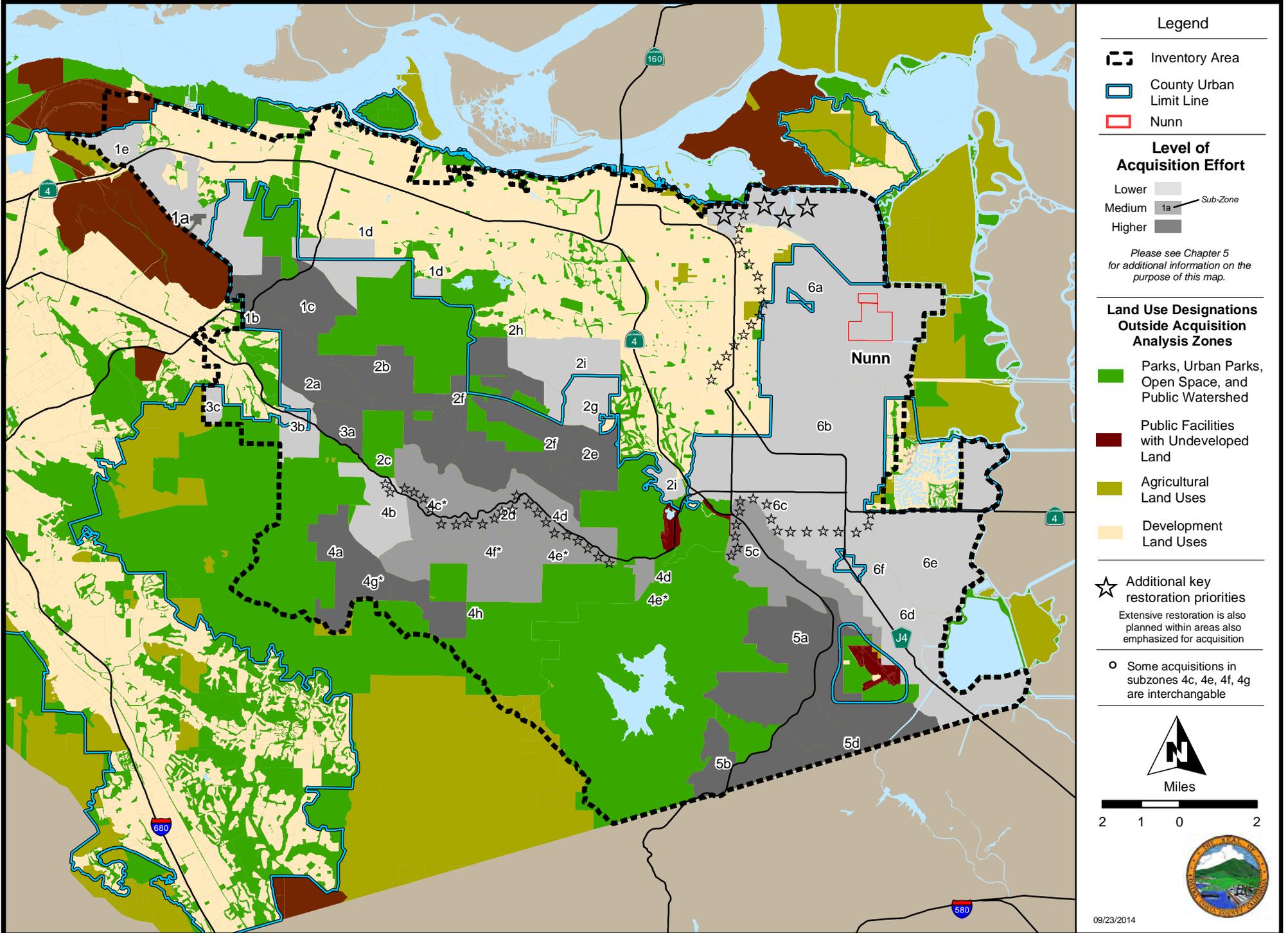
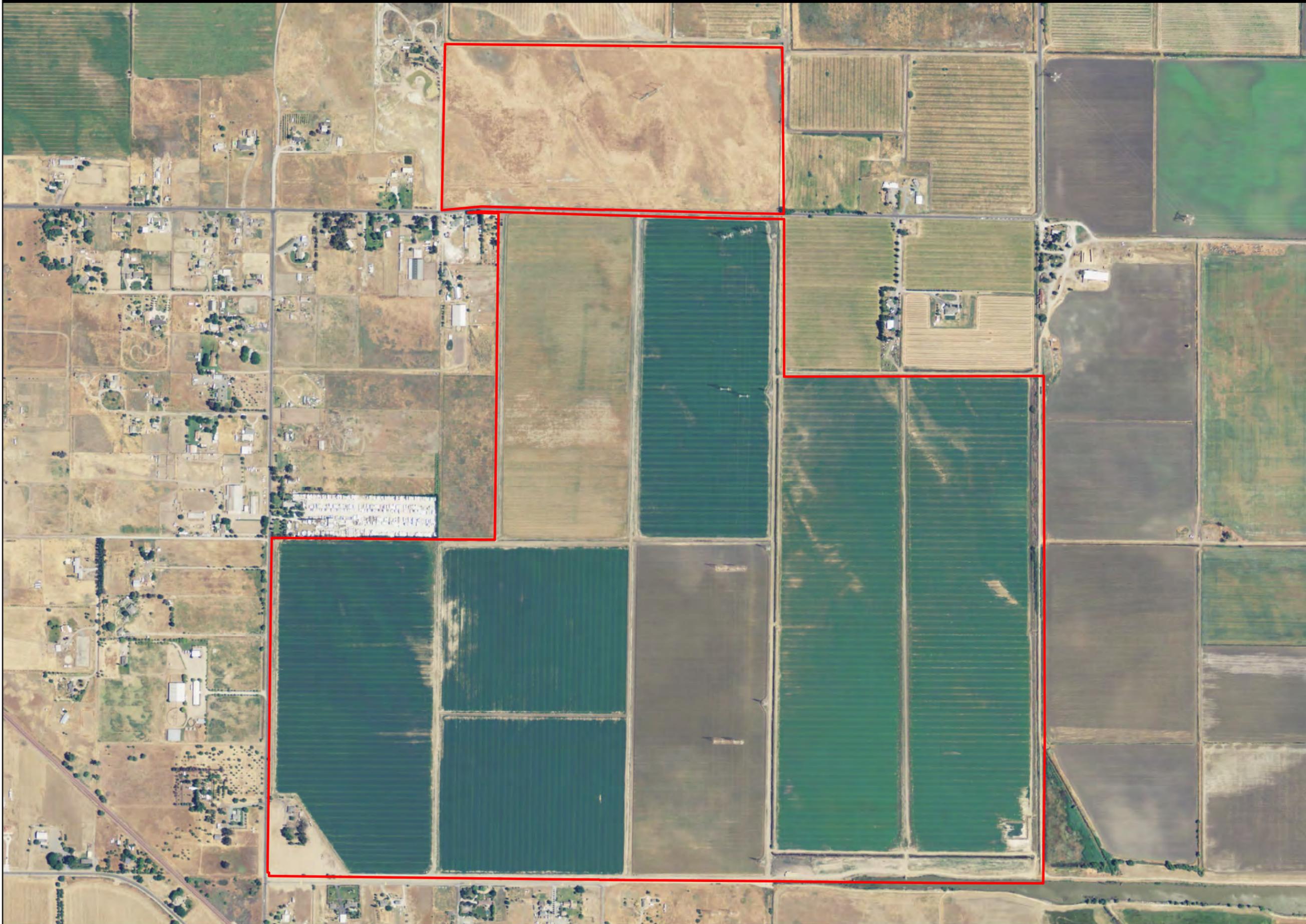


Figure 3: Nunn parcel - 2012 Orthophotography



Legend

 Nunn



Feet
0 500 1,000



Figure 4a. Nunn parcel - Terrestrial and Aquatic Land Cover Types

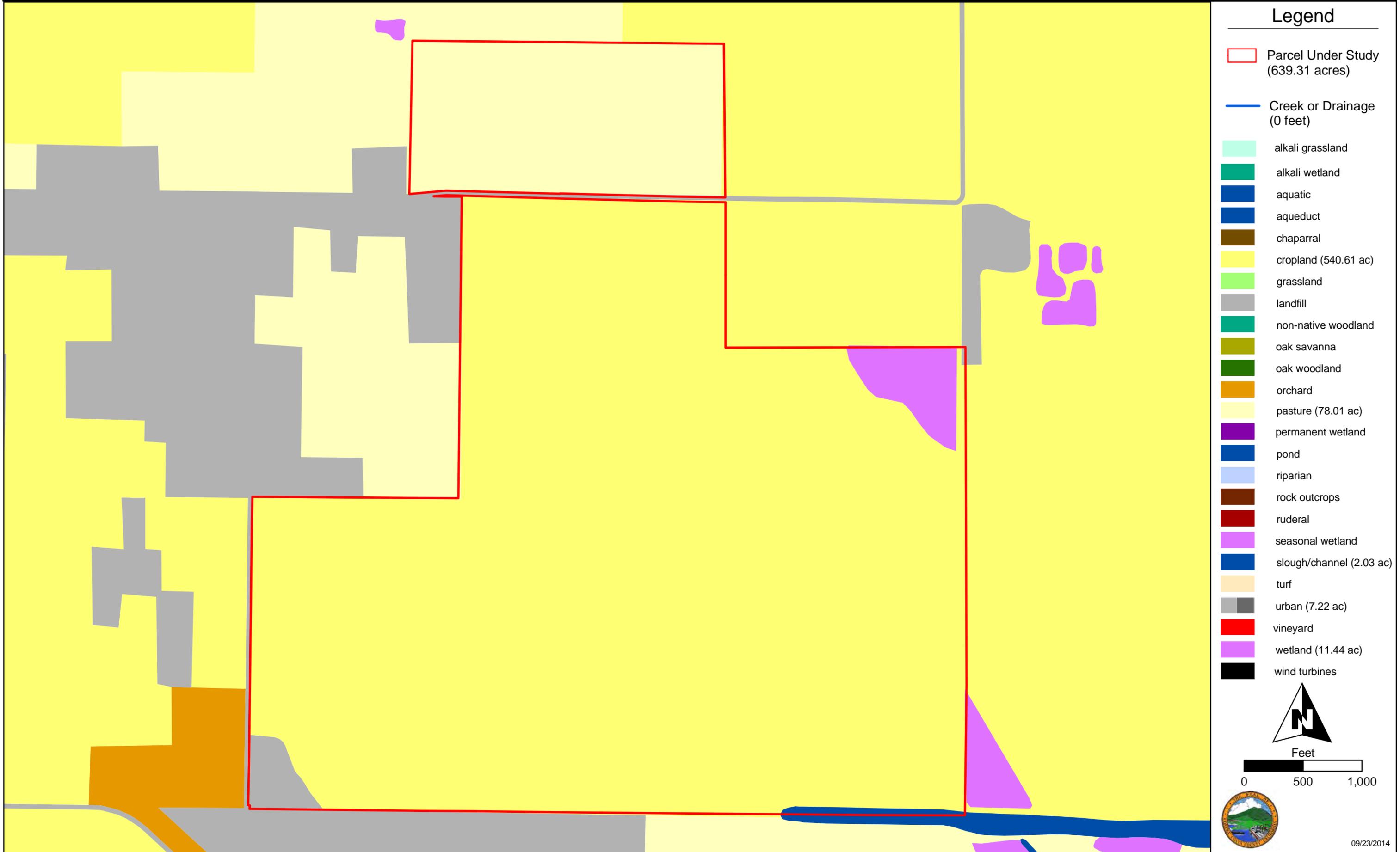
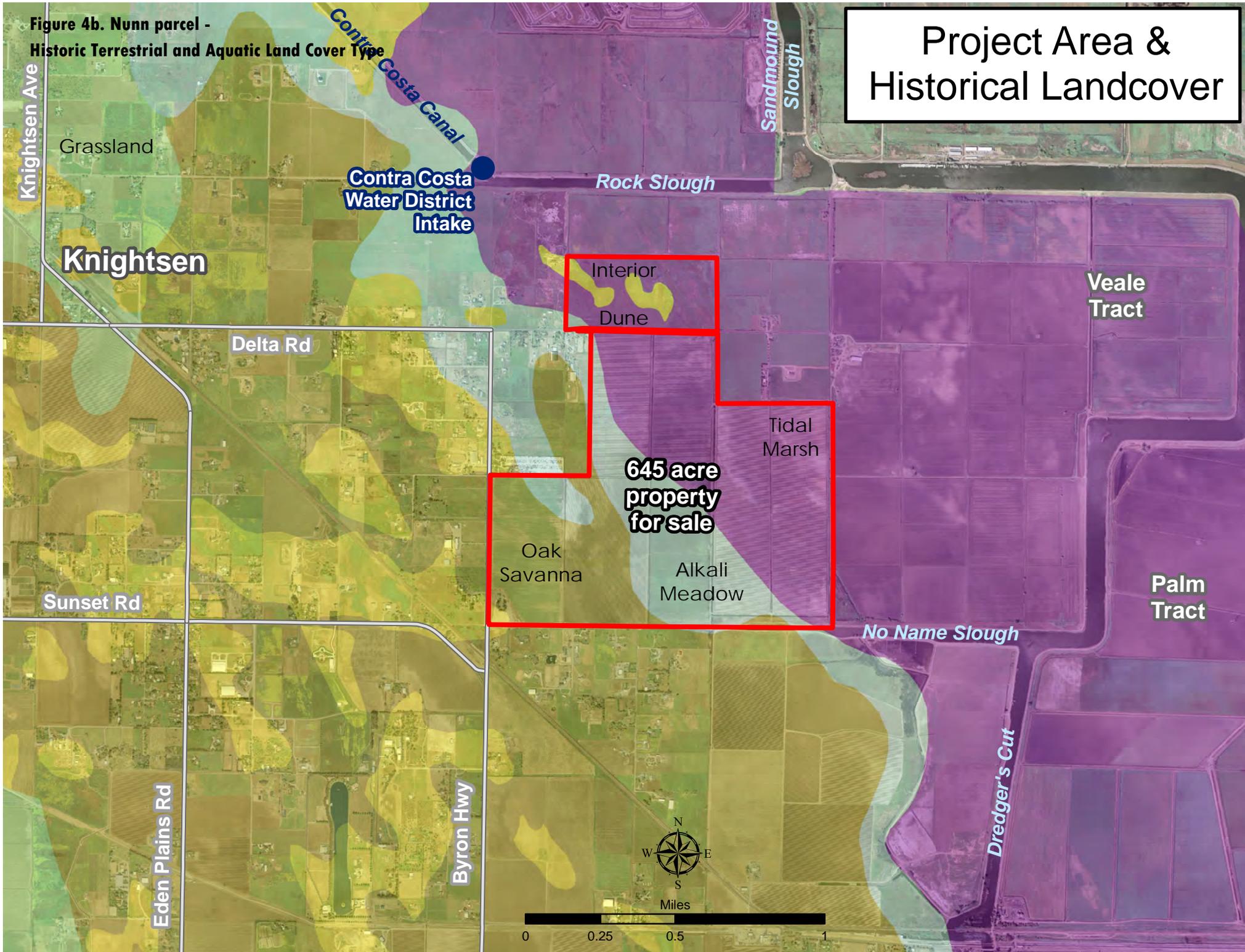


Figure 4b. Nunn parcel -
Historic Terrestrial and Aquatic Land Cover Type

Project Area & Historical Landcover



Grassland

Knightsen

**Contra Costa
Water District
Intake**

Interior
Dune

**Veale
Tract**

Delta Rd

**645 acre
property
for sale**

Tidal
Marsh

Oak
Savanna

Alkali
Meadow

**Palm
Tract**

Sunset Rd

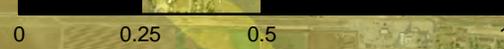
No Name Slough

Eden Plains Rd

Byron Hwy

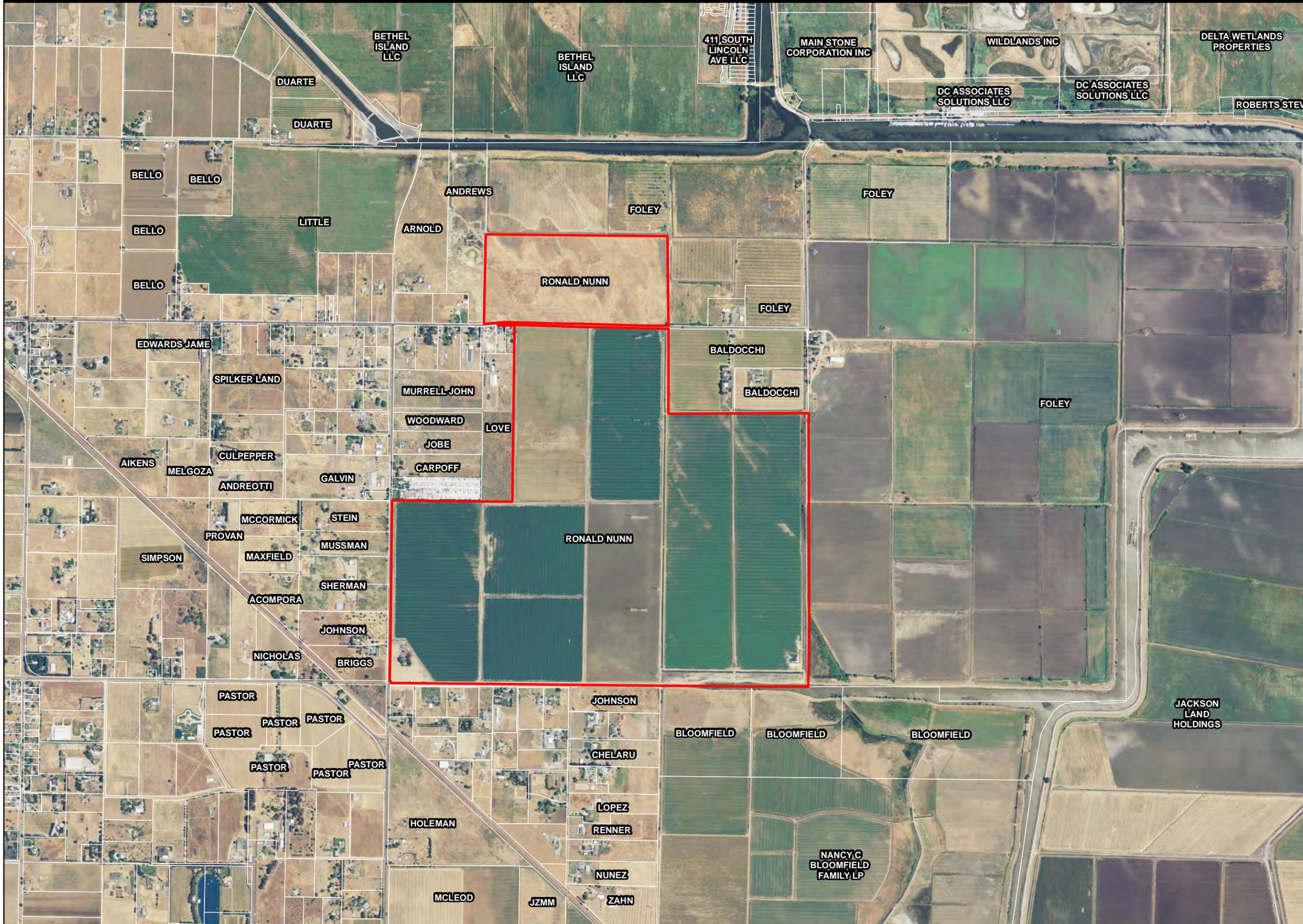


Miles



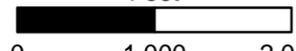
Dredger's Cut

Figure 5: Nunn parcel - Neighborhood



Legend

 Parcels Under Study


Feet

0 1,000 2,000



Memorandum

Date 01/28/13

To Abigail Fateman and John Kopchik - East Contra Costa County Habitat Conservancy

From Jessica Olson, M.L.A., Mark Lindley, P.E. and Jeffrey Haltiner, PhD, P.E.

Subject Knightsen Habitat Restoration Feasibility Study

The East Contra Costa County Habitat Conservancy and its partners are considering acquisition of a 645 acre parcel in Knightsen, CA (project site). Historically, the project site supported alkali wetlands and grasslands, stabilized interior dune, oak savanna, and tidal marsh habitats. This memo describes the methods and results of a restoration feasibility study of the project site for potential to enhance or restore habitats that historically were found on site and to provide storm water quality treatment. The memo first describes historical and present day site conditions, the key components of the target restoration habitats, and storm water quality treatment facilities. Next, the memo discusses opportunities and constraints of restoring target habitats and providing storm water quality treatment. Lastly, we discuss potential next steps, including recommended future studies necessary to develop and implement a restoration plan if the site is acquired.

Site Conditions

We conducted a site visit on December 10th 2012 and reviewed existing GIS data, ESA-PWA's previous storm water study, and analyzed soil conditions to characterize the site conditions.

The 640 acre Knightsen property land cover type currently consists primarily of agricultural fields and limited areas of seasonal wetlands (Figure 2). The site boundaries include several features including roads, canals and neighboring properties (Figure 1). Delta Road bisects a northern parcel from the southern parcel. Eagle Lane defines the southern boundary, along with No Name Slough, which enters the south-eastern portion of project site. Two unnamed irrigation ditches extend north to south bisecting agricultural fields and marking western boundary of the southern portion of project site. South of Delta Road, the western boundary is bordered by Byron Highway and neighboring business and residential properties, while north of Delta road the site is bordered by two residential properties. Several easements for power lines, transmission lines, and irrigation ditches bisect the property (Appendix A).

Soils on site consist of both sand, loam and clay, including Marcuse clay, piper fine sandy loam, Sacramento clay (a sodic or “alkaline” soil type), and Delhi sand (Figure 3). The presence of clay, sand and sodic soils are indicative of historical habitats on the site including tidal marsh, interior sand dunes, alkali seasonal wetlands, and oak savanna (Figure 4). We collected soil samples from areas with clay and/or sand soils throughout the site to test whether the soil pH indicates alkaline soils that would support some of the specific target restoration habitat (see description of seasonal alkali wetland below). Using the Leaf Luster Rapitest pH test kit, we tested the soil pH from 6 soils characterized as clay or clay loam and 4 characterized as sand or sandy clay loam. All of the samples taken in clay soils have a soil pH of approximately 7.5 and indicate alkaline soils. Samples characterized as sand or sandy clay loam (taken from remnant dunes) had pH of 7.0. In addition to testing the soil pH, we sent two samples to a soils lab for further testing. Results indicate that the clay soils on site are slightly saline but not sodic or sodic-saline (Appendix B). See *Seasonal Alkali Wetland Complex* section below for more information.

The site elevation ranges from 1-20 feet NAVD also indicates that the site historically supported a wide spectrum of habitats from tidal wetlands (elevations approx. 6 feet to 3 feet NAVD) to seasonal wetland and upland habitats (elevations greater than 6 ft NAVD) (Figure 3 and 5). Existing ground water elevation is approximately 6.5-7.5 NAVD 88 (PWA 2002). Storm water generally flows from north to south-east (PWA 2012) making the site a potential capture area for stormwater flow from the town of Knightsen.

Existing vegetation along ditches and sloughs is dominated by an herbaceous understory with an occasional tree or shrub in the overstory. Native species observed on site include: sedges (*Carex* sp.), stinging nettle (*Urtica dioica*), salt grass (*Distichlis spicata*), mugwort (*Artemisia douglasiana*), alkali heath (*Frankenia salina*), Western flat-topped goldenrod (*Euthamia occidentalis*), creeping wild rye (*Elymus tridicoides*), cattails (*Typha angustifolia*), and bullrush (*Schnoplectus acutus*) and an occasional willow (*Salix* sp.). Non-native species include Bermuda grass (*Cynodon dactylon*), Himalayan blackberry (*Rubus discolor*), and giant reed (*Arundo donax*).

Vegetation on the northern parcels includes several plant species indicative of sand dunes and alkali seasonal wetlands. Previous surveys indicate the presence of plant species characteristic of sand dunes including California croton (*Croton californicus*) (Abigail Fateman pers. comm. December 2012). Seasonal wetland species observed on the December 2012 field visit include: alkali heath (*Frankenia salina*), alkali weed (*Cressa truxillensis*), rushes (*Juncus* sp.), sedge (*Carex* sp.), alkali mallow (*Malvella leprosa*). Lastly, a large heritage oak tree is present on the southern parcel, indicative of historical oak savanna habitat type (Figure 4). Follow up surveys, at multiple times of year to capture flowering times, are recommended to characterize all existing vegetation.

Target Restoration Habitats

The Conservancy and its partners are interested in restoring or creating the following habitat types on site (1) seasonal alkali wetlands (2) stabilized interior dune (3) oak savanna (4) freshwater tidal marsh. We describe the key components of each habitat type and discuss the opportunities and constraints of restoring these features at the project site. Opportunities and constraints that apply to all habitats are discussed below. While the term “restoration” may imply complete reversion to previous state, actually converting a site back to a certain point in history is usually unrealistic because present day conditions reflect altered conditions in disturbance regimes, species invasions, hydrologic regime, climate change, surrounding land use changes and adjacent site land use

constraints (Hobbs et al. 2009). However, recreation of the major habitat types, to provide the same functions as were provided historically is often feasible within site constraints. We consider the historical conditions as context and discuss how the site may function following restoration.

Primary sources of reference information include:

- East Contra Costa County Historical Ecology Study (Stanford et al. 2011)
- Sacramento- San Joaquin Delta Historical Ecology Investigation: Exploring Pattern and Process (Whipple et. al 2012)
- Manual of California Vegetation (Sawyer et al. 2009)
- Tidal Wetland Vegetation in the San Francisco Bay-Delta Estuary (Vasey et. al 2012)

Alkali Seasonal Wetland Complex

Historically, alkali seasonal wetlands occurred on the project site (Figure 4) and the presence of seasonal alkali vegetation adjacent to current farmed areas indicates the potential to support this habitat following restoration. Alkali seasonal wetlands are characterized by hummocky, varied micro topography which supports a mosaic of salt-influenced habitats including small brackish ponds/pools, alkali flats, alkali sink-scrub and seasonally inundated alkali meadow (Stanford et al. 2011). Alkali seasonal wetlands are seasonally inundated from a couple of inches (meadow features) to one foot or more (pond/pool features) (Stanford et al. 2011). Alkaline habitats are characterized by having sodic soils. There are several characteristics of sodic soils including (Brandy and Weil 2002):

- Alkaline pH (greater than 8.5 pH)
- The “sod” in sodic refers to sodium (Na), which is prevalent on the cation exchange complex (CEC). But Na is not the only reason for alkalinity. Bicarbonate and borates can also cause the high pH, so sodic soils can have Ca, K and/or Mg as well. Sodium Adsorption Ratio (SAR) of sodic soils is typically greater than 13-15.
- There are two classes of sodic soils, sodic and saline-sodic. The later has an Electrical Conductivity (EC) > 4, or greater than 2 mmhos/cm.
- Sodic soils typically have high clay content.

Soil testing indicates clay soils are not sodic or saline-sodic but have some characteristics of saline soils (Appendix B). Soils have a slightly alkaline pH (7.3-7.4 pH) and high percent cation saturation of magnesium (Mg) (35-41%) and moderate percentage cation saturation of potassium (K) (3.2-3.6%), and moderate to high percent cation saturation of sodium (Na) (4.6-8.2%), and low percent cation saturation of calcium (47-56%). Soils are slightly saline with high to moderate concentrations of soluble salts (1.6-2.1 mmhos/cm). The sodium adsorption ratio, however, is significantly lower than characteristic of sodic soils (3.8-4.9) (Appendix B). Results can vary seasonally as rainfall and seasonal flooding can decrease sodium concentrations. Further, soils may become more saline following restoration of seasonal wetlands. In particular, as water evaporates and leaves behind salts, soils may become increasingly saline.

Despite the lack of sodic soils, vegetation typical of alkaline wetlands already occurs on site, indicating the soils are suitable to support alkali vegetation. Expected vegetation within alkali seasonal wetlands includes salt grass (*Distichlis spicata*), alkali heath (*Frankenia salina*), alkali weed (*Cressa truxillensis*), pickleweed (*Salicornia* sp.), rushes (*Juncus* sp.), sedge (*Carex* sp.), alkali mallow (*Malvella leprosa*), and saltbush (*Atriplex* sp.) (Stanford et al. 2011). Several of these species were present within the northern parcels of the property between the dune communities and adjacent to sloughs and ditches on the southern parcels.

The presence of alkali vegetation currently on site indicates that portions of the site have suitable soils and hydrology to support seasonal alkali wetland features. Restoring and managing tidal flows to the site may further assist in seasonal wetland development as extreme high tides may inundate seasonal wetlands and allow for a more dynamic hydrologic system. This tidal to seasonal wetland transition zone is likely to shift landward as sea level rises, known as estuarine transgression. Maintaining hydrological connection between seasonal wetlands and tidal wetlands is an important aspect in making it possible for estuarine transgression to occur.

Stabilized Interior Dune

Historical interior dune features in this area were created as a result of windblown processes during the Pleistocene (Stanford et. al. 2011). Two historical dune features are present in the northern portion of the property and are characterized by sandy soils (Figure 3 and 4). Historically, the sand dune features on the project site were probably sparsely vegetated but little historical reference data exists to characterize the vegetation (Stanford et. al. 2011). Based on sources available, stabilized interior dune vegetation includes silver bush lupine (*Lupinus albifrons*), California croton (*Croton californicus*), slender buckwheat (*Erogonum gracil*), and valley lessingia (*Lessingia gladiolifera*) (Stanford et. al. 2011). California croton has been observed on site (Abigail Fateman pers. comm. December 2012). In addition, non-native invasive grass species have extensively colonized the dune.

The existing site topography, presence of sandy soil, and presence of target vegetation indicates a good opportunity to restore or enhance the existing dune features. The existing native vegetation on both the dune and seasonal wetland habitats in the northern parcels indicates that the entire northern parcel could require a less intensive approach to restoration. A vegetation enhancement project could be implemented, to expand existing native vegetation patches and reduce weed patches. Since existing desirable native vegetation is in a patchy mosaic, site grading would be difficult without impacting desirable vegetation. Alternatively, extensive manipulation of the site may be preferable if complete elimination of invasive species is required. We observed extensive grading on an adjacent parcel with comparable sandy soils (to create ponding). Where the excavated sand had been placed in large mounds, it appears to remain mostly unvegetated. While invasive grasses appear to be absent after using this approach, desirable species would be impacted by site grading as well. Vegetation surveys at appropriate times of year to characterize all vegetation present would help in deciding whether extensive site manipulation is necessary or a less intensive approach is appropriate.

Oak Savanna

Oak savanna habitat features are characterized by widely spaced blue oak (*Quercus douglasii*) or valley oak (*Quercus lobata*) trees (between 10-30% canopy cover), and an herbaceous understory (Sawyer et. al 2009). While the elevations are suitable to support oak savanna, the poorly drained clay soils that dominate the site may be unsuitable to support blue oaks. Blue oak woodlands are typically found on shallow, low fertility, and moderately to excessively drained soils (Sawyer et. al 2009). However, there is potential to support valley oak

woodland, as they can tolerate seasonally saturated soils and alluvial or residual soils (Sawyer et. al 2009). Further, the presence of what appears to be a large heritage valley oak, perhaps remnant from when the south western parcels were oak savanna indicates the potential to restore oak savanna.

Sea level rise poses a potential constraint to restoring oak savanna, assuming the restored oak savanna areas would be hydrologically connected to estuarine habitats. Specifically, as estuarine habitats shift upslope as sea level rises, the future range of potential suitable oak savanna habitats would be narrowed. Concentrating the oak savanna restoration effort to the highest elevation areas and anticipating future transgression areas could alleviate this constraint.

Freshwater Tidal Marsh

Historically freshwater tidal marsh occurred on site (Figure 3). Key components of freshwater tidal wetlands include a complexity of channels and low to high marsh vegetation, and hydric soils. Elevations necessary to support a variety of low to high marsh vegetation are approximately 2-6 feet NAVD (Table 1) and occur on site. Soils are typically high in clay content, which is also found throughout the site (Figure 3). Expected vegetation within these features is characterized below.

Table 1. Local Tidal Datum's at Dutch Slough

	Feet NGVD	Feet NAVD
Mean Higher High Water (MHHW)	3.15	5.97
Mean High Water (MHW)	2.7	5.48
Mean Tide Level (MTL)	1.47	4.29
Mean Low Water (MLW)	0.23	3.11
Mean Lower Low Water (MLLW)	-0.29	2.58

Based on local reference site at nearby Sand mound Slough (Vasey et. al 2012) a diversity of vegetation may have potential to be supported on site. Low marsh to mid marsh areas have potential to support emergent vegetation such as California bulrush (*Scirpus californicus*) and cattail (*Typha* spp.), tule (*Scirpus acutus*) (Vasey et al. 2012).

Mid to high marsh vegetation may include silverweed (*Potentilla anserine*), Western flat-topped goldenrod (*Euthamia occidentalis*), seaside arrow grass (*Triglochin maritima*), willow herb (*Epilobium cilatum*), marsh fleabane (*Pluchea odorata*), spikerush (*Eleocharis macrostachya*), water smartweed (*Persicaria punctata*), California loosestrife (*Lythrum californicum*), bur marigold (*Bidens laevis*), panicle bulrush (*Scirpus microcarpus*), slough sedge (*Carex obnupta*) and Baltic rush (*Juncus balticus*). In small patches, woody species including dogwood (*Cornus sericeus*), arroyo willow (*Salix lasiolepis*), and cottonwood (*Populus fremontii*) have potential to establish on site (Vasey et. al 2012). Future studies that characterize vegetation at Sand mound slough in relation to tidal datums would be helpful to develop refine revegetation plans at the project site.

The Knightsen property has high potential to establish tidal freshwater wetlands on site without extensive site grading. With a low gradient slopes and elevations that can support tidal marsh to upland habitats there is also potential for tidal wetlands to transgress landward as sea level rises. Since many existing wetland to upland

transition zones are disconnected because of roads, development or other infrastructure, locations than can accommodate estuarine transgression are increasingly important to restore (The Goals Project 1999). Overall, this site is extremely well-suited for restoring tidal marsh.

Water Quality Treatment

Previous studies (PWA 2002) identified the 645 acre Knightsen property as an excellent site to treat stormwater using treatment wetlands and biofilter swales. Treatment wetlands detain water and are sized based on an expected storm water volume whereas biofilter swales allow stormwater to slowly flow through vegetation while infiltrating and are sized on a flow rate/velocity.

Because standing water has been observed on parcels immediately south of Delta Road (PWA 2002), this area may be particularly well-suited to host treatment wetlands or biofilter swales. The areas to the north may have limited potential as well assuming this does not conflict with dune restoration and seasonal wetland enhancement.

If the location of the water quality treatment site is within tidal elevation ranges (as is the case with the area immediately south of Delta Road) biofilter swales and treatment wetland features will need to be hydrologically disconnected from tidal wetlands in order for these features to function properly, filter pollutants and to prevent the area from converting to tidal marsh. Treated storm water could be pumped out or discharged from the storm water treatment features, but tidal exchange would need to be prevented.

The size of the wetland treatment facility will be determined based on the contributing watershed area. These may range from the immediate adjacent subwatersheds that flow into the site or eventually, all stormwater from the central and southwestern regions of Knightsen (PWA 2002). The ultimate site design can be flexible in this, perhaps initially treating runoff from a smaller area, then expanding as various stormwater conveyance improvements are made in the more developed parts of Knightsen. Potential locations and water quality treatment volumes (in acre feet) from individual subwatershed or for regions were identified in the earlier PWA study (Table 2). Watersheds 4 and 9 are immediately adjacent to the project site, which would require treatment of 12.3 and 8.5 acre-feet respectively. The site could also be used to treat 28 and 54 acre feet of storm water from central and southwest Knightsen (Figure 6). Based on an approximate treatment depth of 1- to 2-ft, approximately 40-80 acres of the site could be used for the treatment wetland. This area would have a seasonally-varying habitat function, ranging from season- freshwater marsh to shallow freshwater pond. It would likely include extensive fresh and brackish marsh vegetation in the perennially wet areas, transitioning to alkali marsh vegetation in the drying areas.

Table 2. Potential Stormwater Treatment Requirements (From PWA 2002)

Watershed (WS)	Watershed Area (Acres)	Water Quality Volume (Acre-ft)
WS 3	321	5.8
WS 4 (Adjacent to Project Site)	684	12.3
WS 5	1,537	27.7
WS 6	1,146	20.6
WS 7	189	3.4
WS 8	235	4.2
WS 9 (Adjacent to Project Site)	473	8.5
Region		
Central Knightsen (WS 4,7,8,9)	1,581	28.4
Southwest Knightsen (WS 3,5,6)	3,004	54

Summary of Opportunities and Constraints

Overall, the existing site topography, soils, and existing vegetation indicate the site 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. With a low gradient slopes and no barriers to estuarine transgression, there is potential for tidal wetlands to transgress landward as sea level rises. Since many existing tidal wetland to upland transition zones within the San Francisco Bay and Delta are disconnected because of roads, development or other infrastructure, locations than can accommodate estuarine transgression are increasingly important to restore (The Goals Project 1999).

The existing native vegetation and varied micro topography on dune and seasonal wetland habitats in the northern parcels indicate that the entire northern parcel would require a vegetation enhancement project, to expand existing native vegetation patches and reduce weed patches. Since the northern parcels are largely a patchy mosaic of desirable native vegetation, site grading would be difficult without impacting desirable vegetation. However, it may also be preferable to regrade the site, eliminate the exotic species seed source, and replant with native vegetation. Additional plant surveys at appropriate times of year and information about the site history will help determine the preferred approach.

Potential constraints to neighbor properties may include a high ground water table and increased flood risk and seepage with restoration. This constraint could be managed by (1) limiting the site location where fill tidal circulation is allowed (2) allowing dampened or managed tidal circulation in certain areas (3) providing engineered levees around the site (4) providing drainage ditches/maintaining pumping facilitation to manage ground water elevation at property boundaries (5) an adaptive monitoring/management program to identify and manage the site if problems are identified.

Existing power lines and transmission lines on the project site also represent a restoration constraint. While transmission line towers are anchored into 7-foot tall cement footings, power line towers are anchored in with smaller concrete footings, at elevations closer to site grade. Coordination would be required with the utility owners to insure that the functions of these facilities are not compromised. Powerlines and transmission lines may interfere with bird navigation and could result in bird collisions with power or transmission lines (Bevanger 1998). Birds associated with water tend to be especially susceptible to being victims of collisions with a transmission lines (Bevanger 1998). Locating water features that attract waterfowl adjacent to existing powerlines may increase the likelihood of this occurring.

An additional constraint to the restoration of target habitats may be invasive species. The invasive weed perennial pepperweed (*Lepidium latifolium*) was observed on site, and additional field studies may reveal additional invasive species. The history of actions taken on a site (site history) can define the species composition found on site and whether or not it is dominated by natives or non-native species. Site history refers to species colonization (what species are first to colonize), dispersal (some species are dispersal limited), and disturbance. Site history plays a significant role in shaping the restoration trajectory, and whether or not restoration is successful (Suding and Hobbs 2009). In restoration, we can help limit the constraint posed by invasive species through active revegetation, attempting to establish the desirable species first and introduce source material for desirable dispersal limited species. Maintenance is often required until a native cover is fully established.

Use of a portion of the site as a treatment wetland and/or biofilter swales would affect the type of habitat that can be created in these areas. For example, tidal action will not be able to be restored in treatment wetland areas. However, the benefit of reducing pollution entering the delta likely outweighs the impact of reducing the acreage of freshwater tidal wetland. Further, biofilter swales can be considered desirable seasonal wetland habitat, as they provide habitat for many birds and wildlife.

If one of the goals of the project is to restore habitat for the giant garter snake (*Thamnophis gigas*), there may be constraint to restoring full tidal action. In order to accommodate GGS the restored wetlands would have to be designed (e.g., through grading) to facilitate extended hydroperiods in shallow basins that experience only small, gradual (i.e., slower than tidal flooding/draining) changes in inundation. Design features may include notched or lowered levees that prevent full draining during low tides, intertidal dendritic channels with variable bottom elevations, and other features that retain water such as potholes, ponds/pannes, and shallow isolated backwaters (Eric Hansen pers. comm. August 2012).

Depending on project goals and evaluation of site opportunities and constraints, there are several potential configurations of the target habitat on the project site. One potential configuration could be to limit tidal wetlands to the southern parcels and maximize the seasonal alkali wetland acreage (Figure 7, Table 3). Tidal marsh and oak woodland acreages would be reduced if a portion of the site is designated for biofiltration in locations depicted in Figure 6.

Table 3. Potential Acreage per Habitat Type

Habitat Type	Potential Acres
Freshwater Tidal Marsh	320
(Alkali) Season Wetland Complex	140
Stabilized Interior Dune	22
Oak Savanna	157
Total	639

Notes: As described previously, using a portion of the site for storm water treatment (Figure 6, Table 2) would replace a maximum of 40-80 acres of the above freshwater tidal marsh and the oak savanna with a somewhat wetter and fresher seasonal marsh/pond complex.

In summary, the site appears to provide an excellent opportunity for the restoration of the four target habitat types with moderate constraints requiring design and management to control.

Next Steps

This memo provides a preliminary assessment of the restoration potential of the site. If the site is acquired for restoration we suggest the following next steps to refine descriptions of the site conditions and develop a conceptual restoration plan for the site. These include:

1. Collect existing and historical data to characterize existing site physical biological and land use conditions including (but not limited to):
 - Conducting complete vegetation surveys at appropriate times of year, in order to identify species during all possible flowering times, within the existing ditches, sloughs and the northern parcels to characterize existing vegetation.
 - Conduct additional soil testing in summer months to test sites soils for sodic (alkali) properties including: pH, electrical conductivity, sodium absorption ratio, and exchangeable sodium percentage.
2. Refine site specific, quantitative restoration goals/objectives for each habitat type.
3. Based on data collected in above, refine the opportunities and constraints for restoration
4. Identify site options and alternatives for restoration
5. Develop a permitting and stakeholder involvement process
6. Select a preferred alternative
7. Conduct additional studies at reference sites assist in development of conceptual plan including (but not limited to):
 - Conduct reference site vegetation and elevation surveys at Sand mound slough in order to develop elevation-vegetation relationships necessary to refine a revegetation list.

- Identify and characterize vegetation at a suitable dune reference plant community in order to assist in development of revegetation list.
8. Develop Conceptual Plan & Cost estimate
 9. Develop detailed plans and specs
 10. Develop a construction level funding program
 11. Construct the project
 12. Implement a post project monitoring and adaptive management program

List of Figures:

1. Knightsen 645 Site Boundary
2. Knightsen Landcover
3. Knightsen Soils
4. Knightsen Historical Habitats
5. Knightsen Topography
6. Potential Storm Water Biofiltration Swales
7. Potential Habitat Configuration- Post Restoration

List of Appendices:

- A. Powerline Easements
- B. Soil sample results

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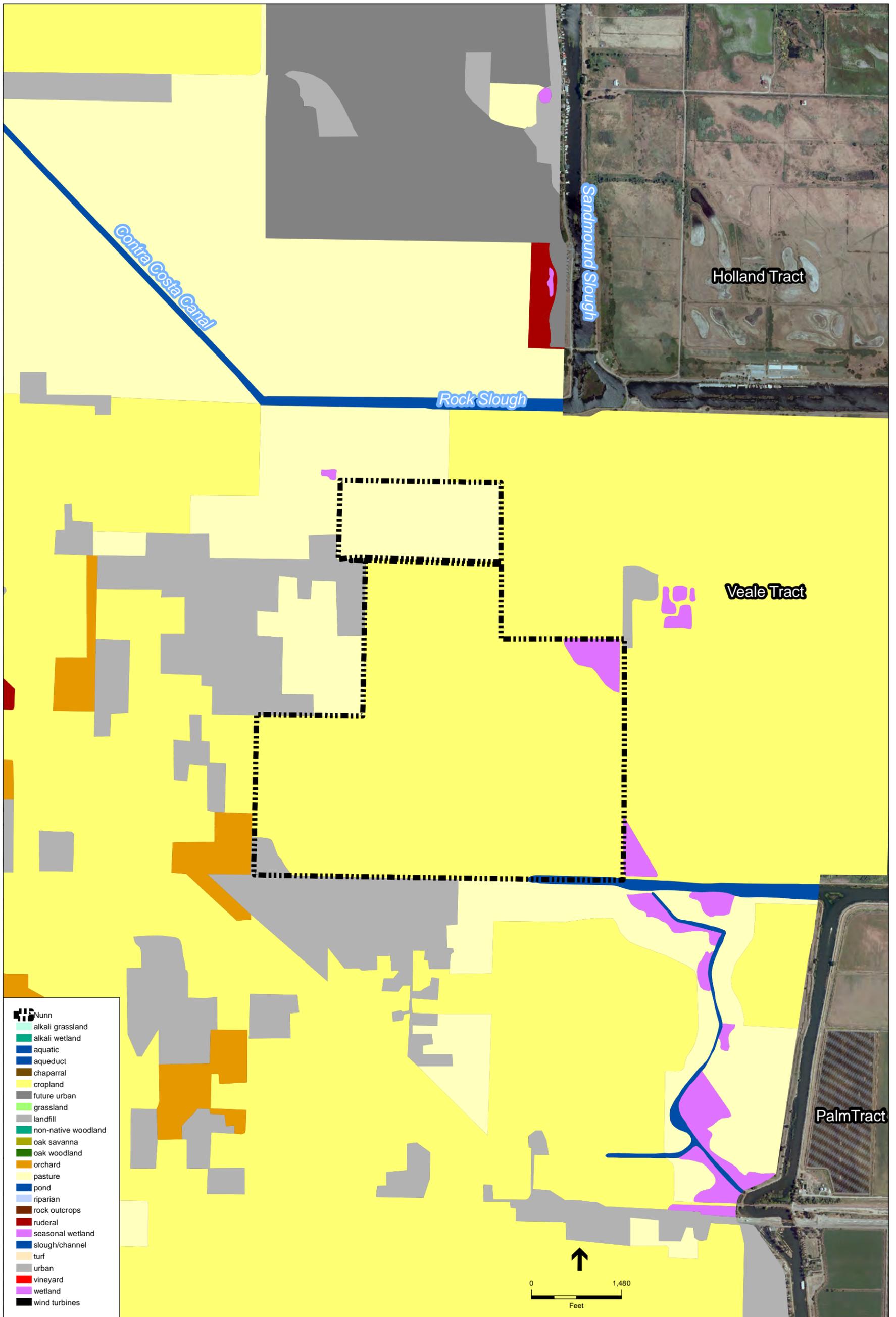
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SOURCE:
Landcover from CCC HCP, ESA-PWA 2012

Knightson Feasibility Assessment .120943
Figure 1
Existing Landcover-Knightson

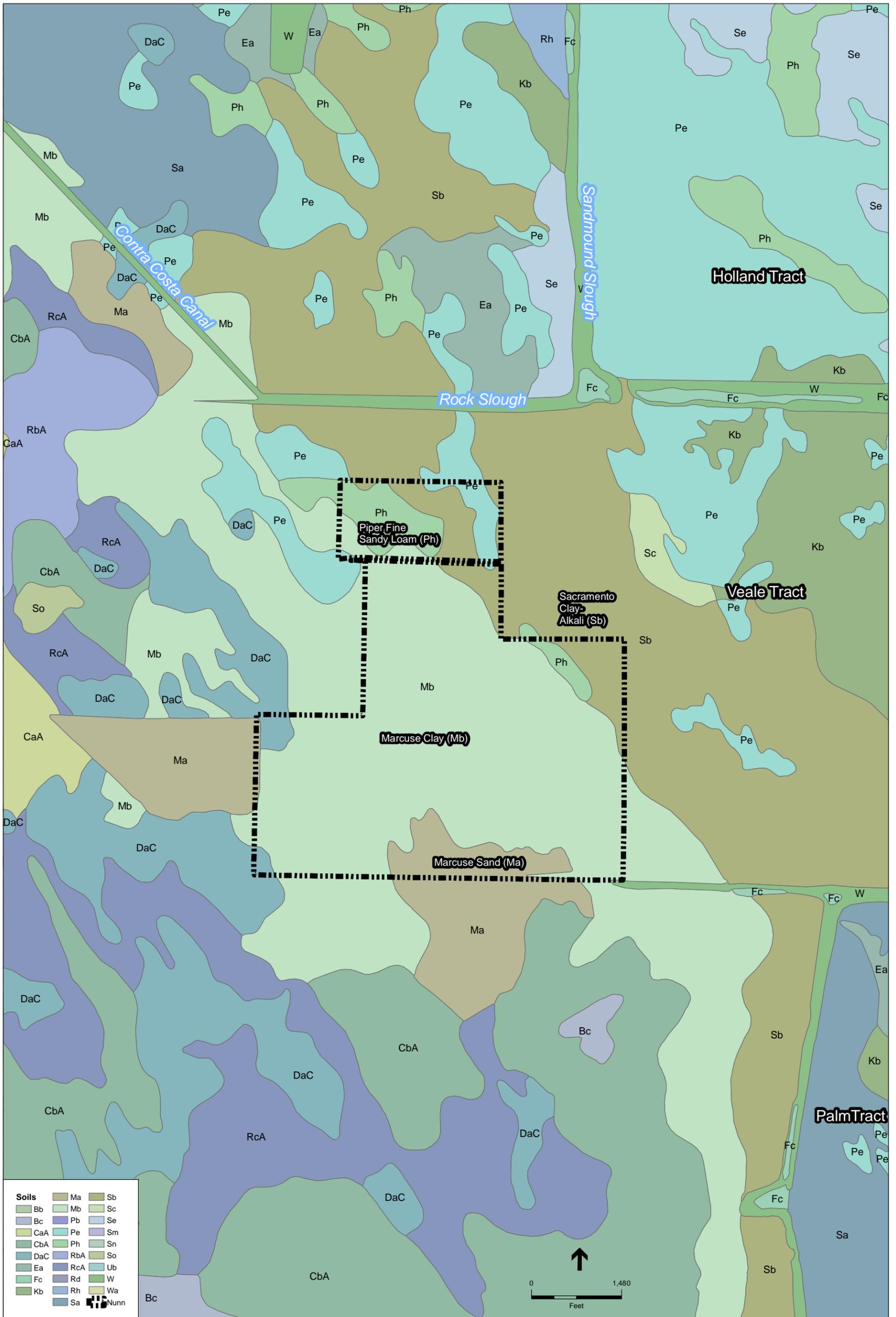




SOURCE: NAIP 2012 (Imagery) ESA-PWA 2012

Knightsen Feasibility Assessment .120943
Figure 2
Knightsen 645 Site Boundary

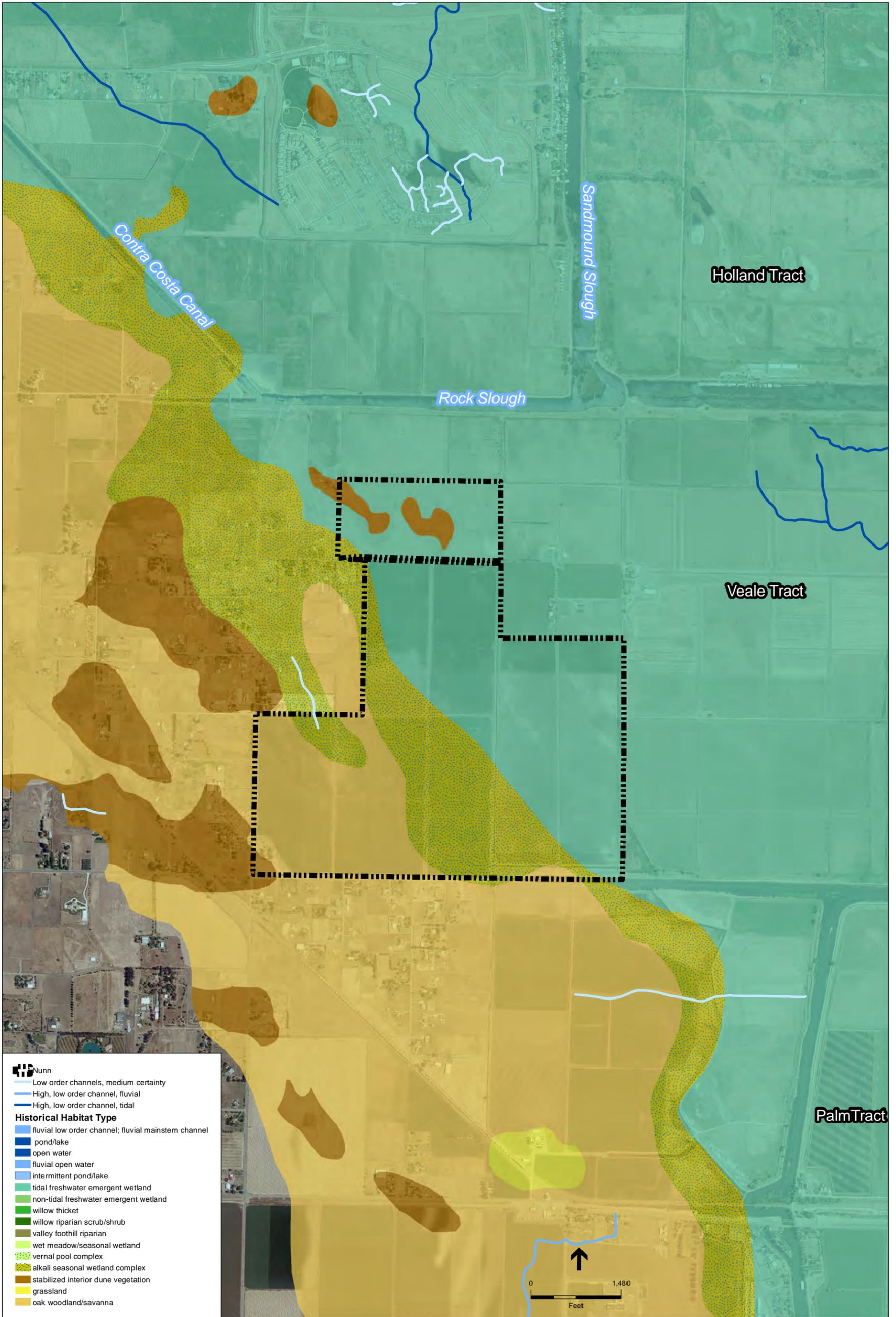




SOURCE:USDA (Soils), ESA-PWA 2012

Figure 3
Soils-Knightson





SOURCE:

Historical Habitats Whipple et. al 2012, ESA-PWA 2012

Knightesen Feasibility Assessment .120943

Figure 4

Historical Habitats-Knightson



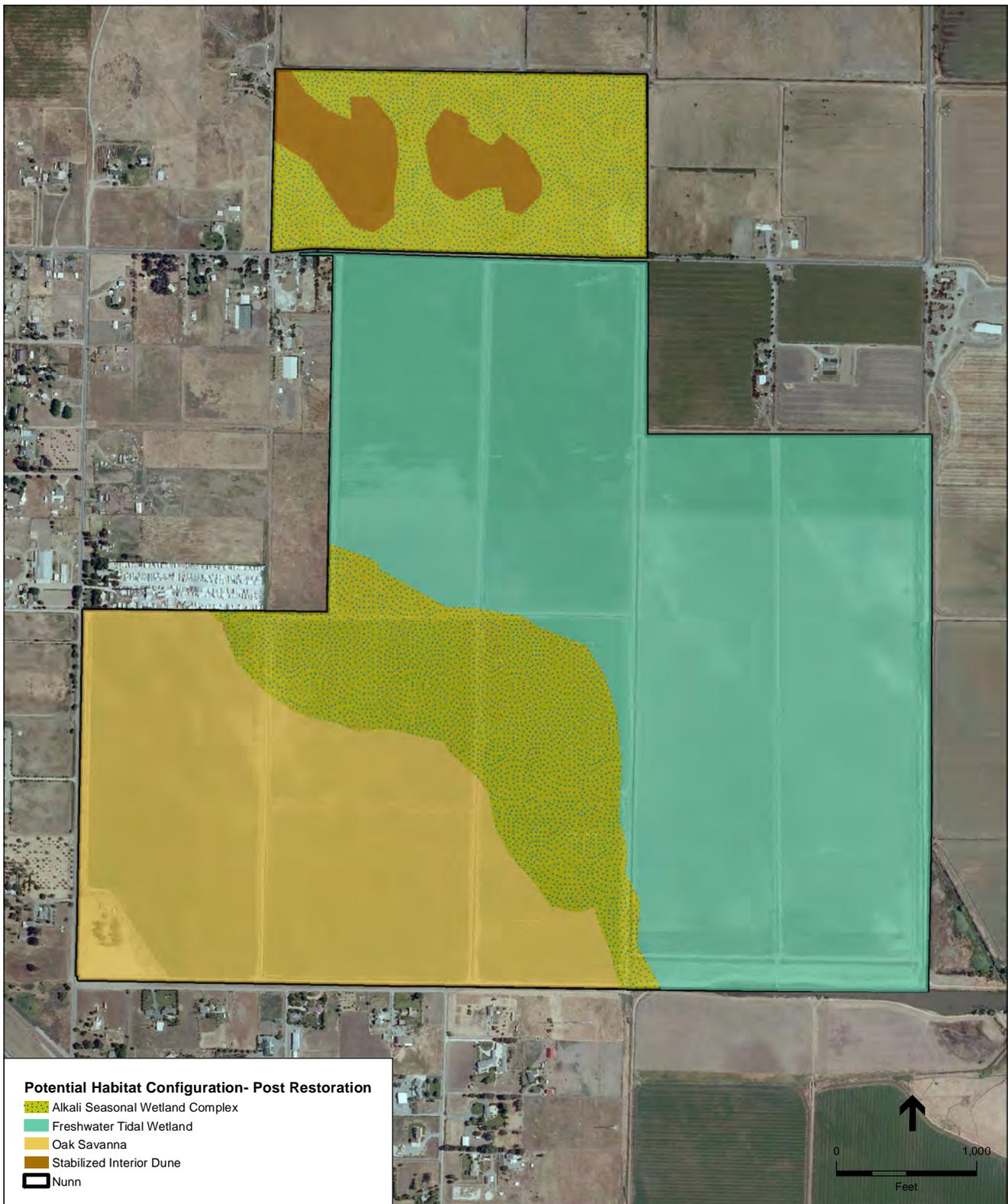




SOURCE:
Aerial from NAIP 2009

Knightsen Feasibility Assessment .120943
Figure 6
Potential Storm Water Biofiltration Swales





SOURCE:
Aerial from NAIP 2009

Knightsen Feasibility Assessment .120943

Figure 7

Potential Habitat Configuration- Post Restoration



Appendix A:

Power line Easements

Appendix B:

Soil Sample Results

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CLIENT NO: 9999-D

SUBMITTED BY: JESSICA OLSON

REPORT NUMBER: 12-361-002
 SEND TO: ESA PWA
 2600 CAPITOL AVE, STE 200
 SACRAMENTO, CA 95816-

GROWER:

DATE OF REPORT: 12/28/12

SOIL ANALYSIS REPORT

PAGE: 1



SAMPLE ID	LAB NUMBER	Organic Matter		Phosphorus		Potassium	Magnesium	Calcium	Sodium	pH		Hydrogen	Cation Exchange Capacity	PERCENT CATION SATURATION (COMPUTED)				
		% Rating	ENR lbs/A	P1 (Weak Bray)	NaHCO ₃ -P (Olsen Method)					K	Mg			Ca	Na	Soil pH	Buffer Index	H meq/100g
KNG06	52044	3.3M	96	50VH	44VH	369M	1475VH	2765L	552H	7.3		0.0	29.3	3.2	41.4	47.1	0.0	8.2
KNG05	52045	3.3M	96	38H	28VH	287M	881VH	2304L	215M	7.4		0.0	20.4	3.6	35.5	56.3	0.0	4.6

SAMPLE NUMBER	Nitrogen NO ₃ -N ppm	Sulfur SO ₄ -S ppm	Zinc Zn ppm	Manganese Mn ppm	Iron Fe ppm	Copper Cu ppm	Boron B ppm	Excess Lime Rating	Soluble Salts mmhos/cm	Chloride Cl ppm	PARTICLE SIZE ANALYSIS			SOIL TEXTURE
											SAND %	SILT %	CLAY %	
KNG06		148VH						L	2.1H					
KNG05		29H						L	1.6M					

* CODE TO RATING: VERY LOW (VL), LOW (L), MEDIUM (M), HIGH (H), AND VERY HIGH (VH).
 ** ENR - ESTIMATED NITROGEN RELEASE
 *** MULTIPLY THE RESULTS IN ppm BY 2 TO CONVERT TO LBS. PER ACRE OF THE ELEMENTAL FORM
 **** MULTIPLY THE RESULTS IN ppm BY 4.6 TO CONVERT TO LBS. PER ACRE P₂O₅
 ***** MULTIPLY THE RESULTS IN ppm BY 2.4 TO CONVERT TO LBS. PER ACRE K₂O
 MOST SOILS WEIGH TWO (2) MILLION POUNDS (DRY WEIGHT) FOR AN ACRE OF SOIL 6-2/3 INCHES DEEP

This report applies only to the sample(s) tested. Samples are retained a maximum of thirty days after testing.

Mike Buttriss
 Mike Buttriss, CPA
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Agenda Item #8c

REPORT NUMBER: 12-361-002

CLIENT: 99999

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GROWER:

DATE OF REPORT: 12/28/12

SOIL SALINITY ANALYSIS REPORT

PAGE: 1

Sample ID	Lab Number	SAR	ESP	Na meq/L	Ca meq/L	Mg meq/L	pH	CO ₃ meq/L	HCO ₃ meq/L	E.C. dS/m	Cl meq/L	B ppm	Saturation %
KNG06	52044	4.9	5.6	13.5	8.1	7.1	0.0	0.0	0.0	0.0	0.0	0.0	*****
KNG05	52045	3.8	4.2	9.1	6.3	4.9	0.0	0.0	0.0	0.0	0.0	0.0	*****

NOTES:

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SOIL ANALYSIS

Agenda Item #8c

General Guidelines for Interpreting Soil Analysis Ratings

Comments: Note that the cations potassium, magnesium, calcium and sodium are rated according to what percentage of the total cation exchange capacity they take. A clay soil may have 4,000 ppm calcium whereas a sandy soil may have only 400 ppm and both may be rated as “medium” in terms of their percent cation saturation.

These ratings are not crop-specific. However, when soil fertility guidelines are requested, specific crop requirements and tolerances are taken into account.

Analyte	Description	Units	VLow	Low	Medium	High	VHigh
OM	Organic Matter	percent	0.3	2.2	3.7	5.2	15.0
pH	Soil pH	pH	5.0	6.0	7.5	8.5	10.0
P1	Weak Bray-phosphorus	ppm	8.0	17.0	26.0	39.0	90.0
HCO ₃ -P	NaHCO ₃ -phosphorus	ppm	3.0	7.0	13.0	22.0	50.0
K	Potassium	% Cation Sat.	0.6	2.0	5.0	10.0	15.0
Mg	Magnesium	% Cation Sat.	5.0	10.0	20.0	25.0	35.0
Ca	Calcium	% Cation Sat.	35.0	60.0	70.0	75.0	85.0
Na	Sodium	% Cation Sat.	1.0	3.0	5.0	10.0	30.0
NO ₃ -N	Nitrate-Nitrogen	ppm	4.0	12.0	25.0	40.0	65.0
S	Sulfate-Sulfur	ppm	3.0	10.0	25.0	35.0	60.0
Zn	Zinc	ppm	0.5	1.0	3.0	6.0	9.0
Mn	Manganese	ppm	1.0	2.0	12.0	30.0	40.0
Fe	Iron	ppm	5.0	10.0	16.0	25.0	35.0
Cu	Copper	ppm	0.3	0.8	1.2	2.5	5.0
B	Boron	ppm	0.3	0.5	1.2	2.0	5.0
Ex. Lime	Excess Lime	percent	1.0	2.0	3.0	4.0	7.0
SS (ECe)	Soluble Salts	mmhos/cm	0.3	0.7	2.0	4.0	6.0
Cl	Chloride	ppm	70.0	170.0	350.0	900.0	999.9
Mo	Molybdenum	ppm	0.05	0.1	0.2	0.4	1.0

Example: Organic matter = “Medium” between 2.3% and 3.7% (inclusive of numbers)

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The Soil Experts.

SOIL SALINITY PACKAGE RECOMMENDATIONS Agenda Item #8c

Soils are generally categorized as follows:

Soil	Soil pH	Electrical Conductivity	Sodium Adsorption Ratio
Saline	<8.5	>4.0 dS/m	<13-15
Saline-Sodic	<8.5	>4.0 dS/m	>13-15
Sodic	>8.5	<4.0 dS/m	>13-15

If the sodium adsorption ratio (SAR) at the soil surface is greater than five times the electrical conductivity of the irrigation water (EC_w) then gypsum should be applied to the **surface** (after tillage, preferably) to facilitate water penetration.

If the sodium adsorption ratio (SAR) at about six inches below the surface is greater than ten times the electrical conductivity of the soil extract (EC_e), then gypsum or gypsum-forming products should be **incorporated**, to facilitate rapid sodium replacement.

SAR and EC_e should increase with depth if leaching irrigation is adequate, and water quality is satisfactory.

Leaching Requirements:

It soon becomes apparent, the importance of knowing one's irrigation water quality in order to determine leaching requirements for crops. $LR = EC_w/5(EC_e) - EC_w$ where EC_e corresponds to that at an acceptable yield potential. EC_w = irrigation water. A multiplication factor, EC_e/EC_w may also be used to read off a graph. Refer to the *Western Fertilizer Handbook* for detailed information.

Warning: Excessive leaching may raise the water table and exacerbate the situation! Minimize leaching and choose salt-tolerant crops wherever possible.

Gypsum Requirements:

We need to express Saturation Percentage in terms of Cation Exchange Capacity, in order to determine how many meq Na/100g soil we need to replace.

Sat. %	C.E.C.	Texture	Available Water Held
20 - 35%	7-15 meq/100g	Sandy loam	0.6 – 1.0 inches/ft depth.
35 - 50%	15-30	Loam-silt loam	1.0 – 1.5
50 - 65%	30-40	Clay loam	1.5 – 2.0
65 - 135%	>40	Clay	> 2.0

Assume we wish to drop ESP from 15.0 to 5.0. We need to replace ... $(15 - 5) = 10\%$ of say, a CEC of 40 meq/100g soil... = 4 meq sodium/100 g soil.

A general guideline is to apply 1 ton gypsum (86% purity) per 1 meq sodium/100 g soil per acre-six inch depth.

Boron:

Refer to the *Western Fertilizer Handbook* for crop tolerances to boron.

A & L Western Agricultural Laboratories, Inc.

California Office:
 1311 Woodland Avenue, Suite 1
 Modesto, CA 95351
 Phone (209) 529-4080 • Fax (209) 529-4736

Oregon Office:
 10220 S.W. Nimbus Ave., Bldg. K-9
 Portland, OR 97223
 Phone (503) 968-9225 • Fax (503) 598-7702



The Soil Experts.

A&L TECH NOTES

**FUNDING AGREEMENT
BY AND BETWEEN
EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY AND
EAST BAY REGIONAL PARK DISTRICT
(Insert Property Name)**

This **FUNDING AGREEMENT** (the “**Agreement**”), dated [redacted], 201[redacted], 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 collectively referred to herein as the “**Parties.**”

Recitals

A. Conservancy is implementing the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“**HCP/NCCP**”), dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association and approved by the United States Fish and Wildlife Service (“**USFWS**”) under Section 10 of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 *et seq.*), and by California Department of Fish and Wildlife (“**CDFW**”) under California Fish and Game Code Section 2835.

B. The HCP/NCCP provides a framework to protect natural resources in eastern Contra Costa County, to comprehensively conserve species, wetlands, and ecosystems, and to recover endangered species through creation of a preserve network.

C. District is a regional park district which owns and manages lands in Alameda and Contra Costa Counties. District is working cooperatively with the Conservancy to implement the HCP/NCCP as is appropriate and consistent with District’s mission.

D. District and [Insert Seller’s Name] (“**Seller**”) have entered into that certain Option Agreement, effective as of [redacted], 201[redacted], (the “**Option Agreement**”), providing for District’s acquisition of that certain real property comprised of approximately [Insert Numerical Acres] acres located in Contra Costa County, California that is legally described in **Exhibit A** attached hereto (the “**Property**”). The purchase price for the Property under the Option Agreement is [Insert Purchase Price (spelled out)] Dollars (\$[Insert Numerical Purchase Price]) (the “**Purchase Price**”).

E. The Property possesses significant ecological and habitat values that benefit endangered, threatened, and other species, including without limitation, habitat suitable for many or all of the following Covered Species (as defined in the HCP/NCCP) (collectively, the “**Property’s Covered Species**”): Townsend’s western big-eared bat (*Corynorhinus townsendii townsendii*), San Joaquin kit fox (*Vulpes macrotus mutica*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western

burrowing owl (*Athene cunicularia hypugea*), Swainson's Hawk (*Buteo swainsoni*), silvery legless lizard (*Anniella pulchra pulchra*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), Giant garter snake (*Thamnopsis gigas*), western pond turtle (*Clemmys marmorata*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), longhorn fairy shrimp (*Brachinecta longiantenna*), vernal pool fairy shrimp (*Brachinecta lynchi*), midvalley fairy shrimp (*Brachinecta mesovallensis*), vernal pool tadpole shrimp (*Lepidurus packardi*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittlescale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joanquiniana*), big tarplant (*Blepharizonia plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), round-leaved filaree (*Erodium macrophyllum*), Diablo helianthella (*Helianthella castanea*), Brewer's dwarf flax (*Hesperolinon breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis ssp. nigelliformis*).

F. Conservancy desires to provide to District, directly through the escrow set up for this purchase and sale between District and Seller, the funds to pay for [Insert Percentage (spelled out)] percent ([Insert Numerical Percentage]%) of the Purchase Price, for the purpose of advancing the requirements and goals of the HCP/NCCP through funding District's protection of the Property's Covered Species, subject to the terms and conditions set forth below in this Agreement.

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

1. Conservancy Funding. Subject to the terms, conditions and procedures set forth below, Conservancy shall provide to District the amount equal to [Insert Amount of Conservancy Funding (spelled out)] Dollars (\$[Insert Numerical Amount]) by [Insert Date], 201[Insert Year] (the "**Conservancy Funding**"), which shall be used solely to fund the Purchase Price due Seller under the Option Agreement.

2. Purpose of Conservancy Funding. District covenants and agrees that if Conservancy provides the Conservancy Funding under this Agreement for District to acquire the Property, District will own, manage and use the Property for the purpose of protecting in perpetuity the Property's Covered Species in accordance with the HCP/NCCP and the other terms and conditions set forth in this Agreement (the "**Funding Purpose**").

3. Conditions Precedent

(a) **Conditions Precedent to Deposit of Conservancy Funding.** Conservancy's obligation to deposit the Conservancy Funding into the Escrow (as defined below) shall be subject to the satisfaction, or waiver by Conservancy in writing, of each of the following conditions precedent on or prior to the date escrow is to close under the Agreement (collectively, the "**Conservancy Funding Conditions Precedent**"):

(i) **Property Documents.** District shall have delivered to Conservancy, and Conservancy shall have reviewed and approved, a full and complete copy of all documents and reports obtained by District from Seller or prepared by or at the direction of District, that relate to the ownership, development, management, operation and/or use of the Property and/or any of the transactions contemplated by this Agreement, including, without limitation, the following (collectively, the “**Property Information**”):

(A) The Option Agreement, including any and all amendments and modifications thereto entered into by Seller and District; provided, however, Conservancy has previously reviewed and approved the Option Agreement;

(B) A current preliminary title report for the Property, together with a copy of each recorded document referenced in such report;

(C) A copy of each lease, contract, permit, license or other document or agreement that District has been provided evidencing any unrecorded third party rights to the Property which is currently in effect;

(D) A current appraisal of the Property, including any and all updates thereto; provided, however, that Conservancy has previously reviewed and approved the appraisal of the Property prepared by [Insert Name of Appraiser], [Insert Address of Appraiser], dated [redacted], 201[redacted];

(E) A current Phase 1 environmental site assessment for the Property; provided, that Conservancy has previously reviewed and approved Phase 1 for the Property prepared by [Insert Name of Company] dated [redacted], 201[redacted];

(F) A copy of all documentation in District’s possession or control relating to the water rights associated with or appurtenant to the Property; and

(G) A copy of any study, report or other written information or documents in District’s possession or control relating to the Property and the transactions contemplated by this Agreement or the Option Agreement, including, without limitation, maps, surveys, appraisals, environmental, soils and geotechnical reports, engineering reports, and mineral rights.

(ii) **No Defaults under the Option Agreement.** Neither District nor Seller shall be in default under any term, condition or

provision of the Option Agreement, and the Option Agreement shall remain in full force and effect.

(iii) **Additional Funding.** District shall have deposited, or caused to be deposited into the Escrow sufficient funds to pay all title, escrow and closing fees, costs, and expenses allocated to District in the Option Agreement or otherwise payable by District.

- (A) [Insert Option Payment Amount (spelled out)]s (\$[Insert Numerical Amount]) as the option payment (the “**Option Payment**”);
- (B) [Insert Payment Amount (spelled out)] Dollars (\$[Insert Numerical Amount]), which is District’s share of the Purchase Price, less the Option Payment; and
- (C) Sufficient funds to pay all title, escrow and closing fees, costs, and expenses allocated to District in the Option Agreement or otherwise payable by District.

(iv) **Approval of Closing Documents.** Conservancy shall have reviewed and approved the final form of all closing documents relating to District’s purchase of the Property from Seller under the Option Agreement including, without limitation, the following (collectively, the “**Closing Documents**”), each signed by all signatories thereto:

- (A) Grant Deed transferring the fee interest in the Property from Seller to District (the “**Grant Deed**”);
- (B) Escrow Instructions of Seller; and
- (C) Escrow Instructions of District.

(v) **Delivery of Closing Documents into Escrow.** All of the Closing Documents shall have been delivered into the Escrow with instructions from District to close the transactions contemplated by the Option Agreement and this Agreement in a manner that is not inconsistent with the separate escrow instructions delivered to Escrow Holder by Conservancy.

(vi) **Restrictive Covenant.** District shall be irrevocably committed to record in the Official Records of Contra Costa County (“**Official Records**”), concurrent with, but immediately following, recordation of the Grant Deed, a restrictive covenant covering the entire Property that is designed to provide for the perpetual protection of the Property’s Covered Species and otherwise comply with the requirements

of the HCP/NCCP and are in form and substance acceptable to Conservancy, USFWS and CDFW and sufficient to permit inclusion of the Property into the Preserve System under the HCP/NCCP (“**Restrictive Covenant**”); provided, however, if USFWS or CDFW have not approved the Restrictive Covenant prior to the Closing (as defined below), District shall record the Restrictive Covenant in the Official Records, as approved by USFWS and CDFW, as soon as reasonably possible following such approval. The Restrictive Covenant shall permit improvements to Deer Valley Road, as identified as a covered activity in the HCP/NCCP, and District public access improvements and recreational uses, consistent with the Preserve Management Plan (as defined below) and Section 6 below. [Insert Following if Applicable] Conservancy and District acknowledge that the proposed improvements to _____ Road along the east boundary of the property may require Contra Costa County (the “**County**”) to expand its right of way. Conservancy and District anticipate the County will request to purchase a narrow portion of the Property along its northern edge for this purpose. Conservancy and District acknowledge that one purpose of the right of way purchase may be to enable the County to construct the improvements while minimizing the use of retaining walls, which may be unsightly and may hinder wildlife movement. Conservancy and District acknowledge that sale of any portion of the Property will be subject to necessary approval of WCB, as that term is defined below. Attached hereto as **Exhibit B** is a draft of the Restrictive Covenant which is in a form and substance agreeable to Conservancy and District and which agreed upon draft shall be submitted to USFWS and CDFW for review and approval. Conservancy and District shall use their respective reasonable best efforts to negotiate with USFWS and CDFW a mutually acceptable final form of the Restrictive Covenant.

(vii) **Baseline Conditions Report.** Conservancy and District shall have reviewed and approved a final baseline conditions report for the Property, the initial draft of which shall have been prepared by or at the direction of Conservancy (“**Baseline Report**”), unless the Parties have agreed to waive preparation of the Baseline Report. The Baseline Report shall provide detailed information on the condition of the Property as of the date District acquires the Property from Seller. The Baseline Report shall be tailored to the terms and conditions of the Restrictive Covenant and the conservation values the Restrictive Covenant seeks to protect. The Baseline Report must be reviewed, approved, signed and certified by District on or before the Closing. District’s certification of the Baseline Report shall confirm that to the District’s best knowledge after diligent review of the final Baseline Report and inspection of the Property, the Baseline Report is a current and accurate description and representation of the physical condition and conservation values of the Property as of the Closing.

(viii) **Recordation of Closing Documents.** The Grant Deed and Restrictive Covenant shall have been delivered into the Escrow with District's irrevocable instructions to record such documents in the Official Records at the Closing; provided, however, if USFWS or CDFW have not approved the Restrictive Covenant prior to the Closing (as defined below), District shall record the Restrictive Covenant in the Official Records, as approved by USFWS and CDFW, as soon as reasonably possible following such approval.

(ix) **Grant Funding Requirements.** District understands that Conservancy intends to use federal and state grant funds made available to Conservancy through the California Wildlife Conservation Board ("**WCB**") [Insert Any Additional Grant Funders as Applicable and identify collectively as "Grant Funders"] to fund all of the Conservancy Funding. District further understands that Conservancy and District have entered into grant agreements with Grant Funders that impose certain obligations on Conservancy and District respecting the use of such funds for this project. District will comply with all grant requirements imposed by Grant Funders in connection with such funding, so long as such requirements are not inconsistent with this Agreement, and will execute and deliver all documents as reasonably required by Grant Funders for such funding. District understands that Conservancy shall be unable to approve the Property Information until Grant Funders approve the Property Information.

4. District's Covenants. In consideration of Conservancy's disbursement of the Conservancy Funding in accordance with **Section 1** above, District hereby covenants and agrees as follows:

(a) **Notice of Unrecorded Agreement.** District shall record or cause to be recorded, concurrent with the Closing, a Notice of Unrecorded Agreement ("**Notice of Unrecorded Agreement**"), incorporating by reference this Agreement and giving public notice that District received funds under this Agreement in order to assist District in acquiring the Property and that, in consideration of receipt of the Conservancy Funding hereunder, District has agreed to the terms of this Agreement. The Notice of Unrecorded Agreement shall be substantially in the form of **Exhibit C** attached hereto and incorporated herein by reference.

(b) **Delivery of Closing Documents.** District shall provide to Conservancy, promptly following the Closing, a conformed copy of the recorded Grant Deed, Restrictive Covenant and Notice of Unrecorded Agreement, with all recording information identified thereon, as well as a copy of the final closing or settlement statement and the title insurance policy insuring District as the fee owner of the Property. District shall also provide Conservancy with copies of such other documents related to the Closing as requested by Conservancy.

(c) **Amendment or Termination of the Restrictive Covenant.** District shall not amend or modify the Restrictive Covenant without first obtaining Conservancy's written approval to such amendment or modification. District shall not terminate the Restrictive Covenant without first obtaining Conservancy's written approval.

(d) **Use of Property.** Following acquisition of the Property, District shall use, operate, manage and maintain the Property in perpetuity in a manner that complies with the Restrictive Covenant and this Agreement, and fulfills the Funding Purpose set forth in **Section 2** above.

(e) **Management Plan and Management Costs.** Conservancy and District shall jointly prepare a management plan for the Property ("**Preserve Management Plan**") that shall be consistent with the HCP/NCCP and shall be completed as soon as reasonably possible but no later than [REDACTED], 201[REDACTED] unless the Conservancy and District are able to close escrow on the Property prior to [REDACTED], 201[REDACTED], in which case the Preserve Management Plan will be completed no later than one year following the date of the close of escrow. Conservancy and District may extend this deadline by mutual agreement. Conservancy shall prepare and provide to District an initial draft of the Preserve Management Plan. District shall promptly review and comment on the initial draft Preserve Management Plan. Conservancy and District shall work together in good faith to produce a final Preserve Management Plan that is mutually acceptable to Conservancy and District. The Preserve Management Plan will include a monitoring plan for the Property and an estimated budget of all management and monitoring costs associated with implementation of the Preserve Management Plan ("**Management Costs**"). Conservancy and District intend to allocate Management Costs between the Parties consistent with the general principle such that Conservancy will pay for those Management Costs relating to management and monitoring of the Property's Covered Species and District will pay for those Management Costs relating to public access and public use of the Property. On or before final approval of the Preserve Management Plan, Conservancy and District will enter into a written agreement confirming the Parties' respective obligations to pay Management Costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment. Conservancy shall pay all costs associated with preparation of the Preserve Management Plan. Following completion of the Preserve Management Plan, District shall use and manage the Property in accordance with the Preserve Management Plan.

(f) **Lease Revenues. [Include this Section if Property has Communication Tower, Wind, or Residential Lease Revenue]**

(i) **Leases.** The District will acquire the Property subject to those leases referenced in the Option Agreement (collectively, the "**Leases**"). Following the District's acquisition of the Property, the

District will enter into new leases with the existing tenants and be entitled to receive all the revenues due the lessor under the Leases (the “**Lease Revenues**”).

(ii) **Allocation of Lease Revenues.** All Lease Revenues received by District under the Leases shall be used by District as follows:

(A) To pay management costs associated with the management of any real property that is (i) identified in those certain grant agreements, Grant No. [Insert Grant Number], Grant Title: [Insert Grant Title], between USFWS and CDFW (the “**Federal Grant Agreements**”) and (ii) included in the ECCC HCP/NCCP preserve lands (collectively, the “**Lease-Funded Management Costs**”), which Lease-Funded Management Costs may include, without limitation, any combination of the following costs:

1. Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
2. Fence repair, replacement and construction;
3. Maintaining roads and access facilities;
4. Control of invasive or exotic species;
5. Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
6. Removal of debris & unnecessary structures, including buildings & unnecessary roads;
7. Other habitat enhancement activities;
8. Monitoring of habitat conditions and of HCP/NCCP covered species; and
9. Adaptive management activities guided by monitoring.

The Conservancy and District recognize that the Property (which includes District’s right to receive the Lease Revenues) was purchased with a combination of funds provided by the Conservancy and District; and/or

(B) To fund a non-wasting endowment (the “**Endowment**”) to provide funding for those Lease-Funded Management Costs incurred following the date the Leases are terminated; the Parties intend that District shall invest an agreed-upon amount of the Lease Revenues to generate annual interest sufficient to pay that portion of the Lease-Funded Management Costs covered by Lease Revenues according to a schedule agreed

to by Conservancy and District, pursuant to **Section 4(f)(ii)(A)** above (the “**Endowment Goal**”).

(iii) **Grazing Lease Revenues.** The Parties understand that, at some point in the future, District may enter into a grazing lease for the Property. The lease revenues received by District under such grazing lease will not be subject to the allocation of lease revenues provisions of **Section 4(f)(ii)** above and such grazing lease revenues may be spent in District’s sole discretion.

(iv) **Annual Budget and Annual Reporting.** On or before the beginning of each calendar year, District and Conservancy shall jointly prepare an annual written budget setting forth the total amount of Lease Revenues projected for collection by the District during the upcoming year, together with District’s proposed expenditures consistent with **Section 4(f)(ii)** above (the “**Annual Budget**”). Within thirty (60) days following the end of each calendar year, District shall deliver to Conservancy an accounting for the immediately preceding calendar year (the “**Annual Accounting**”) which shall set forth (A) the total amount of Lease Revenues collected during such calendar year; (B) how such Lease Revenues were actually expended by District during such year, and (C) the total amount of the Endowment, together with the projected amount of the Endowment Goal. The requirements set forth in this section may be modified and expressly superseded in the funding agreement contemplated under **Section 4(e)** above.

(g) **Future Wetland Restoration Projects.** Following District’s execution of this Agreement, Conservancy shall have the exclusive right to work with District to conduct, or cause to be conducted, wetland and/or habitat creation, restoration, enhancement, and/or development improvements, projects or activities on the Property to satisfy the requirements of the HCP/NCCP (“**Habitat Activities**”). Any Habitat Activities conducted, or caused to be conducted, on the Property by Conservancy shall (i) be paid for by Conservancy, provided that it is expected the District may provide some staff resources; (ii) require District’s prior reasonable approval with respect to design, location and phasing, and (iii) be conducted in accordance with a separate written agreement entered into by Conservancy and District providing for such projects, if and to the extent either Party to this agreement requires such agreements. The written agreement shall address Conservancy’s reimbursement for District’s costs and staff time where appropriate, in light of the type of project and the staff resources required of District. District understands that Conservancy may encounter urgent timing constraints to complete some Habitat Activities in order to comply with the HCP/NCCP. If Conservancy reasonably determines that District will not be able to meet such deadlines, Conservancy and District shall exercise their respective reasonable good faith efforts to enter into a written agreement on reasonable terms and conditions for Conservancy to step in and manage construction of the Habitat

Activities through timely completion in a manner substantially consistent with the District's previous approvals of such activities and the other written agreements entered into by the Parties respecting the Habitat Activities. Neither District nor any other third party shall conduct any Habitat Activities on the Property unless such party first obtains Conservancy's written reasonable approval of such Habitat Activities. Should District be required to mitigate project impacts for any portion of its project relating to public access/use of the Property, District shall be allowed to mitigate on the Property so long as said mitigation does not conflict or interfere with Conservancy's existing or planned Habitat Activities projects.

(h) **Access to the Property.** From and after the Effective Date and through the Closing, District shall use its reasonable best efforts to coordinate with Seller to provide Conservancy, and Conservancy's employees, agents and consultants, WCB and WCB's employees, agents and consultants access at reasonable times upon reasonable prior notice to the Property to conduct appropriate due diligence investigations and to conduct Habitat Activities. District shall also make available District's employees and agents to Conservancy, WCB and their respective employees, agents, and consultants to provide additional explanatory information and answer questions respecting the Property and to otherwise assist in Conservancy's and WCB's due diligence investigation of the Property. Following District's acquisition of the Property, District shall provide access to the Property to Conservancy and Conservancy's employees, agents and consultants, at reasonable times upon reasonable prior notice, to monitor District's compliance with the terms of this Agreement and to exercise any of Conservancy's rights hereunder.

(i) **Transfer.** District shall not assign, sell, transfer, exchange or otherwise convey all or any portion of the Property without obtaining the prior written approval of Conservancy, which approval shall not be unreasonably denied as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Funding Purpose.

(j) **Security.** District shall not use all or any portion of the Property as security for any debt without obtaining the prior written approval of Conservancy.

5. Funding Procedure

(a) **Escrow.** Conservancy shall deposit the Conservancy Funding directly into the escrow (the "**Escrow**") that has been opened to consummate District's purchase of the Property in accordance with the Option Agreement, at [Insert Name of Title Company], [Insert Title Company Address], Attention: [Insert Name of Escrow Officer], Escrow Number [Insert Escrow Number] ("**Escrow Company**"). The Conservancy Funding shall be released from the Escrow to Seller to pay the Purchase Price upon confirmation that the Grant Deed, Restrictive Covenant and Notice of Unrecorded Agreement have been recorded in

the Official Records (the “**Closing**”) provided, however, if USFWS or CDFW have not approved the Restrictive Covenant prior to the Closing (as defined below), District shall record the Restrictive Covenant in the Official Records, as approved by USFWS and CDFW, as soon as reasonably possible following such approval. The Closing shall occur, if at all, on [REDACTED], 201[REDACTED] (the “**Closing Date**”), unless otherwise mutually agreed by Conservancy and District in writing. If the Closing has not occurred on or before the Closing Date and Conservancy is not in default under this Agreement, Conservancy shall be entitled to terminate this Agreement by delivering written notice of termination to District, upon which the Parties shall have no further rights or obligations under this Agreement, including without limitation the obligation to fund the Conservancy Funding.

(b) **Closing and Escrow Costs and Expenses.** Conservancy shall not be responsible for paying any closing, escrow or title insurance costs, fees or expenses due in connection with District’s acquisition of the Property.

6. Public Access. Conservancy understands and acknowledges that property located in the vicinity of the Property has been identified in District’s current Master Plan as a potential regional park and that District’s mission incorporates both resource conservation and public access goals. Conservancy further recognizes that the HCP/NCCP permits public access and recreational uses on Preserves (as defined in the HCP/NCCP) provided such public access and recreational uses are conducted in a manner consistent with the species conservation goals and recreation provisions contained therein. Conservancy acknowledges that one of the reasons that the District is entering into this Agreement and acquiring the Property is specifically to provide public access and recreational uses on the Property. Consequently, Conservancy and District shall work collaboratively to identify and include in the Preserve Management Plan appropriate public access facilities and recreational uses for the Property that are consistent with protection of the conservation values of the Property and the HCP/NCCP and which will be developed jointly by Conservancy and District. All proposed public uses and recreational facilities for the Property shall be sited on the Property in locations that are consistent with the protection of the Property’s conservation values and will be subject to the prior approval of Conservancy, which approval shall not be withheld provided such uses and facilities do not impair the Property’s conservation values and are otherwise consistent with the HCP/NCCP.

7. Cooperation. From and after the Effective Date, Conservancy and District shall each use its respective good faith reasonable best efforts to cooperate with the other Party in exercising such Party’s rights under this Agreement, which shall include, without limitation, the Parties’ respective good faith reasonable best efforts to assist in satisfying the Conservancy Funding Conditions Precedent.

8. Default and Remedies.

(a) **Notice of Breach.** In the event of a breach by Conservancy or District of any of the terms, covenants or conditions of this Agreement or any

written agreement entered into by Conservancy or District respecting the allocation of Management Costs as required under **Section 4(e)**, the non-breaching party shall give written notice to the breaching party describing the breach (“**Notice**”), and the breaching party shall have thirty (30) days from the date of the Notice to cure the breach or, if the breach is not curable within such thirty (30) day period, to commence and diligently pursue such cure to completion.

(b) **Remedies.** If the breaching party fails to cure any breach within the cure period provided in **Section 8(a)** above, the breaching party shall be in default under this Agreement (“**Default**”). In the event of a Default under this Agreement, the non-breaching party shall have all remedies available at law or in equity.

(i) **Additional Conservancy Remedies.** In addition to the remedies available under **Section 8(b)** above, if the non-breaching party is Conservancy and the breaching party is District and Conservancy is not then in default under this Agreement, Conservancy may require District to convey its interest in the Property to Conservancy or to another public entity or nonprofit organization that is willing and financially able to assume all of the obligations and responsibilities of District hereunder, subject to receipt of any approvals required under any public funding grant agreements for the Property.

(ii) **Additional District Remedies.** In addition to the remedies available under **Section 8(b)** above, if the non-breaching party is District and the breaching party is Conservancy and District is not in default under this Agreement, District may require either Conservancy or another entity acceptable to Conservancy to accept a conveyance of District’s interest in the Property subject to receipt of any approvals required under any public funding grant agreements for the Property. Upon such conveyance, Conservancy or the other entity will assume any and all terms, covenants and conditions of the Agreement that were imposed upon District by the Agreement or any related documents. Upon transfer of the Property to Conservancy or another entity acceptable to Conservancy under this **Section 8(b)(ii)**, this Agreement shall terminate and neither party hereto shall have any further obligations hereunder.

9. Injury or Destruction to a Habitat Activities Project. District shall not be responsible for the unauthorized acts of third parties, and natural disasters such as fire, floods, storms, earthquakes or landslides and shall have no obligation to restore any Habitat Activities projects injured or destroyed due to such or similar causes; provided, that nothing in this section shall prevent Conservancy and District from reaching separate agreement to take such additional steps to restore such injury or destruction to the Habitat Activities projects that are mutually acceptable to Conservancy and District in each Party’s sole and absolute discretion.

10. Public Announcements. Other than when otherwise required by law, District shall consult with Conservancy prior to any public announcement or press release describing the District’s acquisition of the Property and specifically the Conservancy funding activities associated with the acquisition of the Property.

11. Representations and Warranties. The Parties hereby represent and warrant to each other that the execution, delivery and performance by such Party of this Agreement together with the transactions contemplated thereby have been duly authorized and approved by such Party. Upon execution and delivery by each Party, this Agreement shall constitute the legal, valid and binding obligations of such Party under applicable law, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies including, without limitation, specific performance and injunctive relief.

12. 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 District:

East Bay Regional Park District
 2950 Peralta Oaks Ct.
 Oakland, CA 94605
 Attention: Land Acquisition Manager
 Facsimile: (510) 569-1417

If to Conservancy:

East Contra Costa County Habitat
 Conservancy
 30 Muir Road
 Martinez, CA 94553
 Attention: Executive Director
 Facsimile: (925) 674-7250

Notices may be sent by any of the following means: (i) by delivery in person, (ii) by certified U.S. mail, return receipt requested, postage prepaid, (iii) by Federal Express or other reputable “overnight” delivery service, provided that next-business-day delivery is requested by the sender, or (iv) by facsimile transmission; provided that a hard copy of such notice shall have been deposited into the U.S. mail to the recipient on the same day as transmission. Notices delivered in person shall be deemed effective immediately upon receipt (or refusal of delivery or receipt). Notices sent by certified mail shall be deemed given on the date deposited with the U.S. Postal Service. Notices sent by Federal Express or other reputable “overnight” delivery service shall be deemed given on the date deposited with the delivery service. Notices sent by facsimile transmission shall be effective on the date of successful transmission. Either Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

13. No Partnership. Nothing in this Agreement shall be deemed to create a partnership between any combination of the parties hereto.

14. 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 or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the Party to be charged.

(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 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.

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

DISTRICT:

EAST BAY REGIONAL PARK
DISTRICT, a California special district

Date: _____, 201█

By: _____
Name: Robert E. Doyle
Title: General Manager

CONSERVANCY:

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

Date: _____, 201█

By: _____
Name: Abigail Fateman
Title: Interim Executive Director

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Form of Restrictive Covenant

RECORDING REQUESTED BY AND)
 WHEN RECORDED MAIL TO:)
)
 East Bay Regional Park District)
 Land Acquisition Department)
 2950 Peralta Oaks Court)
 Oakland, California 94605)
 Attention: Land Division)

APN

Space Above Line for Recorder's Use Only

Request is made that this document be recorded without fee pursuant to Government Code Section No 27383.

COVENANT TO RESTRICT USE OF PROPERTY

THIS COVENANT AND AGREEMENT has been executed as of [REDACTED], 2014 in favor of the UNITED STATES DEPARTMENT OF THE INTERIOR, acting by and through the U.S. Fish and Wildlife Service (“USFWS”), and the STATE OF CALIFORNIA, acting by and through its Department of Fish and Wildlife (“DFW”), by the EAST BAY REGIONAL PARK DISTRICT, a California special district (“District”).

RECITALS

- A. District is the sole owner in fee simple of certain real property containing approximately [REDACTED] acres, located in the County of Contra Costa, State of California, designated Assessor’s Parcel Number(s) [REDACTED] and more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”).
- B. This Covenant is being executed, delivered, and recorded in the Official Records of Contra Costa County (“Official Records”) to satisfy certain requirements set forth in the following documents (collectively, the “HCP/NCCP Conservation Instruments”):
 - (i) East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan (“HCP/NCCP”), dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association, and approved by the USFWS under Section 10 of the Federal Endangered Species Act of 1973, as amended (16 U.S.C. Section 1531 *et seq.*) (“FESA”) and by DFW under California Fish and Game Code Section 2835; and
 - (ii) Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/ Natural Community Conservation Plan, by and between East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of

Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District, District, USFWS, and DFW (the “**Implementing Agreement**”); and

- (iii) The federal incidental take permit issued by USFWS to East Contra Costa County Habitat Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District and District (collectively, the “**Permittees**”) for the HCP/NCCP pursuant to Section 10(a)(1)(B) of FESA, as it may be amended from time to time; and
 - (iv) The state Incidental Take Permit issued to Permittees for the HCP/NCCP pursuant to California Fish and Game Code Section 2835, as it may be amended from time to time.
- C. A management plan for the Property (the “**Preserve Management Plan**”), developed in accordance with the applicable requirements of the HCP/NCCP Conservation Instruments, may be revised from time to time in accordance with the HCP/NCCP Conservation Instruments. The District shall maintain in its offices a full and complete copy of the most current Preserve Management Plan.
- D. The Property possesses wildlife and habitat values, including open space and significant ecological and habitat values that benefit endangered, threatened, and other species (the “**Conservation Values**”). The Conservation Values include, but are not limited to, habitat suitable for many or all of the following Covered Species (as defined in the HCP/NCCP) (collectively, the “**Property’s Covered Species**”): Townsend’s western big-eared bat (*Corynorhinus townsendii townsendii*), San Joaquin kit fox (*Vulpes macrotus mutica*), tricolored blackbird (*Agelaius tricolor*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cunicularia hypugaea*), Swainson’s Hawk (*Buteo swainsoni*), silvery legless lizard (*Anniella pulchra pulchra*), Alameda whipsnake (*Masticophis lateralis euryxanthus*), Giant garter snake (*Thamnopsis gigas*), western pond turtle (*Clemmys marmorata*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), longhorn fairy shrimp (*Brachinecta longiantenna*), vernal pool fairy shrimp (*Brachinecta lynchi*), midvalley fairy shrimp (*Brachinecta mesovallensis*), vernal pool tadpole shrimp (*Lepidurus packardi*), Mount Diablo manzanita (*Arctostaphylos auriculata*), brittle scale (*Atriplex depressa*), San Joaquin spearscale (*Atriplex joanquiniana*), big tarplant (*Blepharizonia plumosa*), Mount Diablo fairy lantern (*Calochortus pulchellus*), recurved larkspur (*Delphinium recurvatum*), round-leaved filaree (*Erodium macrophyllum*), Diablo helianthella (*Helianthella castanea*), Brewer’s dwarf flax (*Hesperolinon breweri*), showy madia (*Madia radiata*), and adobe navarretia (*Navarretia nigelliformis* ssp. *nigelliformis*).

AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of California, District hereby declares that the Property, and every part thereof or interest therein, is now held and shall hereafter, in perpetuity (subject to termination only pursuant to **Section 5** below), be held, managed, transferred, sold, leased, conveyed and occupied subject to the restrictions (collectively, the "**Restrictions**") set forth in the Preserve Management Plan and this Covenant. The Restrictions and this Covenant shall burden and run with the Property, and every part thereof or interest therein, and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property, or any part thereof. The Restrictions and this Covenant are intended to be a covenant running with the land and shall only be terminated in accordance with **Section 5** below.

1. Purposes. The purposes of the Restrictions are to ensure that the existing wildlife and habitat values of the Property will be forever protected by preventing any use of the Property that would significantly impair or interfere with the Conservation Values (the "**Purposes**").

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the Purposes of the Restrictions is prohibited. Without limiting the generality of the foregoing, District, and its personal representatives, successors, assigns, employees, agents, lessees, licensees and invitees, are expressly prohibited from doing or permitting any of the following uses and activities on the Property, except as required by or specifically allowed in the Preserve Management Plan:

- (a) Unseasonable watering; incompatible use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; incompatible fire protection activities; and other activities and uses which may adversely affect the Conservation Values;
- (b) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (c) Removing, destroying or cutting of trees, shrubs or other vegetation, except for allowable agricultural uses and as required by law for fire breaks, maintenance of existing foot trails or roads or creation of foot trails and roads in accordance with the Preserve Management Plan, prevention and treatment of disease, or control of non-native or exotic plants;
- (d) Use of off-road vehicles and use of any other motorized vehicles, except on established roads, or for public safety, or for land management, monitoring, habitat enhancement or restoration, and public education in accordance with the Preserve Management Plan;

(e) Agricultural activity, except low-intensity uses such as grazing, cropland and pasture that have been determined by USFWS and DFW to be compatible with the Conservation Values and are performed in accordance with the Preserve Management Plan;

(f) Commercial or industrial uses;

(g) Any legal or de facto division, subdivision or partitioning of the Property or any fee transfer of less than the entire Property;

(h) Construction, reconstruction or placement of any building, billboard, or any other structure or improvement of any kind, except for structures and improvements necessary for public safety or for management, monitoring, habitat enhancement or restoration, or recreational uses consistent with the Conservation Values and described in the Preserve Management Plan;

(i) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials, except as necessary for habitat enhancement or restoration in accordance with Preserve Management Plan;

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, and granting or authorizing any surface entry for any of these purposes, except as necessary for management, monitoring, habitat enhancement or restoration, or minor earthmoving activities associated with the construction of structures and improvements in accordance with the Preserve Management Plan;

(k) Altering the surface or general topography of the Property, including building of roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material, except as necessary for management, monitoring, habitat enhancement or restoration, or minor earthmoving activities associated with the construction of structures and improvements in accordance with the Preserve Management Plan;

(l) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or sub-surface waters, except as necessary for management, monitoring, habitat enhancement or restoration, in accordance with the Preserve Management Plan; and

(m) Transferring or abandoning any water, mineral or air rights necessary to protect, sustain, maintain or restore the Conservation Values.

3. District's Reserved Rights. District reserves to itself, and to its personal representatives, successors, and assigns, all rights accruing from its ownership of the Property,

including the right to engage in or to permit or invite others, including the public, to engage in all uses of the Property that are not expressly prohibited or limited by the Restrictions and the terms and conditions of this Covenant, and are consistent with, the Purposes, including, but not limited to, the right to implement the Preserve Management Plan.

4. Required Notice to Future Lessees and Licensees. Any lease, license, easement, or other rental or use agreement subsequently entered into or made with respect to any portion of the Property, whether written or oral, shall contain an express provision informing the lessee, tenant, licensee or other contracting party of the Restrictions and this Covenant and shall require such lessee, tenant, licensee or other contracting party to comply with all such Restrictions and the terms of this Covenant throughout the term of such lease, license or rental or use agreement.

5. Conveyances of Property.

(a) District shall not convey a fee interest in the Property without first obtaining the written approval of DFW and USFWS and complying with this Section 5.

(b) Before conveying the fee interest in all or any portion of the Property to another governmental or quasi-governmental entity, District shall require the entity receiving the fee interest to, in writing, acknowledge, accept, assume, and agree to be bound by the terms and conditions of this Covenant and, following such conveyance, shall cause such writing and any additional instruments that District, DFW and USFWS mutually agree are necessary to continue the effectiveness of this Covenant following such transfer, to be recorded in the Official Records of Contra Costa County.

(c) Before District conveys the fee interest in all or any portion of the Property to any party other than a governmental or quasi-governmental entity, including but not limited to any individual, partnership, corporation, or trust, District shall first enter into, and record in the Official Records, a conservation easement that fully satisfies all the following requirements (the “**Conservation Easement**”): (i) the Conservation Easement will satisfy all of the requirements under California Civil Code Section 815 *et seq.* for creating a conservation easement interest thereunder; (ii) the Conservation Easement will be held by East Contra Costa County Habitat Conservancy, a joint exercise of powers authority, or another nonprofit conservation organization that (x) is qualified and authorized to hold a conservation easement under California Civil Code Section 815.3, (y) has the financial and stewardship capacity and experience to hold conservation easements of this nature, and (z) has been approved in advance by USFWS and DFW; (iii) the Conservation Easement will include terms and conditions consistent with the protection of the Conservation Values and the Purposes of the Restrictions; (iv) the Conservation Easement will include other terms and conditions substantially similar to those included in other conservation easements that have been recorded to satisfy the habitat conservation requirements set forth in the HCP/NCCP Conservation Instruments; and (v) the form of Conservation Easement shall be approved in advance of recordation by USFWS and DFW. Effective automatically upon recordation of a Conservation Easement covering all or any portion of the Property, the Restrictions and this Covenant

shall terminate with respect to the portion of the Property covered by such recorded Conservation Easement.

(d) [INCLUDE THIS PARAGRAPH (d) ONLY IF THE PROPERTY IS ADJACENT TO ROAD PROJECT COVERED BY THE HCP/NCCP] USFWS and DFW acknowledge that a portion of the Property abuts XXX Road and that widening XXX Road is a covered activity under the HCP/NCCP. If, upon the request of a public agency, District proposes to transfer to the public agency any interest in a portion of the Property needed for the purpose of widening the road, District shall notify USFWS and DFW, and USFWS and DFW shall approve the proposal consistent with the terms of the HCP/NCCP. Provisions (b) and (c) above shall not apply to such transfers. Following any such transfer, the portion of the Property that had an interest transferred, or was transferred in fee, will no longer be part of the Property and cannot be credited toward the requirements of the HCP/NCCP Conservation Instruments.

6. Right of Inspection. USFWS and DFW, through its employees and representatives, shall be entitled to enter upon the Property for the limited purpose of confirming compliance with the terms and conditions contained in this Covenant. Unless and until the District allows public access to the property, USFWS or DFW shall provide three (3) days written notice to District before any such entry, and District shall have the right, through District's employees and representatives, to accompany and observe such entry. Once District allows public access to the Property, such notice shall no longer be required but, if possible, District would appreciate such notice as a courtesy. This provision does not apply to DFW wardens, who may enter public lands at any time to investigate potential violations of State or federal law, such as illegal poaching.

7. Remedies. If USFWS or DFW determines there is a violation of the terms of this Covenant, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to District, with a copy provided to USFWS and/or DFW, as appropriate. If District fails to cure the violation within fifteen (15) days after receipt of written notice and demand from USFWS or DFW, as applicable, or if the cure reasonably requires more than fifteen (15) days to complete and District fails to begin the cure within such fifteen (15) day period or fails to continue diligently to complete the cure, USFWS or DFW may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Covenant, to recover any damages to which USFWS or DFW may be entitled for such violation or for any injury to the Conservation Values, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury.

If USFWS or DFW, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, USFWS or DFW may pursue its remedies under this section without prior notice to District or without waiting for the period provided for cure to expire. Remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

The rights of DFW and USFWS under this section apply equally to actual or threatened violations of the terms of this Covenant. The failure of DFW and USFWS to discover a violation or to take immediate legal action shall not bar DFW or USFWS from taking such action at a later time.

(a) **Costs of Enforcement.** Should proceedings be brought by DFW or USFWS to enforce or interpret any of the terms of this Covenant, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its actual costs and expenses, including, but not limited to, reasonable attorneys' and experts' fees and other costs of suit. If DFW or the USFWS is the prevailing party, such actual costs and expenses may include any habitat restoration costs incurred by DFW or USFWS to repair or restore harm to the Conservation Values that resulted from District's breach of the terms and conditions of this Covenant.

(b) **Enforcement Discretion.** Enforcement of the terms of this Covenant shall be at the respective discretion of USFWS and DFW, and any forbearance by either USFWS or DFW to exercise its rights under this Covenant in the event of any breach of any term of this Covenant shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Covenant or of any rights under this Covenant. Likewise, no delay or omission by USFWS or DFW in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond District's Control.** Nothing contained in this Covenant shall be construed to, or shall entitle, USFWS or DFW to bring any action against District for any injury to or change in the Property resulting from (i) any natural cause beyond District's control, including, but not limited to, fire not caused by District, flood, storm, and earth movement, or any prudent action taken by District under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; (ii) unauthorized acts of third parties; or (iii) acts by USFWS or DFW or any of their employees.

8. Liberal Construction. It is the intention of District that the Purposes of the Restrictions shall be carried out in perpetuity. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

9. Notices. Any notice, demand, request, consent, approval, or communication that District, USFWS or DFW desires or is required to give to the others must be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To District:	East Bay Regional Park District Land Acquisition Department 2950 Peralta Oaks Court Oakland, California 94605
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Attn: Land Acquisition Manager

To USFWS: United States Fish and Wildlife Service
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846
Attn: Field Supervisor

To DFW: California Department of Fish and Wildlife
Region 3, Bay-Delta
7329 Silverado Trail
Napa, CA 94558
Attn: Regional Manager

With a copy to:

Department of Fish and Wildlife
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

or to such other address as any may designate for itself by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

10. Amendment or Extinguishment. Any instrument, and any provision in any instrument, that purports to amend, modify, or extinguish this Covenant shall be void, unless such instrument is executed by District, or District's successor in interest, and is approved in writing in advance by USFWS and DFW. Any such instrument must be consistent with the Purposes of the Restrictions, preserve the Conservation Values of the Property, and shall not affect the perpetual duration of this Covenant. Any amendment must be in writing, must refer to this Covenant by reference to its recordation data, must be approved by USFWS and DFW, and must be recorded in the Official Records of Contra Costa County.

11. Controlling Law. The interpretation and performance of this Covenant shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable Federal law.

12. Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Covenant, such action shall not affect the remainder of this Covenant. If a court of competent jurisdiction voids or invalidates the application of any provision of this Covenant to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

IN WITNESS WHEREOF District has executed this Covenant on the day and year first above written.

**EAST BAY REGIONAL PARK DISTRICT,
a California special district**

By: _____

Name: _____

Title: General Manager

Approved as to form:

By: _____

District Counsel

State of California

Department of Fish and Wildlife

By: _____

Name: _____

Title: _____

United States Fish and Wildlife Service

By: _____

Name: _____

Title: _____

EXHIBITS: Exhibit A - Legal Description of the Property

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss

On _____, 20 __, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as _____ of East Bay Regional Park District, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

EXHIBIT A

Legal Description of the Property

EXHIBIT C

Form of Notice of Unrecorded Agreement

RECORDING REQUESTED BY, AND
WHEN RECORDED, PLEASE MAIL TO:

East Contra Costa County
Habitat Conservancy
Attn: Executive Director
30 Muir Road
Martinez, CA 94553

APNs:

Space above for Recorder's Use

**NOTICE OF UNRECORDED AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)
(Name of Property)**

THIS NOTICE OF UNRECORDED AGREEMENT (WITH COVENANTS AFFECTING REAL PROPERTY) (the "Memorandum") is made this [redacted], 201[redacted] (the "Notice Date"), by EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, a joint exercise of powers authority ("Conservancy"), and EAST BAY REGIONAL PARK DISTRICT, a California special district ("District"), to provide notice of an agreement between Conservancy and District affecting the real property described below.

This Notice is executed pursuant to that certain Funding Agreement, dated [redacted], 201[redacted], between Conservancy and District (the "Agreement"). The real property that is the subject of this Notice is comprised of [Insert Number of Acres] acres, located in Contra Costa County, California, and described on **Exhibit A** (the "Property"), pursuant to which Conservancy has provided certain funding to District in support of District's acquisition of the Property.

TO ALL INTERESTED PARTIES, PLEASE BE ADVISED AS FOLLOWS:

1. This Notice has been executed and recorded for the purpose of imparting notice of the Agreement and the respective rights and obligations of the parties thereto as set forth therein. All of the terms and conditions set forth in the Agreement are incorporated herein by this reference as if fully set forth herein. All capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement.

2. The Agreement includes certain rights and obligations of District relating to the Property, and certain restrictions on District's use of the Property, including, without limitation, the following:

(a) District will own, manage and use the Property for the purpose of protecting in perpetuity the Property's Covered Species in accordance with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 2006, prepared by the East Contra Costa Habitat Conservation Planning Association and approved by the United States Fish and Wildlife Service and the

California Department of Fish and Wildlife (“HCP/NCCP”) and the other terms and conditions set forth in the Agreement (the “Funding Purpose”).

(b) District will not assign, sell, transfer, exchange or otherwise convey all or any portion of the Property without obtaining the prior written approval of Conservancy, which approval shall not be unreasonably denied as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Funding Purpose.

(c) District shall not use all or any portion of the Property as security for any debt without obtaining the prior written approval of Conservancy.

3. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Conservancy and District each has rights, duties and obligations under the Agreement which are not set forth in this Notice. To the extent the terms of this Notice conflict with the Agreement, the terms of the Agreement shall govern and control.

4. A full and complete copy of the Agreement can be obtained from Conservancy or District at the following addresses:

East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605

5. This Notice shall not be amended, modified, or removed except by a writing executed by Conservancy and District and recorded in the Official Records of Contra Costa County.

This Notice has been executed by Conservancy and District as of the Notice Date.

CONSERVANCY:

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

By: _____
Name: Abigail Fateman
Title: Interim Executive Director
Date: _____

DISTRICT:

EAST BAY REGIONAL PARK DISTRICT,
a California special district

By: _____
Name: Robert E. Doyle
Title: General Manager
Date: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss

On _____, 20 __, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as _____ of East Bay Regional Park District, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

EXHIBIT A

Legal Description of the Property

CALIFORNIA WILDLIFE CONSERVATION BOARD
GRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST

Grantee: Name: East Contra Costa County Habitat Conservancy
Address: 30 Muir Road
Martinez, CA 94553

Attn: Abigail Fateman, Interim Executive Director

Phone: (925) 674-7820
Fax: (925) 674-7250
E-mail: abigail.fateman@dcd.cccounty.us

Federal Employer ID No./Taxpayer ID No.: 26-2547338

Successor Grantee: Name: East Bay Regional Park District
Address: P.O. Box 5381
Oakland, CA 94605-0381

Attn: Liz Musbach, Land Acquisition Manager

Phone: (510) 544-2610
Fax: (510) 569-1417
E-Mail: lmusbach@ebparks.org

Federal Employer ID No./Taxpayer ID No.: 94-60000-591

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

WCB Grant Agreement Number: [Insert Grant Agreement Number]

WCB Project ID: [Insert WCB Project ID]

Grant Agreement Amount: Not to exceed \$[Insert Numerical Amount]

Notices to be addressed to:

For Grantee: East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553
Attn: Executive Director

For Successor
 Grantee: East Bay Regional Park District
 P.O. Box 5381
 Oakland, CA 94605-0381
 Attn: Land Acquisition Manager

For Grantor: Wildlife Conservation Board
 1807 13th Street, Suite 103
 Sacramento, CA 95811-7137
 Attn: Executive Director

With a copy to: Department of Fish and Wildlife
 1416 Ninth Street, 12th Floor
 Sacramento, CA 95814
 Attn: Director

1. SCOPE OF AGREEMENT

Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code and the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection fund of 2006 (Proposition 84, Public Resources Code Section 75055(c)), the Wildlife Conservation Board (“Grantor”) hereby grants to East Contra Costa County Habitat Conservancy, (“Grantee”) and East Bay Regional Park District, (“Successor Grantee”), a sum not to exceed [Insert Grant Amount (spelled out)] Dollars (\$[Insert Numerical Amount]) (“Grant Funds”), upon and subject to the terms and conditions of this Grant Agreement for Acquisition of Fee Interest (“Agreement”).

2. PURPOSES OF GRANT

Grantor is entering into this Agreement, and the Grant Funds shall be used, only for the purpose of the project (the “Project”) described as: Successor Grantee’s acquisition of fee title to approximately [Insert Number of Acres] acres of land known as the [Insert Name of Property], located in the County of Contra Costa, California (the “Property”). The Property is more particularly described in **Exhibit A** attached to this Agreement.

Grantee and Successor Grantee covenant and agree that if Grantor deposits the Grant Funds into escrow and Successor Grantee acquires the Property, the Property shall be held and used for the purposes of [Edit Pruposes of Grant Accordinly] preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) as well as protecting critical habitat connectivity between existing preserved lands (individually and collectively, the

“Purposes of Grant”).

Grantor understands the ECCC NCCP/HCP provides for low-intensity recreational uses on ECCC NCCP/HCP preserve lands, subject to appropriate constraints to protect covered species and natural communities, and that Property acquired with Grant Funds or used as a match for Grant Funds will be subject to such recreational uses, to the extent consistent with the ECCC NCCP/HCP. Notwithstanding the above, all parties acknowledge that nothing in this Agreement shall be deemed to impair pre-existing contracts or property rights on the real property proposed for acquisition.

3. CONDITIONS OF GRANT

Grantor’s obligation to disburse Grant Funds under this Agreement is conditioned upon and subject to the satisfaction of all of the following conditions precedent:

3.1. Grantor shall have reviewed and approved all documents pertaining to Successor Grantee’s acquisition of the Property, including, without limitation, appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, and instruments of conveyance. Such review and approval by Grantor shall not be unreasonably withheld or delayed. Successor Grantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of Grantor, any encumbrances or defects of title that Grantor determines are inconsistent, or could interfere, with the Purposes of Grant. Any outstanding security interests or monetary encumbrances affecting the Property shall have been terminated.

3.2. Grantee shall acquire the Property from a willing seller for a purchase price that does not exceed the fair market value of the Property, as established by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code. The appraisal shall be prepared pursuant to the Uniform Standards of Professional Appraisal Practice (USPAP) and approved by the Department of General Services. The appraisal shall become part of the project file maintained by Grantor and shall be retained for no less than three years from the date of value.

3.3. Grantor shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of Grantee and Successor Grantee, authorizing the execution and performance of this Agreement and the acquisition of the Property by Successor Grantee. Upon approval by Grantor, the authorizing resolution or other action shall be attached to this Agreement as **Exhibit B**.

3.4. Grantee and Successor Grantee shall have deposited, or caused to be deposited, into escrow all funds beyond those granted under this Agreement that are needed for Grantee and Successor Grantee to complete the Project.

3.5. Concurrently with this Agreement, WCB and Grantee and Successor Grantee have entered into Subgrant Agreement No. [Insert Subgrant Agreement Number], pursuant to which WCB agrees to subgrant to Grantee the entire federal share of funding to facilitate Grantee's acquisition of the Property.

3.6. Grantee shall have provided WCB with a written commitment by Grantee and Successor Grantee for management of the Property in perpetuity consistent with the Purposes of Grant and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, including but not limited to Conservation Measure 1.2, "Prepare and Implement Preserve Management Plans for Natural Habitat Lands". This commitment shall be attached to this Agreement as **Exhibit E**.

3.7. Grantee and Successor Grantee shall have provided WCB with written certification that the Acquisition is not intended, and shall not serve, to satisfy any local, State or federal regulatory requirement (e.g., mitigation for any local, State or federal permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA (the "Certification"). WCB understands that, following acquisition by Successor Grantee, the Property will be preserved and managed in accordance with and will fulfill certain commitments under the ECCC NCCP/HCP, to the extent provided for in the Federal Grant Application and the Federal Grant Agreement. The Certification shall be attached to this Agreement as **Exhibit F**.

4. DISBURSEMENT PROCEDURE

Except as provided in paragraph 17, upon satisfaction of all of the above Conditions of Grant, and subject to approval of the Project by the Wildlife Conservation Board at a duly noticed public meeting, Grantor shall disburse the Grant Funds directly into an escrow account established for the Project according to the following procedure:

4.1. Grantee shall request disbursement of the Grant Funds by sending a letter to the Grantor ("Disbursement Request"). The Disbursement Request shall be signed by an authorized representative of Grantee and shall contain all of the following:

- a. Name and address of Grantee;
- b. Project Name and Number of Grant Agreement;

- c. Dollar amount and purpose of disbursement;
- d. Name, address and telephone number of the title company or escrow holder, name of the escrow officer, and the escrow account number to which the Grant Funds will be disbursed; and
- e. A certification by Grantee that all funds (exclusive of the Grant Funds to be provided under this Agreement) needed to complete the Project have been secured and have been or will be deposited to escrow prior to or at the same time as the requested Grant Funds.

4.2. After receipt of the Disbursement Request, Grantor will promptly and timely (estimated to be 45 working days from the date Grantor receives the Disbursement Request) disburse an amount not to exceed [Insert Amount (spelled out)] Dollars (\$[Insert Numerical Amount]) into the designated escrow account.

5. GRANTEE'S AND SUCCESSOR GRANTEE'S COVENANTS

In consideration of Grantor's disbursement of the Grant Funds, Grantee and Successor Grantee hereby covenant and agree as follows:

5.1. The Grant Funds shall be used as purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the Property.

5.2. The Property shall be held and used only in a manner that is consistent with this Agreement, including the "Purposes of Grant" set forth in Section 2.

5.3. Grantee and Successor Grantee shall recognize the cooperative nature of the Project and shall provide credit to the Grantor, the California Department of Fish and Wildlife ("CDFW") and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Grantee and/or Successor Grantee referencing the Project. Subject to the mutual agreement of Grantor, Grantee and Successor Grantee regarding text, design and location, Grantee shall, or shall cause Successor Grantee to, post sign(s) on the Property to indicate the participation of Grantor and CDFW in Successor Grantee's purchase of the Property; *provided however*, that the sign(s) shall display Grantor's logo, as shown on **Exhibit C**.

5.4. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Executive Director of the Wildlife Conservation Board ("WCB"), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of

Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

5.5. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Director of WCB, or its successor.

5.6. Grantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Grant Agreement (the "Notice"), incorporating by reference this Agreement and giving public notice that Grantee received funds under this Agreement in order to assist Successor Grantee in acquiring the Property and that, in consideration for the receipt of the Grant Funds, Grantee and Successor Grantee have agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit D**.

5.7. Grantee or Successor Grantee shall provide to Grantor, promptly following the close of escrow, a conformed copy of the recorded deed(s) and Notice, with all recording information, as well as a copy of the final closing or settlement statement and the title insurance policy insuring Successor Grantee as the owner of fee simple title to the Property. Grantee shall also cause Successor Grantee to provide copies of such other documents related to the closing of the above transaction as requested by Grantor. These documents shall become part of the project file maintained by Grantor.

5.8. At the request of Grantor, not less than once in any period of three calendar years, Grantee and Successor Grantee shall allow designated staff of Grantor to access the Property to assess compliance with the terms, covenants and conditions of this Agreement.

5.9. Grantee and Successor Grantee agree to ensure that the terms and conditions of this Grant Agreement shall be taken into account when calculating the Baseline/Business As Usual of the Property for purposes of establishing carbon credits or other emissions offsets proposed to be authorized, created, sold, exchanged or transferred. Grantee and Successor Grantee agree to notify Grantor prior to any such proposed establishment.

5.10 [Include this Section if Property has Communication Tower, Wind Turbine, or Residential Lease Revenue] The Property will be acquired by Successor Grantee subject to one or a combination of residential leases that have been approved by WCB in accordance with the terms of this Agreement (collectively, the "Leases"). Following Successor Grantee's acquisition of the Property, Successor Grantee will be entitled to receive the lease revenues due under such Leases (collectively, the "Lease Revenues"). All Lease Revenues received by Successor Grantee shall be used by Successor Grantee as follows:

- a. To pay management costs associated with the management of any

real property that is (1) identified in the Federal Grant Agreement and described in Exhibit A attached to the Agreement, and (2) included in the ECCC NCCP/HCP preserve lands (collectively, the "Management Costs"), which Management Costs may include, without limitation, any combination of the following costs:

- (i) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
- (ii) Fence repair, replacement and construction;
- (iii) Maintaining roads and access facilities;
- (iv) Control of invasive or exotic species;
- (v) Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
- (vi) Removal of debris & unnecessary structures, including buildings & unnecessary roads;
- (vii) Other habitat enhancement activities;
- (viii) Monitoring of habitat conditions and of ECCC HCP/NCCP covered species; and
- (ix) Adaptive management activities guided by monitoring; and/or

b. To fund a non-wasting endowment that will provide funding for those Management Costs incurred following the date(s) Lease Revenues will be received and available to cover such costs.

The provisions of this Section 5.10 of this Agreement only apply to Lease Revenues received under the Leases, which expressly include a residential lease, and do not apply to lease revenues, if any, received under any grazing leases or other types of leases.

6. BREACH AND DEFAULT

6.1. In the event of a breach of any of the terms, covenants or conditions of this Agreement, Grantor shall give written notice to Grantee and Successor Grantee describing the breach. Notice shall be deemed given when personally delivered or deposited in the United States Mail, postage prepaid, or with a reliable over-night courier, addressed to Grantee and Successor Grantee at the addresses for notices set forth at the beginning of this Agreement.

6.2. If Grantee or Successor Grantee does not cure the breach within 90 days of the date a notice of breach is given or, if the breach is not curable within said 90-day period, Grantee or Successor Grantee does not commence the cure within the 90-day period and diligently pursue it to completion, then Grantee and Successor Grantee shall be in default ("Default") under this Agreement.

6.3. Grantee and Successor Grantee shall also be in Default under this

Agreement upon the discovery that information given to Grantor by or on behalf of Grantee or Successor Grantee under or in connection with obtaining this Agreement was materially false or misleading. Notice of a Default under this Section 6.3 shall be given in accordance with Section 6.1.

7. REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity, Grantor shall have the following remedies:

7.1. Grantor may seek specific performance of this Agreement. Grantee and Successor Grantee agree that payment by Grantee and/or Successor Grantee to Grantor of an amount equal to the Grant Funds disbursed under this Agreement would be inadequate compensation to Grantor for any Default because the benefit to be derived by Grantor from full compliance by Grantee and Successor Grantee with the terms of this Agreement is the preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by Grantor by way of Grant Funds under this Agreement.

7.2. Grantor may require Grantee and/or Successor Grantee to convey a conservation easement over the Property in favor of Grantor or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and to pay, or cause Successor Grantee to pay, a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum granted to Grantee pursuant to this Agreement, together with interest compounded semi-annually starting from the date of this Agreement to and including the date of payment, at a rate equivalent to that which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account. The conservation easement shall be for the purposes of preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands. The value of the conservation easement shall be determined by a fair market value appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and acceptable to Grantor. The appraisal shall be prepared pursuant to USPAP and, if required by law, approved by the Department of General Services.

7.3. Despite the contrary provisions of Article 6 of this Agreement, if Grantor determines that circumstances require immediate action to prevent or mitigate

interference with the Purposes of Grant arising from a breach of this Agreement, then Grantor may pursue its remedies without waiting for the period provided for cure to expire.

8. NONPROFIT ORGANIZATION GRANTEE

If the existence of Successor Grantee is terminated for any reason, title to all interest in the Property acquired with Grant Funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in the Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this Section 8 shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

9. TERM

9.1. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and received in the respective offices of Grantee, Successor Grantee and Grantor, together with the resolution described in Section 3.3 (the "Effective Date"). Grantee, Successor Grantee and Grantor shall each sign three original Agreements. Each party shall receive one completely executed original.

9.2. The term of this Agreement will commence on the date authorized by the Wildlife Conservation Board, as set forth in Section 16 and, unless previously terminated as provided in Section 9.3, will expire on [REDACTED], 201[REDACTED] if escrow has not closed by that date.

9.3. Prior to Successor Grantee's close of escrow for acquisition of the Property, any party may terminate this Agreement for any reason or for no reason, by providing the other parties with not less than 15 days written notice of such termination. If this Agreement is terminated after Grantor's deposit of the Grant Funds into escrow but before close of escrow for Successor Grantee's acquisition of the Property, Grantee shall cause the escrow holder to immediately return all Grant Funds to Grantor and Grantee shall bear all costs and expenses of such termination.

9.4. The provisions of this Agreement that are not fully performed as of the close of escrow, including but not limited to Section 2 (Purposes of Grant) and Section 5 (Grantee's and Successor Grantee's Covenants), shall survive the close of escrow for Successor Grantee's acquisition of the Property and remain in full force and effect.

10. LIABILITY; MODIFICATIONS; INTERPRETATION

10.1. Grantee and Successor Grantee shall indemnify, protect and hold harmless Grantor, CDFW, the State of California, and their respective members, directors, officers, agents, and employees (each an "Indemnified Party"), from and against any and all claims, demands, damages, liabilities, losses, costs (including attorneys' fees) and expenses (collectively, "Claims") arising out of, connected with, or incident to this Agreement or the acquisition, ownership, use, management, operation or maintenance of the Property, except that Grantee and Successor Grantee shall have no obligation to indemnify or hold harmless an Indemnified Party for Claims caused by the negligent or wrongful act of that Indemnified Party.

10.2. This Agreement may be modified only by written amendment signed by Grantor, Grantee, and Successor Grantee. No prior or contemporaneous oral understanding or agreement not incorporated in this Agreement shall be binding on either of the parties.

10.3. All references herein to "Grantee" are intended to refer to Grantee or its designee, successor or assignee as may be approved by WCB (including, upon its acquisition of the Property, Successor Grantee).

10.4. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, that shall not affect any other provision of this Agreement or applications of the Agreement that can be given effect without the invalid provision or application and to this end the provisions of this Agreement are severable.

10.5. Grantee, Successor Grantee, and their officers, directors, employees, agents and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, director, officer, agent, employee or representative of Grantor.

10.6. This Agreement is not assignable or transferable by Grantee or Successor Grantee, either in whole or in part, except in connection with a transfer of the Property approved by Grantor under Section 5.4 of this Agreement.

10.7. Any costs incurred by Grantor, where Grantor is the prevailing party, in enforcing the terms of this Agreement against Grantee, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Grantee and Successor Grantee.

10.8. Enforcement of the terms of this Agreement by Grantor shall be at the discretion of Grantor, and any forbearance by Grantor to exercise its rights under this Agreement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or any of the rights of Grantor under it.

10.9. Grantor will notify Grantee and Successor Grantee as promptly as possible following Grantor's receipt of any request for information related to the Project under the California Public Records Act (Government Code Section 6250 *et seq.*).

11. CONDEMNATION

If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor, Grantee, and Successor Grantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award (as defined below) which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor Grantee paid to acquire the Property (e.g., if Grantor provided \$50,000.00 of Grant Funds and the purchase price was \$75,000.00, then Grantor would be entitled to two-thirds of the Award). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Property so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Successor Grantee in connection with the taking or purchase.

12. AUDIT

Grantee and Successor Grantee shall maintain complete and accurate records of its actual Project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least four years after final disbursement by Grantor. During such time, Grantee and Successor Grantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by Grantor shall be borne by Grantee and Successor Grantee. The audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

13. UNION ORGANIZING

By signing this Agreement, Grantee and Successor Grantee hereby acknowledge the applicability of Government Code Sections 16645 through 16649 to this Agreement and certify that:

13.1. No state funds disbursed by this grant will be used to assist, promote or deter union organizing;

13.2. Grantee and Successor Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to

that expenditure;

13.3. Grantee and Successor Grantee shall, where state funds are not designated as described in Section 13.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program; and

13.4. If Grantee or Successor Grantee makes expenditures to assist, promote or deter union organizing, Grantee and Successor Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee and Successor Grantee shall provide those records to the Attorney General upon request.

14. NON-DISCRIMINATION

During the performance of this Agreement, Grantee and Successor Grantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Grantee and Successor Grantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee and Successor Grantee shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 (a – f) *et seq.*), and applicable regulations (California Code of Regulations, Title 2, Section 7285 *et seq.*). The regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated by reference into this Agreement. Grantee and Successor Grantee shall give written notice of its obligations under this non-discrimination clause to labor organizations with which Grantee or Successor Grantee has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Grantee and Successor Grantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Project.

15. EXHIBITS

Each of the Exhibits referenced in this Agreement is incorporated by reference as though set forth in full herein. The following Exhibits are attached to this Agreement:

Exhibit A – Legal Description

Exhibit B – Certified Resolution or Other Action of Governing Body of Grantee

and Successor Grantee

Exhibit C – Grantor’s Logo

Exhibit D – Form of Notice of Unrecorded Grant Agreement

Exhibit E – Commitment for Management and Funding

Exhibit F – Certificate of No Regulatory Requirement

16. AUTHORIZATION

The signature of the Executive Director certifies that at the Wildlife Conservation Board meeting held on [REDACTED], 201[REDACTED], the Board authorized the award of an acquisition grant to Grantee as provided in this Agreement.

17. NON-AVAILABILITY OF FUNDS.

Grantor shall not be obligated to disburse any Grant Funds under this Agreement unless and until the bond cash proceeds identified for allocation to the Project (as further specified in the Funding Certification attached to this Agreement) are released by the State Treasurer’s Office to Grantor for expenditure for this grant. Despite any contrary provision of this Agreement, no request for disbursement submitted prior to the release of such bond cash proceeds to Grantor shall be effective.

IN WITNESS WHEREOF, this Agreement is made and entered into this ___ day of _____, _____ in the State of California, by and between the Wildlife Conservation Board East Contra Costa County Habitat Conservancy and East Bay Regional Park District, each of which hereby agrees to the terms and conditions referenced on pages 1 through 14, along with Exhibits A through F, of this Agreement.

STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD

GRANTEE:
EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY

By: _____
John P. Donnelly

By: _____
Aibigail Fateman

Title: Executive Director

Title: Interim Executive Director

Date: _____

Date: _____

SUCCESSOR GRANTEE
EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

Title: General Manager

Date: _____

EXHIBIT A

(Legal Description)

EXHIBIT B

(Resolution)

EXHIBIT C

(WCB Logo)



EXHIBIT D

(Notice of Unrecorded Grant Agreement)

RECORDING REQUESTED BY:

East Contra Costa County)
Habitat Conservancy)
30 Muir Road)
Martinez, CA 94553)
Attn: Executive Director)

WHEN RECORDED, RETURN TO:

State of California)
Wildlife Conservation Board)
Attn: Executive Director)
1807 13th Street, Suite 103)
Sacramento, CA 95811-7137)

Space above line for Recorder's use

APNs: [Insert Assessor's Parcel Number(s)]
Property Name: [Insert Property Name]
County: Contra Costa County

**NOTICE OF UNRECORDED GRANT AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)**

This Notice of Unrecorded Grant Agreement ("Notice"), dated as of [redacted], 201[redacted], is made by East Contra Costa County Habitat Conservancy ("Grantee"), and the East Bay Regional Park District ("Successor Grantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Grantee, Successor Grantee, and the Wildlife Conservation Board ("Grantor" or "WCB"), a subdivision of the State of California, affecting the real property described below.

1. WCB, Grantee and Successor Grantee have entered into the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest, Grant Agreement No. [Insert WCB Grant Number] ("Grant" or "Agreement"), pursuant to which WCB grants to Grantee certain funds for Successor Grantee's acquisition of fee title to approximately [Insert Number of Acres] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from [Insert Name of Seller] ("Seller"). The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Grant.

2. Grantee and Successor Grantee agree under the terms of the Grant to execute this Notice to give notice that Grantee received funds under the Agreement to

assist Grantee in acquiring the Property and that, in consideration of the Grant Funds, Grantee and Successor Grantee have agreed to the terms of the Grant. The Grant is incorporated by reference into this Notice.

3. Grantee and Successor Grantee covenant and agree in Section 5 of the Agreement as follows:

3.1. The Property shall be held and used only in a manner that is consistent with the Agreement, including the following “Purposes of Grant” set forth in Section 2 of the Agreement:

[Edit Purposes of Grant Accordingly] The Property shall be held and used for the purposes of preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) as well as protecting critical habitat connectivity between existing preserved lands (individually and collectively, the “Purposes of Grant”).

3.2. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California, acting through the Executive Director of the Wildlife Conservation Board (“WCB”), or its successor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

3.3. The Property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State of California, acting through the Executive Director of WCB or its successor.

3.4. At the request of Grantor, not less than once in any period of three calendar years, Grantee and Successor Grantee shall allow designated staff of Grantor to access the Property to assess compliance with the terms, covenants and conditions of this Agreement.

4. Pursuant to Section 7 of the Agreement, in the event of a Default under the Agreement, in addition to any and all remedies available at law or in equity, Grantor may seek specific performance of the Grant and may require Successor Grantee to convey a conservation easement over the Property in favor of Grantor (or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements and which is willing and financially able to assume all of the obligations and responsibilities of Successor Grantee), and to pay a sum to Grantor which, when combined with the fair market value of the conservation easement, equals the sum

granted to Grantee pursuant to the Agreement, together with interest thereon as provided in the Agreement.

5. Pursuant to Section 8 of the Agreement, if Successor Grantee is a nonprofit organization and the existence of Successor Grantee is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the State of California. However, prior to that termination, upon approval of Grantor, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest and right of entry on the part of the State of California.

6. Pursuant to Section 9.2 of the Agreement, the Grant shall remain in full force and effect from and after the close of escrow for the acquisition of the Property.

7. Pursuant to Section 10.3 of the Agreement, the Grant shall be binding upon Grantee and all designees, successors and assigns of Grantee (including, upon its acquisition of the Property, Successor Grantee).

8. Pursuant to Section 11 of the Agreement, if all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, Grantor, Grantee and Successor Grantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. Grantor shall be entitled to the share of the Award, which equals the ratio of the Grant Funds provided by Grantor to the purchase price Successor Grantee paid to acquire the Property.

9. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Grantee, Successor Grantee and WCB each has rights, duties and obligations under the Agreement, which are not set forth in this Notice. To the extent the terms of this Notice conflict with the Agreement, the terms of the Agreement shall govern and control.

10. For additional terms and conditions of the Agreement, reference should be made to the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest by and between WCB, Grantee and Successor Grantee that commenced [REDACTED], 201[REDACTED] and is on file with the Wildlife Conservation Board, 1807 13th Street, Suite 103, Sacramento, California 95811-7137; *mailing address*: Wildlife Conservation Board, c/o Department of Fish and Wildlife, P. O. Box 944209, Sacramento, CA 94244-2090.

GRANTEE: EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____
Abigail Fateman

Title: Interim Executive Director

Date: _____

SUCCESSOR GRANTEE: EAST BAY REGIONAL PARK DISTRICT

By: _____
Robert E. Doyle

Title: General Manager

Date: _____

Exhibit A

Legal Description

EXHIBIT E

Commitment for Management and Funding

The undersigned are the Executive Director of the East Contra Costa County Habitat Conservancy (ECCCHC) and the General Manager of the East Bay Regional Park District (EBRPD), the Grantee and Successor Grantee, respectively, under the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit E** forms a part. Grantee and Successor Grantee hereby commit to the Wildlife Conservation Board (WCB) as follows:

ECCCHC is the agency responsible for ensuring the preservation and management of lands acquired pursuant to the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (ECCC NCCP/HCP). Conservation Measure 1.2 ("Prepare and Implement Preserve Management Plans for Natural Habitat Lands") of the ECCC NCCP/HCP commits the ECCCHC to ensuring the preparation and implementation of Preserve Management Plans for acquired lands and sets forth standards for such management. Section 8.6.2 of the ECCC NCCP/HCP provides the ECCCHC with the ability to cooperate with other entities such as EBRPD to acquire and manage lands pursuant to the ECCC NCCP/HCP.

EBRPD is a party to an agreement implementing the ECCC NCCP/HCP and is anticipated to be a primary owner and manager of lands acquired pursuant to the ECCC NCCP/HCP. EBRPD will be the owner and manager of the Property (as defined in the Agreement). EBRPD owns and manages more than 100,000 acres of land in Alameda and Contra Costa Counties, much of which is similar in character and management need to the lands to be acquired pursuant to the Agreement. ECCCHC will provide assistance to EBRPD with management of Property, including funding assistance.

Grantee and Successor Grantee hereby commit to manage the Property (as defined in the Agreement) located in Contra Costa County, California, in perpetuity and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, consistent with the following Purposes of Grant:

[Edit Purposes of Grant Accordingly] "preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan ("ECCC NCCP/HCP") as well as protecting critical habitat connectivity between existing preserved lands"

Specific management actions for the Property are not known at this time. ECCCHC, with assistance from EBRPD, are in the process of developing a Preserve Management Plan for the Property. Management actions could include removal, repair and replacement of fences, inclusion of improved management conditions in the grazing lease and supervision of the grazing tenant, and control of exotic species. Anticipated costs of land management activities under the ECCC NCCP/HCP are set forth in Tables 9-1 and 9-2 and supporting detail is provided in Appendix G.

In furtherance of the commitment set forth above, and in order to manage the property consistent with the Purposes of this Agreement, Grantee and Successor Grantee will fund management in perpetuity consistent with the funding plan established in Section 9.3 of the ECCC NCCP/HCP. ECCCHC and EBRPD anticipate allocating the costs of such management among the two agencies consistent with the general principle that ECCCHC will pay for those management costs relating to management and monitoring of the species and EBRPD will pay for those management costs relating to public access and public use of the Property. ECCCHC and EBRPD anticipate entering into one or more future agreements confirming their respective obligations to pay management costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment.

Grantee and Successor Grantee make this Commitment with the understanding that if WCB enters into the Agreement and grants funds (as defined in the Agreement) to Successor Grantee, WCB will do so in reliance on this Commitment.

Dated: _____, 20____

GRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: Abigail Fateman

Title: Interim Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT F

Certificate of No Regulatory Requirement

The undersigned are the Executive Director of the East Contra Costa County Habitat Conservancy and the General Manager of the East Bay Regional Park District, the Grantee and Successor Grantee, respectively, under the California Wildlife Conservation Board Grant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit F** forms a part. Grantee and Successor Grantee hereby certifies to the Wildlife Conservation Board (WCB) as follows:

Successor Grantee's acquisition of the Property (as defined in the Agreement) located in Contra Costa County, California, is not intended, and shall not serve, to satisfy any local, state or federal regulatory requirement (e.g., mitigation for any local, state or federal authorization or permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA, provided that Property acquired with any Grant Funds will be preserved and managed in accordance with, and will fulfill certain commitments of, the ECCC NCCP/HCP, to the extent consistent with the Agreement.

Grantee and Successor Grantee make this Certificate with the understanding that if WCB enters into the Agreement and grants funds (as defined in the Agreement) to Grantee and Successor Grantee, WCB will do so in reliance on this Certificate.

Dated: _____, 20____

GRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: Abigail Fateman

Title: Interim Executive Director

SUCCESSOR GRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

**CALIFORNIA WILDLIFE CONSERVATION BOARD
SUBGRANT AGREEMENT FOR ACQUISITION OF FEE INTEREST**

**Cooperative Endangered Species Conservation Fund
(Section 6 of the Federal Endangered Species Act) Grant Program**

Subgrantee: Full, Legal Name: East Contra Costa County Habitat Conservancy
Address: 30 Muir Road
Martinez, CA 94553

Attn: Abigail Fateman, Interim Executive Director

Phone: (925) 674-7820

Fax: (925) 674-7250

E-mail: abigail.fateman@dcd.cccounty.us

Federal Employer ID No./Taxpayer ID No.: 26-2547338

Successor Subgrantee: Name: East Bay Regional Park District
Address: P.O. Box 5381
Oakland, CA 94605-0381

Attn: Liz Musbach, Land Acquisition Manager

Phone: (510) 544-2610

Fax: (510) 569-1417

E-Mail: lmusbach@ebparks.org

Federal Employer ID No./Taxpayer ID No.: 94-60000-591

Project Name: [Insert Name of Property]

Project Location: Contra Costa County

Section 6 Grant Agreement Number: [Insert Section 6 Grant Agreement Number]

WCB Subgrant Agreement Number: [Insert WCB Subgrant Agreement Number]

WCB Project ID: [Insert WCB Project ID]

WCB Subgrant Agreement Amount: Not to exceed \$[Insert Numerical Amount]

Notices to be delivered to:

For Subgrantee: East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553
Attn: Executive Director

For Successor
Subgrantee: East Bay Regional Park District
P.O. Box 5381
Oakland, CA 94605-0381
Attn: Land Acquisition Manager

For WCB: Wildlife Conservation Board
1807-13th Street, Suite 103
Sacramento, CA 95811-7137
Attn: Executive Director

With a copy to: Department of Fish and Wildlife
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Grant Coordinator

1. BACKGROUND

1.1. The U.S. Department of the Interior, Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife (“CDFW”) have entered into a Cooperative Agreement for the benefit of endangered, threatened and rare fish, wildlife and plants which are resident in the State of California.

1.2. USFWS has approved the Application for Federal Assistance submitted by CDFW, [Insert Grant Number] (the “Federal Grant Application”), for Cooperative Endangered Species Conservation Fund (Section 6 of the Federal Endangered Species Act) Grant Program funding (“Federal Grant Funds”) to facilitate the acquisition of real property identified in the Federal Grant Application. The Notice of Federal Assistance Approval for [Insert Grant Number] (the “Federal Approval Notice”) which USFWS issued to CDFW specifies terms of acceptance of the Federal Grant Funds. CDFW and USFWS have entered into Grant Agreement for Grant No. [Insert Grant Number], Grant Title: [Insert Grant Title] (the “Federal Grant Agreement”) which specifies additional terms and conditions of the grant of Federal Grant Funds. The Federal Approval Notice and Federal Grant Agreement, including the terms and conditions set forth or incorporated directly or by reference in either or both of these instruments, are referred to in this Subgrant Agreement (“Agreement”) individually and collectively as the “Federal Assistance Requirements”.

1.3. Successor Subgrantee has entered into an agreement to purchase the Property described in Section 3.1 of this Agreement, which Property is a portion of the real property identified in the Federal Grant Application. Subgrantee has requested a subgrant of Federal Grant Funds from CDFW, acting through the Wildlife Conservation Board (“WCB”), to facilitate Successor Subgrantee’s acquisition of the Property (the “Acquisition”).

1.4. USFWS will permit CDFW, acting through WCB, to subgrant Federal Grant Funds to Subgrantee for the purpose of facilitating Successor Subgrantee’s Acquisition upon and subject to the Federal Assistance Requirements and the terms and conditions set forth in this Agreement.

1.5. USFWS requires that non-federal funds equal to fifty five percent (55%) of the total estimated program costs, as set forth in the Federal Grant Application, must be provided as a match for the Federal Grant Funds.

1.6. Concurrently with this Agreement, WCB, Subgrantee and Successor Subgrantee have entered into Grant Agreement No. [Insert Grant Agreement Number], pursuant to which WCB agrees to grant to Subgrantee a portion of the non-federal share of funding for the Acquisition.

2. SCOPE OF AGREEMENT

2.1. Pursuant to Chapter 4 of Division 2 (commencing with Section 1300) of the California Fish and Game Code, WCB hereby subgrants to Subgrantee Federal Grant Funds in a sum not to exceed [Insert Subgrant Funds Amount (spelled out)] Dollars (\$[Insert Numerical Amount]) (the “Subgrant Funds”), upon and subject to the terms and conditions of this Agreement.

3. PURPOSES OF SUBGRANT

3.1. WCB is entering into this Agreement, and the Subgrant Funds shall be used, only for the purpose of facilitating Successor Subgrantee’s purchase of fee title to approximately [Insert Numerical Acreage] acres of land known as the [Insert Name of Property] and designated Assessor’s Parcel Numbers [Insert Assessor’s Parcel Number(s)] located in the County of Contra Costa, California (the “Property”). The Property is more particularly described in **Exhibit A** attached to this Agreement.

3.2. Subgrantee and Successor Subgrantee covenant and agree that if WCB requests disbursement of the Subgrant Funds and Successor Subgrantee acquires the Property, the Property shall be held and used for [Edit Following Grant Purpose(s)] the purposes of preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) as well as protecting critical

habitat connectivity between existing preserved lands (individually and collectively, the "Purposes of Subgrant").

WCB understands the ECCC NCCP/HCP provides for low-intensity recreational uses on ECCC NCCP/HCP preserve lands, subject to appropriate constraints to protect covered species and natural communities, and that Property acquired with Subgrant Funds or used as a match for Subgrant Funds will be subject to such recreational uses, to the extent consistent with the ECCC NCCP/HCP. Notwithstanding the above, all parties acknowledge that nothing in this Agreement shall be deemed to impair pre-existing contracts or property rights on the real property proposed for Acquisition.

4. **CONDITIONS PRECEDENT TO SUBGRANT**

4.1. The obligation of WCB under this Agreement to request disbursement of the Subgrant Funds is conditioned upon and subject to the satisfaction of all of the following conditions precedent:

a. WCB shall have reviewed and approved all documents pertaining to Successor Subgrantee's acquisition of the Property, including but not limited to appraisals, preliminary title reports and items referenced therein, options, agreements for purchase and sale, escrow instructions, closing or settlement statements, and instruments of conveyance. Such review and approval by WCB shall not be unreasonably delayed or withheld. Subgrantee shall have removed or caused to be removed, or otherwise addressed to the satisfaction of WCB, any encumbrances or defects of title that WCB determines are inconsistent or could interfere with the Purposes of Subgrant. Any outstanding security interests or monetary encumbrances affecting the Property shall have been terminated or the holder of the encumbrance shall have irrevocably committed to remove its security interest or monetary encumbrance prior to the recording of the deed(s) conveying the Property to Successor Subgrantee.

b. Subgrantee shall have provided WCB with a letter or other written acknowledgment (which may be contained in the Successor Subgrantee's option or purchase agreement with the landowner) demonstrating that the landowner is a willing seller of the Property.

c. The purchase price of the Property shall not exceed its fair market value as established by an appraisal that is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the California Business and Professions Code. The appraisal shall have been prepared pursuant to the Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA") and the Uniform Standards of Professional Appraisal Practice ("USPAP"), and approved by the California Department of General Services ("DGS Review"). The

appraisal and DGS Review shall also have been submitted to and approved in writing by USFWS. The appraisal shall become part of the project file maintained by WCB and shall be retained for no less than three years from the date WCB requests disbursement of the Subgrant Funds from the federal Payment Management System.

d. Subgrantee and Successor Subgrantee shall have provided WCB with written certification that the Acquisition is not intended, and shall not serve, to satisfy any local, State or federal regulatory requirement (e.g., mitigation for any local, State or federal permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended (“ESA”), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA (the “Certification”). WCB understands that, following acquisition by Successor Subgrantee, the Property will be preserved and managed in accordance with and will fulfill certain commitments under the ECCC NCCP/HCP, to the extent provided for in the Federal Grant Application and the Federal Grant Agreement. The Certification shall be attached to this Agreement as **Exhibit B**.

e. Subgrantee shall have provided WCB with a written commitment by Subgrantee and Successor Subgrantee for management of the Property in perpetuity consistent with the Purposes of Subgrant and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, including but not limited to Conservation Measure 1.2, “Prepare and Implement Preserve Management Plans for Natural Habitat Lands.” This commitment shall be attached to this Agreement as **Exhibit C**.

f. Subgrantee shall have provided WCB with assurances and certifications of compliance with federal requirements (*i.e.*, Standard Form 424-D available at <http://training.fws.gov/fedaid/toolkit/toolkit.pdf>) by Subgrantee and Successor Subgrantee. Upon execution by Subgrantee and Successor Subgrantee, these assurances and certifications shall be attached to this Agreement as **Exhibit D**.

g. WCB shall have reviewed and approved a certified resolution or other appropriate action of the governing board or governing body of each of Subgrantee and Successor Subgrantee, authorizing the execution and performance of this Agreement and the acquisition of the Property by Successor Subgrantee. Upon approval by WCB the authorizing resolution or other action shall be attached to this Agreement as **Exhibit E**.

h. WCB shall be ready, willing and able to request payment of the Subgrant Funds from the federal Payment Management System for deposit with the State Treasurer’s Office.

i. WCB shall be ready, willing and able to request disbursement of the Subgrant Funds from the State Treasury for deposit into an escrow account designated by Subgrantee that has been established specifically for the purpose of the Acquisition (the “Escrow”).

j. Subgrantee shall have deposited, or caused to be deposited, into the Escrow all funds beyond those granted under this Agreement that are needed for Successor Subgrantee to complete the Acquisition.

k. WCB shall have confirmed that the non-Federal share of funding required for the Acquisition has been provided.

5. DISBURSEMENT PROCEDURE

5.1. Upon satisfaction of all the Conditions Precedent to Subgrant set forth in Section 4.1 a – g, j and k, above, and subject to approval of the acceptance of the Subgrant Funds and the subgrant by the Wildlife Conservation Board at a duly noticed public meeting, Subgrantee shall send a letter to WCB (the “Disbursement Request”), asking it to request disbursement of the Subgrant Funds from (a) the federal Payment Management System for deposit with the State Treasurer’s Office and following such deposit, (b) the State Treasury for deposit into Escrow. The Disbursement Request shall be signed by an authorized representative of Subgrantee and shall contain all of the following:

- a. Name and address of Subgrantee;
- b. Project Name and Number of Agreement;
- c. Dollar amount and purpose of disbursement;
- d. Name, address and telephone number of the title company or escrow holder, and the account number of the Escrow to which the Subgrant Funds will be disbursed; and
- e. Certifications by Subgrantee and Successor Subgrantee that all funds (exclusive of the Subgrant Funds to be provided under this Agreement) needed to complete the Acquisition have been secured and have been or will be deposited to Escrow at or about the same date as the requested Subgrant Funds.

5.2. After receipt of a complete and proper Disbursement Request, WCB will promptly and timely (estimated to be 45 working days from the date the WCB receives the Disbursement Request) request payment from the federal Payment Management System to the State Treasurer’s Office of an amount not to exceed [Insert Amount (spelled out)] Dollars (\$[Insert Numerical Amount]) for deposit into the State Treasury.

After such deposit, WCB will promptly and timely request payment of the same amount from the State Treasury for deposit into Escrow.

6. SUBGRANTEE'S AND SUCCESSOR SUBGRANTEE'S COVENANTS

6.1. In consideration of the subgrant of the Subgrant Funds, Subgrantee and Successor Subgrantee hereby covenant and agree as follows:

a. The Subgrant Funds shall be used as purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the Property.

b. The Property shall be held and used only in a manner that is consistent with this Agreement, including the "Purposes of Subgrant" set forth in Section 3.2.

c. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.

d. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to CDFW, to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property. Such terms and conditions are contained in the Federal Assistance Requirements.

e. Subgrantee and Successor Subgrantee shall recognize the cooperative nature of the Acquisition and shall provide credit to WCB, CDFW, USFWS, and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Subgrantee and/or Successor Subgrantee which reference the Acquisition. Subject to the mutual agreement of WCB and Subgrantee regarding text, design and location, Subgrantee shall, or shall cause Successor Subgrantee to, post sign(s) on the Property to indicate the participation of WCB, CDFW and USFWS in Successor Subgrantee's purchase of the Property; *provided however*, that the sign(s) shall display the logo of WCB, as shown on **Exhibit F**.

f. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged, or otherwise conveyed without the written approval of the State of California (the "State"), acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements). The State shall not unreasonably withhold its approval as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including but not limited to Sections 6.1 (b) and (c), and each successor-in-interest assumes and agrees in a writing reasonably acceptable to the State to be bound by the terms, covenants and conditions of this Agreement.

g. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the State, acting through the Executive Director of WCB, or its successor, and USFWS (to the extent required pursuant to the Federal Assistance Requirements).

h. Subgrantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Agreement to Subgrant (the "Notice"), incorporating by reference this Agreement and giving public notice that Subgrantee received funds under this Agreement in order to assist Successor Subgrantee in acquiring the Property and that, in consideration for the receipt of the Subgrant Funds, Subgrantee and Successor Subgrantee have agreed to the terms of this Agreement. The Notice shall be in the form of **Exhibit G**.

i. Subgrantee shall cause Successor Subgrantee to provide to WCB, promptly following the close of escrow, a conformed copy of the recorded deed(s) and Notice, with all recording information set forth thereon, as well as a copy of the final Escrow closing or settlement statement and the title insurance policy insuring Successor Subgrantee as the owner of fee simple title to the Property. Subgrantee shall also cause Successor Subgrantee to provide copies of such other documents related to the closing of the Acquisition as requested by WCB. These documents shall become part of the project file maintained by WCB. Upon receipt of the above documents, WCB will provide USFWS with a copy of all documents for their files.

j. At the request of WCB, not less than once in any period of three calendar years, Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFW and USFWS to access the Property to assess compliance with the terms, covenants, and conditions of this Agreement. *Provided, however,* that if more frequent access is necessary to comply with applicable federal requirements (including, but not limited to, 50 C.F.R. Section 81.13) then designated staff or representatives of WCB, CDFW and USFWS shall be allowed access to the Property at such intervals as WCB, CDFW or USFWS considers appropriate to meet federal requirements to which it is subject.

k. Subgrantee agrees to ensure that the terms and conditions of this Agreement shall be taken into account when calculating the Baseline/Business As Usual of the Property for purposes of establishing carbon credits or other emissions offsets proposed to be authorized, created, sold, exchanged or transferred. Subgrantee agrees to notify WCB prior to any such proposed establishment.

l. **[Insert this Section if Applicable]** The Property will be acquired by Successor Subgrantee subject to one or a combination of residential leases that

have been approved by WCB in accordance with the terms of this Agreement (collectively, the "Leases"). Following Successor Subgrantee's acquisition of the Property, Successor Subgrantee will be entitled to receive the lease revenues due under such Leases (collectively, the "Lease Revenues"). All Lease Revenues received by Successor Subgrantee shall be used by Successor Subgrantee as follows:

(i) To pay management costs associated with the management of any real property that is (1) identified in the Federal Grant Agreement, and (2) included in the ECCC NCCP/HCP preserve lands (collectively, the "Management Costs"), which Management Costs may include, without limitation, any combination of the following costs:

- (A) Personnel performing day to day oversight, management and protection of such properties (e.g. the cost of rangers, police, and fire personnel);
- (B) Fence repair, replacement and construction;
- (C) Maintaining roads and access facilities;
- (D) Control of invasive or exotic species;
- (E) Improvement of livestock watering facilities to prevent degradation of natural waters and wetlands;
- (F) Removal of debris & unnecessary structures, including buildings & unnecessary roads;
- (G) Other habitat enhancement activities;
- (H) Monitoring of habitat conditions and of ECCC HCP/NCCP covered species; and
- (I) Adaptive management activities guided by monitoring;

and/or

(ii) To fund a non-wasting endowment that will provide funding for those Management Costs incurred following the date(s) Lease Revenues will be received and available to cover such costs.

The provisions of this Section 6.1.k of this Agreement only apply to Lease Revenues received under the Leases, which expressly include residential leases, and do not apply to lease revenues, if any, received under any grazing leases or other types of leases.

7. BREACH AND DEFAULT

7.1. In the event of a breach of any of the terms, covenants or conditions of this Agreement, WCB shall give written notice to Subgrantee and Successor Subgrantee, describing the breach. Notice shall be deemed given when personally delivered or deposited in the United States Mail, postage prepaid, or with a reliable over-night courier, addressed to Subgrantee and Successor Subgrantee at their respective addresses for notices set forth at the beginning of this Agreement (or such

changed address of which Subgrantee or Successor Subgrantee has notified WCB in writing pursuant to this Agreement).

7.2. If Subgrantee or Successor Subgrantee do not cure the breach within 90 days of the date a notice of breach is given or, if the breach is not curable within said 90-day period, Subgrantee or Successor Subgrantee do not commence the cure within the 90-day period and diligently pursue it to completion, then Subgrantee and Successor Subgrantee shall be in default (“Default”) under this Agreement.

7.3. Subgrantee and Successor Subgrantee shall also be in Default under this Agreement upon the discovery that information given to WCB by or on behalf of Subgrantee or Successor Subgrantee under or in connection with obtaining this Agreement was materially false or misleading. Notice of a Default under this Section 7.3 shall be given in accordance with Section 7.1.

8. REMEDIES

In the event of a Default under this Agreement, in addition to any and all remedies available at law or in equity, WCB shall have the following remedies:

8.1. WCB may seek specific performance of this Agreement. Subgrantee and Successor Subgrantee agree that payment by Subgrantee and/or Successor Subgrantee to WCB of an amount equal to the Subgrant Funds disbursed under this Agreement would be inadequate compensation for any Default because the benefit to be derived from full compliance with the terms of this Agreement is preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by way of Subgrant Funds under this Agreement.

8.2. WCB may require Subgrantee to cause Successor Subgrantee to convey a conservation easement over the Property in favor of the State or, at the election of WCB, another entity or organization authorized by California law to acquire and hold conservation easements. Furthermore, WCB may also require Subgrantee to pay, or cause Successor Subgrantee to pay, a sum to WCB which, when combined with the fair market value of the conservation easement, equals the amount of Subgrant Funds provided by this Agreement, together with interest compounded semi-annually starting from the date of default, at a rate equivalent to the higher of (a) that which is being earned at the time of Default on deposits in the State of California’s Pooled Money Investment Account or (b) the applicable rate of interest under the Federal Assistance Requirements. The conservation easement shall be for the purposes of preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the ECCC NCCP/HCP as well as protecting critical habitat connectivity between existing preserved lands. The value of the conservation easement shall be determined by an appraisal that

is conducted by an appraiser who is licensed pursuant to Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code and acceptable to WCB. The appraisal shall be prepared pursuant to UASFLA and USPAP and approved by DGS.

8.3. Intentionally Left Blank.

8.4. Despite the contrary provisions of Article 7 of this Agreement, if WCB determines that circumstances require immediate action to prevent or mitigate interference with the Purposes of Subgrant or other irreparable harm arising from a breach or threatened breach of this Agreement, then WCB may pursue its remedies without waiting for the period provided for cure to expire.

8.5. CDFW, as the grantee under the Federal Grant Agreement, shall be an express third-party beneficiary of this Agreement and shall have the same rights and remedies as WCB in the event of a breach or Default.

9. NONPROFIT ORGANIZATION SUBGRANTEE

9.1. If the existence of Successor Subgrantee is terminated for any reason, title to all interest in the Property acquired with Subgrant Funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in the Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this Section 9.1 shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

10. TERM

10.1. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and received in the respective offices of Subgrantee, Successor Subgrantee and WCB, together with the certifications, commitment and resolution described in Section 4.1 (d) – (g) (the “Effective Date”). Subgrantee, Successor Subgrantee and WCB shall each sign five original counterparts of this Agreement. Subgrantee and Successor Subgrantee shall each receive one completely executed original and WCB shall receive three completely executed originals.

10.2. The term of this Agreement will commence on the Effective Date and, unless previously terminated as provided in Section 10.3, will expire on [REDACTED], 201[REDACTED], if escrow has not closed by that date.

10.3. Prior to Successor Subgrantee’s close of escrow for acquisition of the Property, any party may terminate this Agreement for any reason or for no reason, by

providing the other parties with not less than 15 days' written notice of such termination. Notice shall be given in the same manner as specified in Section 7.1. If this Agreement is terminated after the deposit of the Subgrant Funds into Escrow but before close of escrow for Successor Subgrantee's acquisition of the Property, Subgrantee shall (or shall cause Successor Subgrantee to) cause the escrow holder to immediately return all Subgrant Funds to (or as instructed by) WCB and Subgrantee shall bear all costs and expenses of such termination.

10.4. In the event this Agreement is terminated in accordance with its terms, no party shall have any rights nor remedies against the other parties except as provided herein.

10.5. The provisions of this Agreement that are not fully performed as of the close of escrow, including but not limited to Sections 3 (Purposes of Subgrant), 6 (Subgrantee's Covenants), 7 (Breach and Default) and 8 (Remedies) shall survive the close of escrow for Successor Subgrantee's acquisition of the Property and remain in full force and effect.

11. LIABILITY, MODIFICATIONS, INTERPRETATION

11.1. Subgrantee and Successor Subgrantee shall indemnify, protect and hold harmless WCB, CDFW, the State of California, and their respective members, directors, officers, agents, and employees (each an "Indemnified Party"), from and against any and all claims, demands, damages, liabilities, losses, costs (including attorneys' fees) and expenses (collectively, "Claims") arising out of, connected with, or incident to this Agreement or the acquisition, ownership, use, management, operation or maintenance of the Property, except that neither Subgrantee nor Successor Subgrantee shall have any obligation to indemnify or hold harmless an Indemnified Party for Claims caused by the negligent or wrongful act of that Indemnified Party.

11.2. This Agreement may be modified only by written amendment signed by WCB, Subgrantee and Successor Subgrantee. No prior or contemporaneous oral understanding or agreement not incorporated in this Agreement shall be binding on either of the parties.

11.3. All references herein to "Subgrantee" are intended to refer to Subgrantee or its designee, successor or assignee as may be approved by WCB (including, upon its acquisition of the Property, Successor Subgrantee).

11.4. If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, that shall not affect any other provision of this Agreement or applications of the Agreement that can be given effect without the invalid provision or application and to this end the provisions of this Agreement are severable.

11.5. Subgrantee, Successor Subgrantee, and their officers, directors, employees, agents and representatives, is each acting in an independent capacity in entering into and carrying out this Agreement, and not as a partner, member, director, officer, agent, employee or representative of WCB, CDFW or the State of California.

11.6. This Agreement is not assignable or transferable by Subgrantee or Successor Subgrantee, either in whole or in part, except in connection with a transfer of the Property approved by WCB under Section 6.1 (f) of this Agreement.

11.7. Any costs incurred by WCB or CDFW, where it is the prevailing party, in enforcing the terms of this Agreement against Subgrantee, including but not limited to costs of suit, attorneys' and experts' fees, at trial and on appeal, and costs of enforcing any judgment, shall be borne by Subgrantee.

11.8. Enforcement of the terms of this Agreement by WCB or CDFW shall be at its discretion, and any forbearance by WCB or CDFW to exercise its rights under this Agreement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Agreement or any of the rights of WCB or CDFW under it.

11.9. WCB will notify Subgrantee and Successor Subgrantee as promptly as possible following its receipt of any request under the California Public Records Act (Government Code Section 6250 *et seq.*) for information related to the Acquisition.

12. CONDEMNATION

12.1. If all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, WCB, Subgrantee and Successor Subgrantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. WCB shall be entitled to the share of the Award (as defined below) which equals the ratio of the Subgrant Funds to the total purchase price Successor Subgrantee paid to acquire the Property (e.g., if Successor Subgrantee paid a purchase price of \$2 million and the amount of Subgrant Funds was \$750,000, then WCB would be entitled to 37.5% of the Award). For purposes of this Agreement, the "Award" shall mean all compensation awarded, paid or received on account of the Property so taken or purchased, and all direct or incidental damages resulting from the taking or purchase, less all out-of-pocket expenses reasonably incurred by Successor Subgrantee in connection with the taking or purchase.

13. AUDIT

13.1. Subgrantee and Successor Subgrantor shall each maintain complete and accurate records of its actual project costs, in accordance with generally accepted accounting principles and practices, and shall retain said records for at least four years after the date the Subgrant Funds are deposited into Escrow. During such time,

Subgrantee shall make said records available (or cause them to be made available) to the State of California for inspection and audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized in writing by WCB shall be borne by Subgrantee. Except to the extent the Federal Assistance Requirements (including, but not limited to, 50 C.F.R. Section 81.15) provide otherwise, the audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

14. UNION ORGANIZING

14.1. Subgrantee and Successor Subgrantee hereby acknowledge the applicability of Government Code Sections 16645 through 16649 to this Agreement and certifies that:

- a. No state funds (as defined in Government Code Section 16645) disbursed by this subgrant will be used to assist, promote or deter union organizing;
- b. Subgrantee and Successor Subgrantee shall account for state funds disbursed for a specific expenditure by this subgrant, to show those funds were allocated to that expenditure;
- c. Subgrantee and Successor Subgrantee shall, where funds are not designated as described in Section 14.1(b) above, allocate, on a pro-rata basis, all disbursements that support the subgrant program; and
- d. If Subgrantee or Successor Subgrantee makes expenditures to assist, promote or deter union organizing, such party will maintain records sufficient to show that no state funds were used for those expenditures, and that such party shall provide those records to the Attorney General upon request.

15. NON-DISCRIMINATION

15.1. During the performance of this Agreement, Subgrantee and Successor Subgrantee are subject to all Federal and State laws prohibiting discrimination including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12131 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. Section 6101 *et seq.*), the Fair Employment and Housing Act (Government Code Section 12900 (a – f) *et seq.*), and applicable regulations (California Code of Regulations, Title 2, Section 7285 *et seq.*). Subgrantee and Successor Subgrantee shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability (including HIV and AIDS),

mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, or use of family-care leave, medical-care leave, or pregnancy-disability leave. Subgrantee and Successor Subgrantee shall take affirmative action to ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Subgrantee and Successor Subgrantee shall comply with the regulations of the Fair Employment and Housing Commission regarding Contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations), which are incorporated by reference into this Agreement. Subgrantee and Successor Subgrantee shall each give written notice of its obligations under this non-discrimination clause to labor organizations with which Subgrantee or Successor Subgrantee has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Subgrantee and Successor Subgrantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Acquisition.

16. **DRUG-FREE WORKPLACE REQUIREMENTS**

16.1. Subgrantee and Successor Subgrantee each hereby certify that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1990 (Government Code Section 8350 *et seq.*) by taking all of the following actions:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions to be taken against employees for violations;
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The organization's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that every employee engaged in the performance of this Agreement:
 - (i) Be given a copy of the organization's drug-free workplace policy statement; and

(ii) Must agree to abide by the terms of the organization's statement as a condition of employment in connection with this Agreement.

Failure to comply with the above requirements may result in suspension of payments under, or termination of, this Agreement, or both. Subgrantee and Successor Subgrantee may be ineligible for award of any future grants or subgrants from the State if the State determines that Subgrantee and Successor Subgrantee have made a false certification; or violates the certification by failing to carry out the requirements set forth above.

17. EXHIBITS

Each of the Exhibits referenced in this Agreement is incorporated by reference as though set forth in full herein. The following Exhibits are attached to this Agreement:

Exhibit A – Property Description and List of Assessor's Parcel Numbers

Exhibit B – Certification of No Regulatory Requirements

Exhibit C – Commitment for Management and Funding

Exhibit D – Assurances and Certifications

Exhibit E – Certified Resolution or Other Action of Governing Body of Subgrantee

Exhibit F – WCB's Logo

Exhibit G – Form of Notice of Unrecorded Agreement to Subgrant

18. AUTHORIZATION

The signature of the Executive Director certifies that at the Board meeting held on [redacted], 201[redacted], the Wildlife Conservation Board authorized the award of a subgrant to Subgrantee as provided in this Agreement.

IN WITNESS WHEREOF, this Subgrant Agreement is made and entered into this _____ day of _____, 2014, in the State of California, by and between the Wildlife Conservation Board and the East Contra Costa County Habitat Conservancy, the East Bay Regional Park District, each of which does hereby agree to the terms and conditions referenced on pages 1 through 17, along with Exhibits A through G, of this Agreement.

**STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD**

**SUBGRANTEE
EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY**

By: _____
John P. Donnelly

By: _____
Abigail Fateman

Title: Executive Director

Title: Interim Executive Director

Date: _____

Date: _____

**SUCCESSOR SUBGRANTEE
EAST BAY REGIONAL PARK DISTRICT**

By: _____
Robert E. Doyle

Title: General Manager

Date: _____

EXHIBIT A

Legal Description

EXHIBIT B

Certification of No Regulatory Requirements

The undersigned are the Executive Director of the East Contra Costa County Habitat Conservancy and the General Manager of the East Bay Regional Park District, the Subgrantee and Successor Subgrantee, respectively, under the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit B** forms a part. Subgrantee and Successor Subgrantee hereby certifies to the Wildlife Conservation Board (WCB) as follows:

Subgrantee's acquisition of the Property (as defined in the Agreement) located in Contra Costa County, California, is not intended, and shall not serve, to satisfy any local, state or federal regulatory requirement (e.g., mitigation for any local, state or federal authorization or permit), including but not limited to complying with a biological opinion under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. Section 1361 *et seq.*, as amended ("ESA"), or fulfilling commitments of a Habitat Conservation Plan under Section 10 of the ESA, provided that Property acquired with any Subgrant Funds will be preserved and managed in accordance with, and will fulfill certain commitments of, the ECCC NCCP/HCP, to the extent consistent with the Federal Grant Application and the Federal Grant Agreement.

Subgrantee and Successor Subgrantee make this Certificate with the understanding that if WCB enters into the Agreement and subgrants Federal Grant Funds (as defined in the Agreement) to Subgrantee and Successor Subgrantee, WCB will do so in reliance on this Certificate.

Dated: _____, 20____

SUBGRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: Abigail Fateman

Title: Interim Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT C

Commitment for Management and Funding

The undersigned are the Executive Director of the East Contra Costa County Habitat Conservancy (ECCCHC) and the General Manager of the East Bay Regional Park District (EBRPD), the Subgrantee and Successor Subgrantee, respectively, under the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest (Agreement) of which this **Exhibit C** forms a part. Subgrantee and Successor Subgrantee hereby commit to the Wildlife Conservation Board (WCB) as follows:

ECCCHC is the agency responsible for ensuring the preservation and management of lands acquired pursuant to the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (ECCC NCCP/HCP). Conservation Measure 1.2 (“Prepare and Implement Preserve Management Plans for Natural Habitat Lands”) of the ECCC NCCP/HCP commits the ECCCHC to ensuring the preparation and implementation of Preserve Management Plans for acquired lands and sets forth standards for such management. Section 8.6.2 of the ECCC NCCP/HCP provides the ECCCHC with the ability to cooperate with other entities such as EBRPD to acquire and manage lands pursuant to the ECCC NCCP/HCP.

EBRPD is a party to an agreement implementing the ECCC NCCP/HCP and is anticipated to be a primary owner and manager of lands acquired pursuant to the ECCC NCCP/HCP. EBRPD will be the owner and manager of the Property (as defined in the Agreement). EBRPD owns and manages more than 100,000 acres of land in Alameda and Contra Costa Counties, much of which is similar in character and management need to the lands to be acquired pursuant to the Agreement. ECCCHC will provide assistance to EBRPD with management of Property, including funding assistance.

Subgrantee and Successor Subgrantee hereby commit to manage the Property (as defined in the Agreement) located in Contra Costa County, California, in perpetuity and according to the provisions of the ECCC NCCP/HCP for managing preserved lands in perpetuity and for funding such management, consistent with the following Purposes of Subgrant:

[Edit Purposes of Subgrant] *“preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) as well as protecting critical habitat connectivity between existing preserved lands”*

Specific management actions for the Property are not known at this time. ECCCHC, with assistance from EBRPD, are in the process of developing a Preserve Management Plan for the Property. Management actions could include removal, repair and replacement of fences, inclusion of improved management conditions in the grazing lease and supervision of the grazing tenant, and control of exotic species. Anticipated costs of land management activities under the ECCC NCCP/HCP are set forth in Tables 9-1 and 9-2 and supporting detail is provided in Appendix G.

In furtherance of the commitment set forth above, and in order to manage the property consistent with the Purposes of this Subgrant, Subgrantee and Successor Subgrantee will fund management in perpetuity consistent with the funding plan established in Section 9.3 of the ECCC NCCP/HCP. ECCCHC and EBRPD anticipate allocating the costs of such management among the two agencies consistent with the general principle that ECCCHC will pay for those management costs relating to management and monitoring of the species and EBRPD will pay for those management costs relating to public access and public use of the Property. ECCCHC and EBRPD anticipate entering into one or more future agreements confirming their respective obligations to pay management costs, including the funding mechanisms for such payment which may be in the form of annual payments or an endowment.

Subgrantee and Successor Subgrantee make this Commitment with the understanding that if WCB enters into the Agreement and subgrants Federal Grant Funds (as defined in the Agreement) to Successor Subgrantee, WCB will do so in reliance on this Commitment.

Dated: _____, 20_____

SUBGRANTEE

East Contra Costa County Habitat Conservancy

By: _____

Print Name: Abigail Fateman

Title: Interim Executive Director

SUCCESSOR SUBGRANTEE

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

EXHIBIT D

(Assurances and Certifications)

ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

ASSURANCES - CONSTRUCTION PROGRAMS

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NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

EXHIBIT E

(Certified Resolution or Other Action of Governing Body of Subgrantee)

EXHIBIT F

(WCB Logo)



EXHIBIT G

(Notice of Unrecorded Subgrant Agreement)

RECORDING REQUESTED BY:

East Contra Costa County)
Habitat Conservancy)
30 Muir Road)
Martinez, CA 94553)
Attn: Executive Director)

WHEN RECORDED, RETURN TO:

State of California)
Wildlife Conservation Board)
Attn: Executive Director)
1807 13th Street, Suite 103)
Sacramento, CA 95811-7137)

Project Name: [Insert Property Name]
County: Contra Costa
APNs: [Insert Assessor's Parcel Number(s)]

Space above line for Recorder's use

**NOTICE OF UNRECORDED SUBGRANT AGREEMENT
(WITH COVENANTS AFFECTING REAL PROPERTY)**

This Notice of Unrecorded Subgrant Agreement ("Notice"), dated as of _____, 201__, is made by the East Contra Costa County Habitat Conservancy ("Subgrantee"), and the East Bay Regional Park District ("Successor Subgrantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Subgrantee, Successor Subgrantee and the Wildlife Conservation Board ("WCB"), a subdivision of the State of California, affecting the real property described below.

1. WCB, Subgrantee and Successor Subgrantee have entered into the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest, WCB Subgrant Agreement No. [Insert WCB Subgrant Agreement Number] (Section 6 Grant Agreement No. [Insert Section 6 Grant Agreement Number]) ("Subgrant" or "Agreement"), pursuant to which WCB subgrants to Subgrantee certain Federal Grant Funds for Successor Subgrantee's acquisition of fee title to approximately [Insert Numerical Acreage] acres of real property located in the County of Contra Costa, California (the "Property"), by Grant Deed (the "Deed") from [Insert Name of Seller] ("Seller"). The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Subgrant.

2. Subgrantee and Successor Subgrantee agree under the terms of the Subgrant to execute this Notice to give notice that Subgrantee received funds under the

Agreement to assist Successor Subgrantee in acquiring the Property and that, in consideration of the Subgrant Funds, Subgrantee and Successor Subgrantee have agreed to the terms of the Subgrant. The Subgrant is incorporated by reference into this Notice.

3. Subgrantee and Successor Subgrantee covenant and agree in Section 6.1 b. of the Agreement as follows:

3.1. The Property shall be held and used only in a manner that is consistent with the Agreement, including the following “Purposes of Subgrant” set forth in Section 3.2 of the Agreement:

[Edit Purposes of Subgrant Accordingly] The Property shall be held and used for the purposes of preserving and protecting chaparral, oak woodland, oak savanna, grassland, wetland, seasonal wetland, riparian and other habitats crucial for numerous species covered by the East Contra Costa County Natural Community Conservation Plan/Habitat Conservation Plan (“ECCC NCCP/HCP”) as well as protecting critical habitat connectivity between existing preserved lands (individually and collectively, the “Purposes of Subgrant”).

3.2. The Property shall be set aside in perpetuity for the purposes of conservation, including the Purposes of Subgrant.

3.3. Subgrantee and Successor Subgrantee shall comply with the terms and conditions of the award of Federal Grant Funds to the California Department of Fish and Wildlife (“CDFW”), to the extent such terms and conditions are applicable to Subgrantee, Successor Subgrantee, the Subgrant Funds or the Property.

3.4. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the State of California (the “State”), acting through the Executive Director of WCB, or its successor, and the U.S. Department of the Interior, Fish and Wildlife Service (“USFWS”) (to the extent required pursuant to the Federal Assistance Requirements).

3.5. The Property (including any portion of it or any interest in it) may not be used as security for any debt without the written approval of the State, acting through the Executive Director of WCB, or its successor, except to the extent the use of the Property as security is prohibited or limited by the Federal Assistance Requirements.

3.6. At the request of WCB, not less than once in any period of three calendar years, Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFW and USFWS to access the Property to assess compliance with the terms, covenants and conditions of this Agreement. Provided, however, that if more frequent access is necessary to comply with applicable federal requirements (including, but not limited to, 50 C.F.R. Section 81.13) then Subgrantee and Successor Subgrantee shall allow designated staff or representatives of WCB, CDFW and USFWS access to the Property at such intervals as

WCB, CDFW or USFWS considers appropriate to meet federal requirements to which it is subject.

4. Pursuant to Section 8 of the Agreement, in the event of a Default under the Agreement, in addition to any and all remedies available at law or in equity, WCB may seek specific performance of the Subgrant and may require Successor Subgrantee to convey a conservation easement over the Property in favor of the State (or, at the election of WCB, another entity or organization authorized by California law to acquire and hold conservation easements), and to pay a sum to WCB which, when combined with the fair market value of the conservation easement, equals the amount of Subgrant Funds provided by the Agreement, together with interest thereon as provided in the Agreement. CDFW, as the Grantee under the Federal Grant Agreement, shall be an express third-party beneficiary of the Agreement and shall have the same rights and remedies as WCB in the event of a breach or Default by Subgrantee or Successor Subgrantee.

5. Pursuant to Section 9 of the Agreement, if the existence of Successor Subgrantee is terminated for any reason, title to all interest in the Property acquired with Subgrant funds shall immediately vest in the State. However, prior to that termination, upon approval of the State, acting through the Executive Director of WCB or its successor, another public agency or nonprofit organization may receive title to all or a portion of that interest in the Property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby the Property or any interest in it is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the State.

6. Pursuant to Section 10 of the Agreement, the provisions of the Subgrant that are not fully performed as of the close of escrow shall survive the close of escrow for Successor Subgrantee's acquisition of the Property and shall remain in full force and effect.

7. Pursuant to Section 11 of the Agreement, the Subgrant shall be binding upon Subgrantee and Successor Subgrantee and all designees, successors and assigns of Subgrantee and Successor Subgrantee.

8. Pursuant to Section 12 of the Agreement, if all or any part of the Property is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, WCB and Successor Subgrantee shall act jointly to recover from the condemning authority the full value of the Property so taken or purchased, and all direct or incidental damages resulting therefrom. WCB shall be entitled to the share of the Award which equals the ratio of the Subgrant Funds provided by WCB to the total purchase price Successor Subgrantee paid to acquire the Property.

9. This Notice is solely for the purpose of recording and in no way modifies the provisions of the Agreement. Subgrantee, Successor Subgrantee and WCB each has rights, duties and obligations under the Agreement which are not set forth in this Notice. To the extent the terms of this Notice conflict with the Agreement, the terms of the Agreement shall govern and control.

10. For additional terms and conditions of the Agreement, reference should be made to the California Wildlife Conservation Board Subgrant Agreement for Acquisition of Fee Interest by and between WCB, Subgrantee and Successor Subgrantee that commenced [REDACTED], 201[REDACTED] and is on file with the Wildlife Conservation Board, 1807 13th Street, Suite 103, Sacramento, California 95811-7137; *mailing address*: Wildlife Conservation Board, c/o Department of Fish and Wildlife, P. O. Box 944209, Sacramento, CA 94244-2090.

SUBGRANTEE:

East Contra Costa County Habitat Conservancy

By: _____

Print Name: Abigail Fateman

Title: Interim Executive Director

SUCCESSOR SUBGRANTEE:

East Bay Regional Park District

By: _____

Print Name: Robert E. Doyle

Title: General Manager

[Notary Acknowledgment]

EXHIBIT A

Legal Description