



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

GOVERNING BOARD

REGULAR MEETING

Monday, February 22, 2016

2:00 p.m

City of Clayton

Clayton Community Library, Hoyer Hall
6125 Clayton Road, Clayton, CA 94513

AGENDA

2:00 p.m. Convene meeting.

Adjourn to Closed Session

CS1) Conference with Legal Counsel – Existing Litigation (Gov. Code, § 54956.9(d)(1))

Discovery Builders, Inc. v. City of Brentwood, California; City Council of the City of Brentwood, et al.; Contra Costa County Superior Court, Case No. N13-1781

CS2) Conference with Real Property Negotiators

Property: 078-320-002, 14599 Marsh Creek Road, Unincorporated Contra Costa County, CA

Agency Negotiators: John Kopchik, Abigail Fateman, and Joanne Chiu

Negotiating Parties: East Contra Costa County Habitat Conservancy, East Bay Regional Parks District, and Save Mount Diablo

Under Negotiation: Price and payment terms

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

- 1) **Report on any actions taken in Closed Session.**
- 2) **Introductions.**
- 3) **Public Comment on items that are not on the agenda** (public comment on items on the agenda will be taken with each agenda item).
- 4) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of December 14, 2015.**

- 5) **Consider the following actions related to Governing Board administrative matters.**
 - a) **SET the Governing Board meeting schedule for the remainder of 2016.**
 - b) **APPROVE increasing the food and beverage budget for Governing Board meetings and field trips from \$500 per year to \$720 per year.**
(Abigail Fateman)

- 6) **Consider ADOPTING Resolution 2016-01 to accept a grant award from the California Department of Fish and Wildlife supporting the Knightsen Wetland Restoration and Flood Protection Project.**
(Abigail Fateman)

- 7) **Consider AUTHORIZING staff to execute a funding agreement with the East Bay Regional Park District (EBRPD) and one federal subgrant agreement with the California Wildlife Conservation Board (WCB) for federal funds for acquisition of the Hanson Hills Property (APN 078-320-002, 14599 Marsh Creek Road, unincorporated Contra Costa County, CA)**
(Joanne Chiu)

- 8) **Consider APPROVING the mitigation strategy for the portion of the Contra Costa County Public Works Department's Kirker Pass Road Northbound Truck Climbing Lane Project outside the HCP/NCCP permit area.**
(Abigail Fateman)

- 9) **Consider ACCEPTING update on proposed interim permitting strategy for development projects in the City of Antioch during the development of an Antioch HCP/NCCP.**
(Abigail Fateman)

- 10) **Consider the following actions related to the Conservancy's Public Advisory Committee (PAC):**
 - a) **REVIEW the PAC recommendations on member terms, attendance policy, selection process, geographic distribution and whether PAC membership seats should be held by individuals or organizations;**
 - b) **CONSIDER directing staff to implement PAC or other Governing Board recommendations related to the composition and operation of the PAC.**
(Abigail Fateman)

- 11) **Adjourn. The next Governing Board meeting is April 2016 (TBD).**

If you have questions about this agenda or desire additional meeting materials, you may contact Maureen Parkes of the Contra Costa County Department of Conservation and Development at 925-674-7203.
The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for December 14, 2015

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of December 14, 2015.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: February 22, 2016 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

ATTESTED

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

BY: _____, DEPUTY

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Monday, December 14, 2015
City of Pittsburg

The Board convened the meeting at 11:00 a.m. and announced adjournment to Closed Session.

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

2) Introductions.

Governing Board members in attendance were:

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

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

Mitch Oshinsky	City of Antioch
Juan Pablo Galvin	Save Mount Diablo
Kathryn Lyddan	Brentwood Agricultural Land Trust

Conservancy Staff and consultants in attendance were:

Abigail Fateman	Conservancy Staff
John Kopchik	Conservancy Staff
Joanne Chiu	Conservancy Staff
Allie Van Dorn	Conservancy Staff
Chris Beale	Conservancy Counsel (closed session only via phone)

3) Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item). There were no public comments.

4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of August 24, 2015. The meeting record was approved. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

5) Consider the following Governing Board administrative matters:

- a) **CONFIRM Conservancy Chair and Vice Chair for 2016;**
- b) **AUTHORIZE staff to schedule the next Governing Board meeting for February 2016 once Board membership for the year has been set. SET the schedule for the remainder of 2016 at the February meeting.**

(Abigail Fateman) Items 5a and 5b were approved as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

- 6) Consider the following actions related to the Conservancy's Public Advisory Committee (PAC):
- a) REVIEW composition requirements of the Conservancy's PAC, attendance of Committee Members, and the PAC's recommendations for 2016;
 - b) ACCEPT update on PAC 2015 activities;
 - c) APPOINT the Brentwood Agricultural Land Trust (BALT) to fill the "Private land owner / Agriculturalist" Seat on the PAC as recommended by Chair Randy Pope.

(Abigail Fateman) The Governing Board discussed the composition requirements of the PAC and expressed concerns about the current PAC roster, attendance, and PAC membership selection process. The Board referred the item to the PAC and requested specific input on the following items: terms / term limits, attendance policy, geographic distribution, the selection process, and whether seats should be held by individuals or organizations. Item 6b and 6c were approved as recommended. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

- 7) Consider APPROVING the 2016 Conservancy Work Plan.

(Abigail Fateman) Ms. Fateman provided a summary of the work performed in 2015 and described the goals and types of work planned for 2016 which include the establishment and implementation of an interim permitting process for the development of an Antioch HCP, coordination with State and Regional Water Quality Control Boards to develop regional 401 permit streamlining that is compatible with the Plan and continue to pursue land acquisition and wetland restoration opportunities. The item was approved as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

- 8) Consider the following actions related to legislative matters:

- a) ADOPT the 2016 Legislative Platform;
- b) ADOPT Resolution 2015-03 to support working together with agencies from across California to request that the United States Congress restore overall funding of the U.S. Fish and Wildlife Service Cooperative Endangered Species Fund from approximately \$50 million to \$85 million in the Fiscal Year 2017 Interior and Related Agencies Appropriations bill;
- c) AUTHORIZE the Chair or staff, as appropriate, to communicate items on the Platform to relevant members and staff of the U.S Congress and the California Legislature, relevant federal and state agencies, potential advocacy partners and others;
- d) AUTHORIZE payment of \$5,000 as membership dues for the California Habitat Conservation Planning Coalition in 2016;
- e) AUTHORIZE the Conservancy joining the Bay Area Open Space Council and paying annual membership dues of \$2,500.

(Abigail Fateman) Ms. Fateman presented the 2016 Legislative Platform. Item 8a was approved with updated language to Item 12 of the Legislative Platform to read "Advocate for the California Department of Parks and Recreation to own and manage Conservancy Preserve Systems properties in the Plan Area that are adjacent to land owned and managed by the California Department of Parks and Recreation." Items 8b, 8c, 8d and 8e were approved as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

- 9) Consider the following actions related to Conservancy finances:
- a) APPROVE the 2016 Conservancy Budget;
 - b) AUTHORIZE staff to execute annual contracts for on-going consulting services with:
 - ICF Jones and Stokes: not to exceed \$105,000 for the term from January 1, 2016 to December 31, 2016;
 - H.T. Harvey and Associates: not to exceed \$30,000 for the term from January 1, 2016 to December 31, 2016;
 - Monk and Associates: not to exceed \$70,000 for the term from January 1, 2016 to December 31, 2016;
 - Nomad Ecology: not to exceed \$160,000 for the term from January 1, 2016 to December 31, 2016;
 - Vollmar Natural Lands Consulting: not to exceed \$105,000 for the term from January 1, 2016 to December 31, 2016;
 - Habitat Restoration Services (formerly Restoration Resources): not to exceed \$100,000 for the term from January 1, 2016 to December 31, 2016;
 - Go Native, Inc.: not to exceed \$50,000 for the term from January 1, 2016 to December 31, 2016;
 - California Retaining Walls, Co.: not to exceed \$50,000 for the term from January 1, 2016 to December 31, 2016;
 - c) AUTHORIZE staff to execute a contract amendment with Thunder Mountain Enterprises to increase the contract limit from \$50,000 to \$150,000 and to extend the term from December 31, 2015 to December 31, 2016;
 - d) AUTHORIZE staff to execute a contract for legal services with Resources Law Group: not to exceed \$90,000 for a term from January 1, 2016 through December 31, 2016;
 - e) AUTHORIZE staff to execute a contract amendment for legal services with Abbott and Kindermann to extend the term one year to December 31, 2016.

(Joanne Chiu) Ms. Chiu presented the 2016 Conservancy Budget and Ms. Fateman provided an overview of contracts for various services. All items related to Conservancy finances were approved as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

10) ACCEPT update on activities related to the potential preparation of an HCP/NCCP for the City of Antioch.

(Abigail Fateman) Ms. Fateman provided an update on the status of discussions with the City of Antioch staff as well as conversations with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. Ms. Fateman also outlined some of the next steps and actions that the Conservancy Board will be asked to make regarding an interim permitting process for the City of Antioch that would depend on Conservancy permits, as well as continuing to support the Plan development process. Mitch Oshinsky, Project Manager with the City of Antioch, spoke of the City's engagement in the process and was pleased that the process was moving forward. Governing Board Member Evola encouraged staff to work with the City and move the process forward with the wildlife agencies to expedite the plan development process. Item was accepted as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

11) Consider the following actions related to extending take coverage to Phillips 66 Pipeline LLC for the Line 200 Pipeline Vasco Road Remediation Project:

- a) AUTHORIZE staff to file a Notice of Exemption with the County Clerk for the project;**
- b) AUTHORIZE staff to execute a Participating Special Entity Agreement with Phillips 66 Pipeline LLC for the take coverage of the Line 200 Pipeline Vasco Road Remediation Project.**

(Allison Van Dorn) Ms. Van Dorn provided an overview of the Phillips 66 Pipeline project. Items 11a and 11b were approved as recommended by staff. (4-0: Evola, Haydon, Piepho, Pope; Bryant absent)

12) Adjourn. The next Governing Board meeting is February 2016.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Abby Fateman)
SUBJECT: Administrative Matter for the Governing Board for 2016

RECOMMENDATION

Consider approving the following actions related to Governing Board administrative matters:

- a) SET the Governing Board meeting schedule for the remainder of 2016.
- b) APPROVE increasing the food and beverage budget for Governing Board meetings and field trips from \$500 per year to \$720 per year.

DISCUSSION

a) Governing Board meeting schedule: The Joint Powers Agreement (JPA) forming the Conservancy requires the Governing Board to set a regular meeting schedule. That schedule is set on an annual basis to reflect the availability of Board Members for that year. The Governing Board also previously directed that the meeting location rotate among the jurisdictions.

In 2015, a schedule of meeting the fourth Monday of every other month from 2:00 – 4:00 pm worked well for the Board members. If the Board were to stay with the same schedule, the dates and locations for meetings for the remainder of 2016 are outlined below:

Date	Location
April 25, 2016	City of Oakley
June 27, 2016	City of Pittsburg
August 22, 2016	City of Brentwood
October 24, 2016	City of Clayton
December 26, 2016*	City of Oakley

*December meeting to be held week of Christmas/New Year holiday, and may likely need to be rescheduled.

CONTINUED ON ATTACHMENT: <u> No </u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u> February 22, 2016 </u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
	BY: _____, DEPUTY

b) Food and Beverage budget: On December 16, 2009 the Board authorized the expenditure of up to \$500 per year for provision of a light lunch and beverage to board members, staff, and the public in attendance. Since that time we have increased the frequency of Board meetings (from 4 meetings per year, to 6 meetings per year).

Additionally, as part of the Conservancy program, full day field visits are held three to four times per year to remote parts of eastern Contra Costa to visit Conservancy properties and restoration projects. These field visits include federal and state regulatory agency staff as well as local elected officials. The field visits provide on-site verification of the Conservancy's program efforts and are, therefore, critical in maintaining the federal and state grant funding. Given the extremely remote locations and the all-day nature of the field trips, it is necessary to provide lunch for all the participants to avoid having to cross these sensitive habitat areas multiple times simply to obtain meals.

The cost to the Conservancy averages \$80 per meeting (6 times per year) or a maximum annual total cost of \$480. Field trip refreshments are similarly priced (3 times per year) totaling \$240. This request is for a combined cap of expenses of \$720 annually.

Staff requests the Board's approval to increase the food and beverage budget for Governing Board meetings and field trips from \$500 per year to \$720 per year.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: **Proposition 1 Grant Funding for Nunn Property in Knightsen**

RECOMMENDATION

ADOPT Resolution 2016-01 to accept a grant award from the California Department of Fish and Wildlife supporting the Knightsen Wetland Restoration and Flood Protection Project.

DISCUSSION

Background:

The Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), which California voters passed in November 2014, provides funding to implement the three broad objectives of the California Water Action Plan: more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainably managed water resources system (e.g., water supply, water quality, flood protection, environment) that can better withstand inevitable and unforeseen pressures in the coming decades.

The Conservancy Board accepted an update on Proposition 1 funding opportunities in August 2015 and encouraged staff to pursue funding opportunities. In September 2015, Conservancy staff submitted a proposal for \$240,000 for the Knightsen Wetland Restoration and Flood Protection Project to California Department of Fish and Wildlife’s Watershed Restoration Grant & Delta Water Quality and Ecosystem Restoration Grant program. The proposal was to fund initial studies and site investigations to inform wetland restoration, flood control, and recreation opportunities on the Nunn property in Knightsen. On January 13th 2016, the Conservancy was notified that the Knightsen project was selected to receive full funding. A condition of the award is the submission of a Resolution from the Governing Board of the awardee. Resolution 2016-01 is attached for Board consideration.

Attachments:

Letter of support from the Knightsen Community Services District
Resolution 2016-01

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: February 22, 2016 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

___ UNANIMOUS

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

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

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

BY: _____, DEPUTY

CA Department of Fish and Wildlife
Proposition 1 Restoration Grant Programs
1416 9th Street, 12th Floor
Sacramento, CA 95814

September 16, 2015

To Whom it May Concern:

I am writing to you to express the Knightsen Community Services District's (CSD) enthusiastic support for the proposed Knightsen Wetland Restoration and Flood Protection Project.

The Knightsen CSD was formed in 2005 to address regular devastating flooding in the community. Flooding in Knightsen has caused damage to private property, public infrastructure, well/drinking water and agriculture. The CSD has partnered with Contra Costa County Flood Control to explore solutions to our ongoing problems. A 1998 study followed by the 2002 "Water Quality Wetland Feasibility Study" suggested one plan, whereby it identified a number of locations within the community where biofilters could be built that could help attenuate flood waters. The CSD has been working to partner with other agencies and with property owners to secure a location for this type of facility.

Knightsen CSD partnered with the East Contra Costa County Habitat Conservancy (ECCCHC) in participating in the East County Water Management Association's Integrated Regional Water Management Plan and the Knightsen project is included in the Plan.

Recently, the ECCCHC and the East Bay Regional Park District secured funding to acquire a 645-acre property in the community that was identified in the original Feasibility Study. Working with the CSD, these agencies are developing a cooperative vision of constructing a project that will provide multiple benefits to our community including providing flood protection, restoring wetlands and expanding recreational opportunities.

With this goal in mind, we support the ECCCHC's proposal to the California Department of Fish and Wildlife's Proposition 1 Grant Program.

Sincerely,



Linda Weekes

Chair, Knightsen Community Services District

Resolution No: 2016-01

**RESOLUTION OF THE
East Contra Costa County Habitat Conservancy Governing Board
AUTHORIZING THE ACCEPTANCE OF FUNDS SUPPORTING THE KNIGHTSEN WETLAND
RESTORATION AND FLOOD PROTECTION PROJECT**

WHEREAS, The Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1) was approved by voters of the State of California to implement three broad objectives: more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainable managed water resources system; and

WHEREAS, the California Department of Fish and Wildlife (CDFW) is authorized to award funds through the Watershed Restoration Program and the Delta Water Quality & Ecosystem Restoration Grant Program; and

WHEREAS, the California Department of Fish and Wildlife selected the Knightsen Wetland Restoration and Flood Protection Project (Project) for funding through a competitive grant process for (FY) 2015-16; and

WHEREAS, the East Contra Costa County Habitat Conservancy in partnership with the East Bay Regional Park District acquired the 645-acre Nunn Parcel in January 2016 with the purpose of restoring habitat, addressing local flood control issues, and providing recreation opportunities; and

WHEREAS, this grant award provides the resources needed to complete initial studies and assessments of the property that will inform the design of a large-scale habitat restoration project that is important to the implementation of the East Contra Costa County Habitat Conservancy's Conservation Strategy.

NOW, THEREFORE, BE IT RESOLVED that the Board of the East Contra Costa County Habitat Conservancy does hereby support the Knightsen Wetland Restoration and Flood Control Project and accepts funds from the California Department of Fish and Wildlife for this project.

Approved by the following vote on: February 22, 2016.

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Abigail Fateman, Executive Director

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Joanne Chiu)
SUBJECT: Hanson Hills Property Acquisition

RECOMMENDATION

AUTHORIZE staff to execute a funding agreement with the East Bay Regional Park District (EBRPD) and one federal subgrant agreement with the Wildlife Conservation Board (WCB) for federal funds for acquisition of the Hanson Hills Property (APN 078-320-002); 14599 Marsh Creek Road, unincorporated Contra Costa County, CA).

DISCUSSION

Overview of Property and Potential Acquisition:

The Hanson Hills property (Property) totals approximately 76.46 acres and is located on Marsh Creek Road between Royal Oaks Drive to the west and Sycamore Springs Road to the east. Photos and maps showing the Property, its location, and condition are provided in the attached Pre-Acquisition Assessment.

The Property is currently owned by Save Mount Diablo (Seller). EBRPD and the Seller have reached an agreement on the purchase of the Property. EBRPD commissioned an appraisal of the Property which was completed in Fall 2015, with an effective date of value of July 30, 2015. The appraisal established the fair market value of the Property at \$730,000, which is also the purchase price. EBRPD’s purchase is contingent on support from the Conservancy.

CONTINUED ON ATTACHMENT: <u>Yes</u>	APPROVED AS RECOMMENDED: _____
ACTION OF BOARD ON: <u>February 22, 2016</u>	
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
<input type="checkbox"/> UNANIMOUS	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
AYES: _____	
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
	ATTESTED <u>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</u>
	BY: _____, DEPUTY

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

Table 1. Proposed Funding for Purchase of Property

Source	Amount	% of Total
EBRPD	\$182,500	25%
HCP Land Acquisition Grant (Federal Section 6)	\$547,500	75%
Total	\$730,000	

The Cooperative Endangered Species Conservation Fund (Section 6 of the Endangered Species Act) provides funding to states for species and habitat conservation actions on non-federal lands. The Section 6 federal funds necessary to implement the proposed funding plan are available through previously approved grant awards to the State for implementation of the ECCC HCP/NCCP. The Property is an eligible property under these approved awards. A subgrant agreement with WCB is necessary to expend the federal funds (see additional information on necessary agreements below). EBRPD would provide its contribution through Measure WW Bond Funds (Measure WW was approved by the voters in 2008). No Conservancy funds would be contributed to the purchase.

Staff recommends the proposed funding plan because:

- The funding plan should rely most on those funding sources that are nearest to expiring or otherwise being lost. Conservancy staff has requested a two-year extension for our FY11 Section 6 grant and will need to spend this grant fund before it expires in October 2016. The proposed funding plan relies most heavily on this source.
- The Conservancy’s direct contribution is \$0.

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

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

The Hanson Hills property (Property) is located in the central region of the HCP/NCCP’s inventory area in unincorporated Contra Costa County, lying along and north of Marsh Creek Road. The Property is comprised of one parcel whose southern boundary is adjacent to Marsh Creek Road.

The Property has moderate to steep sloping topography that generally slopes upward from Marsh Creek Road, with one large valley that crosses the Property in a mostly east-west direction in the central area of the parcel. The upper portions of the site provide panoramic views of the area and a high point of 890 feet above sea level.

Long Canyon Creek traverses the center of Hanson Hills and is a tributary to Marsh Creek. The Property contains roughly 1,592 feet of Long Canyon Creek. It is a seasonal creek that flows in a southwestern direction across the Property.

Hanson Hills is not adjacent to any other Preserve System properties but is located one parcel away from the Smith property, which is also adjacent to Roddy Ranch.

The entire property is located in the HCP/NCCP’s acquisition Zone 4, Subzone 4c, and is designated medium priority for acquisition for the HCP/NCCP Preserve System. Hanson Hills will be the Conservancy’s second acquisition in Subzone 4c. A small portion of the Smith Property, acquired in 2014, was the first for Subzone 4c. Land acquisition in Zone 4 is focused in two primary areas – along Marsh Creek in the Briones Valley and upstream (Subzone 4c) and the Upper Marsh Creek Subbasin. Hanson Hills does not contain Marsh Creek main stem, however preservation of Hanson Hills will provide watershed protection and preserve the topographic and biological diversity in this area.

The site contains suitable habitat for several covered species including San Joaquin kit fox, western burrowing owl, golden eagle, alameda whipsnake, western pond turtle, California tiger salamander, and California red-legged frog. The Property also contains habitat types that are modeled habitat for a few covered plant species including Brewer’s dwarf flax, Diablo Helianthella, and Mount Diablo Fairy Lantern.

Table 2. Land Cover Types on Property

Land Cover Type (acres)	Hanson Hills (acres)	HCP Land Acquisition Req. (acres)	% of Land Acquisition Req.
Oak Woodland	41.89	400	10.5%
Oak Savanna	26.22	500	5.2%
Annual Grassland	7.88	16,500	0.05%
Urban	0.05	-	-
Unclassified Stream (feet)	1,591.42	Varies by type	TBD

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

Conservancy costs and funding sources: The Conservancy's total out-of-pocket contribution to the acquisition would be \$0. The Conservancy would arrange for its grant funds to cover \$547,500.

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

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

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

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

Attachments:

Attachment A	Pre-Acquisition Assessment for Hanson Hills
Attachment B	EBRPD Funding Agreement template
Attachment C	WCB Subgrant Agreement template (for federal funds)



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: Hanson Hills

Site Address/Location: 14599 Marsh Creek Road, Contra Costa County, CA
94513

Property APN: 078-320-002

Size of Property: 76.46 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)
- Ownership of Adjacent Properties (Figure 5)

LANDSCAPE AND COMMUNITY LEVEL ELEMENTS

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

The Hanson Hills property (Property) is located in the central region of the HCP/NCCP's inventory area in unincorporated Contra Costa County, lying along and north of Marsh Creek Road. The Property is comprised of one parcel whose southern boundary is adjacent to Marsh Creek Road.

The Property has moderate to steep sloping topography that generally slopes upward from Marsh Creek Road, with one large valley that crosses the Property in a mostly east-west direction in the central area of the parcel. The upper portions of the site provide panoramic views of the area and a high point of 890 feet above sea level.

Long Canyon Creek traverses the center of Hanson Hills and is a tributary to Marsh Creek. The Property contains roughly 1,592 feet of Long Canyon Creek. It is a seasonal creek that flows in a southwestern direction across the Property.

Hanson Hills is not adjacent to any other Preserve System properties but is located one parcel away from the Smith property, which is also adjacent to Roddy Ranch.

The entire property is located in the HCP/NCCP's acquisition Zone 4, Subzone 4c, and is designated medium priority for acquisition for the HCP/NCCP Preserve System. Hanson Hills will be the Conservancy's second acquisition in Subzone 4c. A small portion of the Smith Property, acquired in 2014, was the first for Subzone 4c. Land acquisition in Zone 4 is focused in two primary areas – along Marsh Creek in the Briones Valley and upstream (Subzone 4c) and the Upper Marsh Creek Subbasin. Hanson Hills does not contain Marsh Creek main stem, however preservation of Hanson Hills will provide watershed protection and preserve the topographic and biological diversity in this area.

The site contains suitable habitat for several covered species including San Joaquin kit fox, western burrowing owl, golden eagle, alameda whipsnake, western pond turtle, California tiger salamander, and California red-legged frog. The Property also contains habitat types that are modeled habitat for a few covered plant species including Brewer's dwarf flax, Diablo helianthella, and Mount Diablo fairy lantern.

II. Existing Land Cover Types (Figure 4a)

Land Cover Type	Area (acres) ¹
<i>Terrestrial Land Cover Types</i>	
Oak Woodland	41.89
Oak Savanna	26.22
Annual Grassland	7.88
Urban	0.05
<i>Total area of terrestrial land cover</i>	<i>76.04</i>
Unclassified Stream (feet)	1,591.42 ft

III. Proximity to Development (see Figure 1)

¹ Acreage numbers are calculated with GIS, and therefore do not total the deed acreage.

Type of Development	Distance from Site (miles)	General description of development and influence on site.
Urban	4.5 miles to the north	Urban development in the City of Antioch is located approximately 4.5 miles to the north.
Urban	3.8 miles to the east	Urban development in the City of Brentwood is located approximately 3.8 miles east of the Property.
Urban	5.6 miles to the west	Urban development in Clayton is located approximately 5.6 miles west of the Property.
Rural	Adjacent	The Property is located near rural residential development in unincorporated Contra Costa County along Marsh Creek Road.

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

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

1 2 3 4 5 6 Subzone 4c

Contribution to Acquisition Analysis Zone Requirements

Zone and Subzone Requirement	Total Requirement (MUDA acres)	Contribution by this Acquisition (acres)	% of Requirement Met by Acquisition
Zone 4 estimated minimum requirement	6,050	75.99	1.25%
Zone 4 estimated maximum requirement	8,350	75.99	0.09%
Subzones 4c, 4e, 4f, 4g	3,000	75.99	2.5%

Contribution to Overall Land Cover Acquisition Requirements

Land-Cover Requirement	Total Requirement (MUDA acres)	Contribution by this Acquisition (acres)	% of Requirement Met by Acquisition
Preserve-wide Annual Grassland	16,500	7.88	0.05%
Preserve-wide Oak Woodland	400	41.89	10.5%
Preserve-wide Oak Savanna	500	26.22	5.2%
<i>Total (acres)</i>		75.99	
Preserve-wide stream (feet)	4,224 ft	1,591.42	37.7%

V. Site Conformance with Preserve Design Principles

The following is a subset² 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

² 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.

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 size (76.04 acres) has the 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. Hanson Hills is one parcel south of the Smith Property, which connects to Roddy Ranch. The Property provides an opportunity to preserve habitat along Marsh Creek Road and may spur additional acquisitions along the Road and in connection with other Preserve System land.

Urban development has not yet progressed to the edge of the Urban Limit Line near Antioch, and the Property is roughly 4.5 miles south of Antioch and 3.8 miles west of the suburban areas of Brentwood. No urban areas abut the Property; however there are some rural home sites along Marsh Creek Road adjacent and near the Property.

The Hanson Hills property is irregularly shaped but is roughly rectangular in shape, 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 Preserve System is currently comprised of a range of environmental gradients. The terrain is moderate to steep sloping that generally slopes upward from Marsh Creek Road. A knoll is located along the Marsh Creek Road frontage and is approximately 750 feet in height. The more level areas are near the southeast portion of the parcel, and along the tributary (Long Canyon Creek) that drains into Marsh

Creek. The upper portions of the parcel rise to approximately 890 feet above sea level and offer panoramic views of the area.

The Property contributes to the protection of watersheds and is part of the Upper Marsh Creek Subbasin. As mentioned in the above paragraph, Long Canyon Creek cuts through the Center of Hanson Hills and drains into Marsh Creek.

Based on existing site conditions and characteristics, implementation of desired management approaches is feasible. The home and outbuildings on the Property are in poor condition and will be demolished immediately following acquisition.

BUILT FEATURES AND SITE CONSTRAINTS

- **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 historically as a rural home site, which is also the current use. The house and outbuildings are located toward the southeastern portion of the property. The Property has been grazed historically, but is not being grazed this year at the request of Save Mt. Diablo due to the drought.

- **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.:**

The Property is improved with a 1,040 square foot, wood-frame, single-family residence that was constructed in 1980. The residence is a two-bedroom, two-bath ranch house that is in poor condition. The residence does not appear to have been occupied for several years. There are three shed outbuildings (206 sq ft, 149 sq ft, and 192 sq ft) located behind the residence that are also in poor condition. Access to the home and outbuildings is gravel paved.

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

The land cover mapping conducted on the site (Figure 4, Appendix B) does not include any ruderal land cover. The developed portion of the Property is considered urban.

- **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. The perimeter of the site is fully fenced with a six row barbed wire fence to prevent trespassing and retain cattle.

The conditions of the structures on site are in poor condition and will be removed following acquisition and therefore will not be a management constraint.

- **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 unincorporated Contra Costa County that is currently and historically used for rural home sites, open space, or grazing land. Private properties in the immediate area are typically large acreage holdings, and only a few with improvements with homesteads and agricultural outbuildings. There has been no subdivision activity in the immediate area and urban development is a few miles away from the Property.

- **Describe any populations of invasive plant species on site:**

No field work for invasive plants was performed. A detailed survey will be conducted following acquisition.

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

No extensive field work to assess habitat degradation on this site has been conducted.

Appendix A



View looking west toward Mount Diablo from the northern portion of the Property.



View looking southeast, standing from the northeastern portion of the Property at its highest elevation.



Looking east along the interior dirt path that traverses the Property.



Oak trees on the Property, facing westward toward Mt. Diablo.



Looking west across the Property toward Mount Diablo.

Figure 1: Hanson Hills Parcel - Regional Context

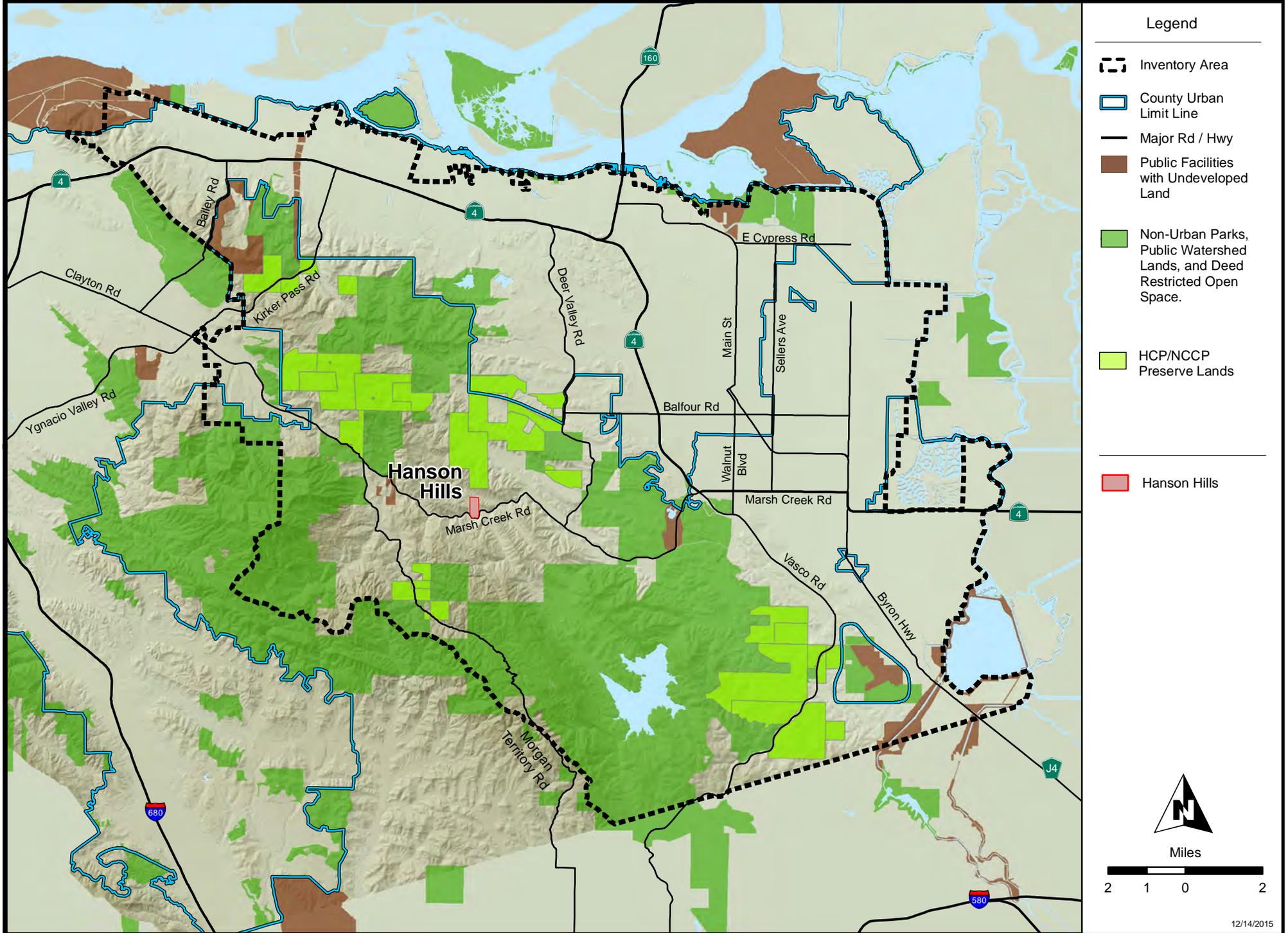


Figure 3: Hanson Hills parcel - 2011 Orthophotography



Legend

 Hanson Hills


N

Feet


0 250 500



Figure 4. Hanson Hills parcel - Terrestrial and Aquatic Land Covers Types

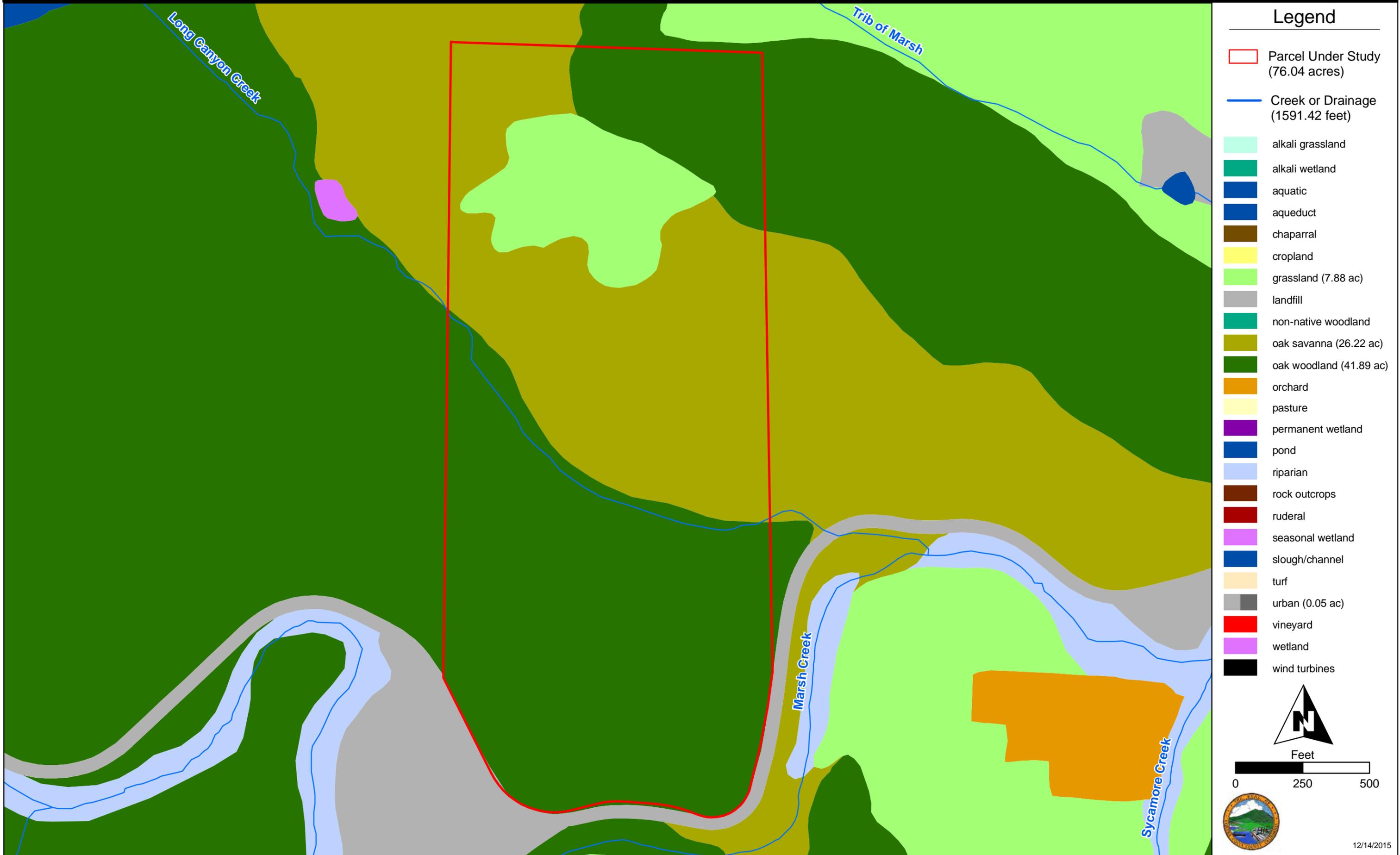
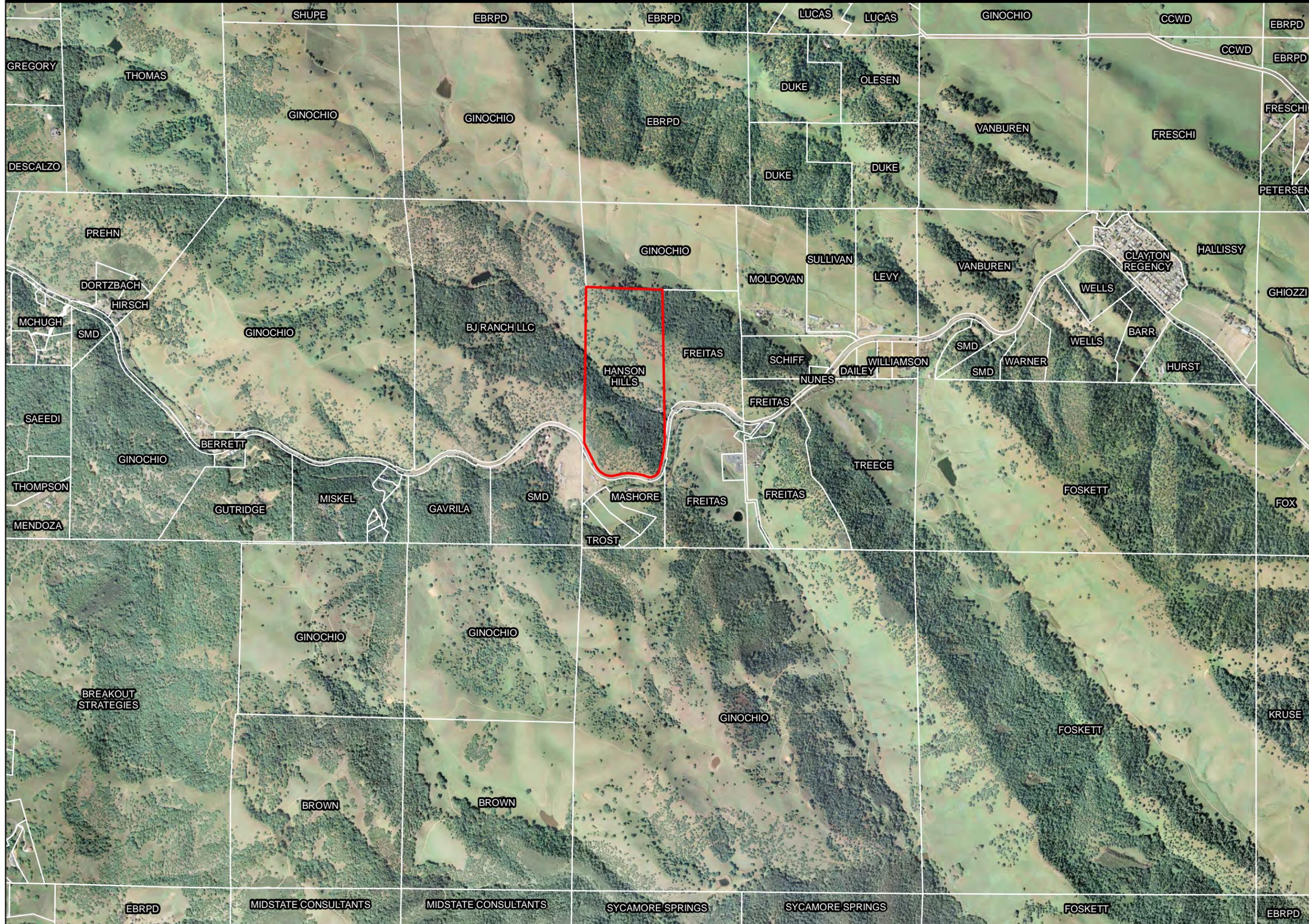


Figure 5: Hanson Hills parcel - Neighborhood

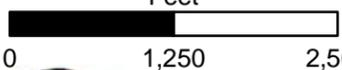


Legend

 Parcel Under Study


N

Feet


0 1,250 2,500



12/14/2015

**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[] (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 packardii*), 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
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 _____, 201____, 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

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.

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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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: **Mitigation Strategy for Northbound Kirker Pass Road Climbing Lane Project**

RECOMMENDATION

APPROVE the mitigation strategy for the portion of the Contra Costa County Public Works Department’s Kirker Pass Road Northbound Truck Climbing Lane Project outside the HCP/NCCP permit area.

DISCUSSION

The Contra Costa County Public Works Department (County Public Works) is in the process of securing permits for the Kirker Pass Road Truck Northbound Truck Climbing Lane project (Project). The Project is a named infrastructure project in the HCP/NCCP. The Project is mostly within the HCP/NCCP permit area with roughly a fourth of length of the Project extending south outside the permit area. The Conservancy has worked with County Public Works, U.S. Fish and Wildlife, and California Department of Fish and Wildlife to develop a strategy that will allow the portion of the Project outside of the permit area to comply with HCP/NCCP avoidance and minimization measures and mitigate through the Conservancy.

The attached memo describes the strategy and the estimated fees associated with the Conservancy assuming the mitigation obligation required of the Project. If this strategy is approved, the Project will return to the Conservancy Governing Board for approval with final fee calculations and mitigation obligations.

CONTINUED ON ATTACHMENT: Yes
 ACTION OF BOARD ON: February 22, 2016
 OTHER: _____

APPROVED AS RECOMMENDED: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

Proposed Approach for Coordinating Mitigation of the Kirker Pass Road Northbound Truck Climbing Lane Project through the ECCC HCP/NCCP

BACKGROUND

The East Contra Costa County Habitat Conservancy (Conservancy) and staff from U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW) (collectively, Wildlife Agencies) have been approached on several occasions by proponents of projects that are partially inside and partially outside the inventory area of the East Contra Costa County HCP/NCCP (HCP/NCCP or Plan). Though only the portion of the project within the inventory area may be covered under the HCP/NCCP, project proponents have typically sought to coordinate their mitigation requirements through the Conservancy. While the HCP/NCCP does not specifically address the split project issues, the Plan does anticipate that non-covered activities could request to mitigate through the Conservancy's program and the Plan contains provisions that address this issue. The Plan encourages such mitigation by non-covered activities in order to maximize benefits to covered species by building on the Plan's conservation strategy and implementation structure and to provide more flexibility to the Conservancy.

The latest project proponent to request coordinated mitigation is the Contra Costa County Public Works Department (County Public Works) for the Kirker Pass Road Northbound Truck Climbing Lane Project (Kirker Pass Road Project). This document introduces the Kirker Pass Road Project, summarizes applicable provisions in the HCP/NCCP, and outlines approaches for addressing the Kirker Pass Road Project.

PROVISIONS IN THE HCP/NCCP

The HCP/NCCP anticipated that non-covered activities might request to mitigate through the Conservancy's program. Two sections of the Plan directly address mitigation for activities not covered by the Plan. The prospect of such mitigation was generally viewed positively, presenting an opportunity to maximize benefits to covered species (by building on the Plan's conservation strategy, including coordinated efforts for land acquisition, preserve management and monitoring), leverage additional funding, take advantage of economies of scale, secure contributions to recovery, and maximize the public benefit of the HCP's mitigation program. Consequently the Plan contains two sets of provisions related to mitigation for non-covered projects. Chapter 8, Section 8.6.2 relates to the contribution of land and Chapter 9, Section 9.3.2 relates to the contribution of funds. This memo only addresses contribution of funds (Chapter 9, Section 9.3.2).

Excerpt from HCP/NCCP Chapter 9, Section 9.3.2 (pages 9-34 and 9-35) Mitigation Funding from Activities Not Covered by the Plan

There may be a number of benefits to addressing the mitigation needs of non-covered projects through the implementing structure of the HCP/NCCP. USFWS and CDFW may wish to use the conservation strategy and implementing structure of the Plan to maximize the conservation benefits to covered species and natural communities. Project proponents may wish to utilize the mitigation approach of the Plan to facilitate their mitigation obligations under a variety of state and federal regulations. The HCP/NCCP Implementing Entity may benefit from the additional flexibility to implement the Plan afforded by access to revenue early in the permit term. See also,

Mitigation Acquisitions by Activities Not Covered by the HCP/NCCP in Section 8.6.2, Land Acquired by Other Organizations or through Partnerships.

Mitigation funds collected from non-covered activities must augment the mitigation and conservation obligations of the Plan (i.e., they may not offset these requirements). To achieve this, the Implementing Entity, the project proponent, USFWS, and CDFG will meet to discuss a mutually acceptable mitigation funding arrangement. Such an arrangement will rest on a description of conservation actions (e.g., land acquisition, restoration) over and above those required by the HCP/NCCP that must be performed to mitigate the non-covered activity. The subsection of Conservation Measure 1.1 entitled Conservation in the Inventory Area beyond HCP/NCCP Requirements in Chapter 5 will help guide the identification of the expanded conservation requirements. The expanded conservation requirements must be approved by CDFG and USFWS. The Implementing Entity must be willing to perform the additional conservation with the funds offered, and the funding arrangement must be acceptable to the project proponent. It is likely that an agreement involving all four parties will be necessary to implement such mitigation funding arrangements.

To facilitate successful implementation of the HCP/NCCP and to ensure that mitigation from non-covered activities is coordinated with the HCP/NCCP, mitigation funding arrangements will include the provisions described below.

- *Flexibility to use the additional revenue to meet existing HCP/NCCP requirements and to use future HCP/NCCP revenue to meet the expanded conservation requirements of the non-covered activity. This will enable the Implementing Entity to use the additional funds in an opportunistic fashion and to meet urgent Plan requirements, such as habitat connectivity requirements in Acquisition Analysis Zone 2, faster than it could otherwise do.*
- *Flexibility in adapting the Stay-Ahead provision to the expanded conservation requirements. In measuring compliance with the Stay-Ahead provision in annual reports, the Implementing Entity will be able to choose either to (a) disregard the expanded the conservation requirements and the land purchased with additional revenue from the non-covered activities when measuring compliance, or (b) include both the expanded conservation requirements (i.e., the HCP/NCCP requirements plus the requirements of the non-covered activities and any continued land acquisition obligations) and the land purchased with additional revenue from non-covered activities when calculating compliance.*

Mitigation funding arrangements will describe the specific application of these provisions in each instance. The additional revenue received from non-covered activities cannot be taken into account during the periodic audits used to recalibrate HCP/NCCP fees.

**Excerpt from HCP/NCCP HCP/NCCP Chapter 8, Section 8.6.2 (pages 8-24 and 8-25)
Mitigation for Activities Not Covered by the HCP/NCCP**

By creating a framework for habitat conservation, the HCP/NCCP could attract additional mitigation to the HCP/NCCP inventory area by projects located in or around the inventory area but not covered by the HCP/NCCP. Land acquired, preserved in perpetuity, and managed for natural resource purposes to mitigate for the impacts of activities not covered by the HCP/NCCP may complement and augment the conservation achieved by the HCP/NCCP if the location and management of the land is consistent with the goals of the

HCP/NCCP. For example, mitigation from non-covered activities may preserve areas that would not have been preserved under the HCP/NCCP. Alternatively, mitigation may accomplish conservation objectives of the HCP/NCCP, enabling conservation under the HCP/NCCP to be redirected to other areas or conservation purposes (as described in Chapter 5 Conservation Measure 1.1, in the section Conservation in the Inventory Area beyond HCP/NCCP Requirements).

Project proponents with projects in or near the inventory area that are not covered by the Plan but that affect covered species may be interested in using the HCP/NCCP as a vehicle to mitigate their projects. These projects may be required to conduct mitigation or conservation actions under a variety of state and federal regulations, including ESA, CESA, CWA, Porter-Cologne Water Quality Control Act, NEPA, or CEQA. If these actions are compatible with the HCP/NCCP, there are advantages to using the conservation strategy of the Plan as a guide to mitigating non-covered projects because of lower costs and greater conservation benefits. Some non-covered project proponents may be interested in contributing land to the HCP/NCCP as their mitigation. See also Mitigation Funding from Activities Not Covered by the Plan in Chapter 9, section 9.3.2, regarding the contribution of mitigation funds to the HCP/NCCP.

If mitigation by non-covered projects occurs in areas that are a priority for conservation in the HCP/NCCP, the Implementing Entity, CDFG, and USFWS will confer and determine how to redirect HCP/NCCP resources to other objectives. In such circumstances, HCP/NCCP resources may be redirected toward other areas such as the following.

- *Additional land acquisition that will be prioritized as described in Chapter 5 Conservation Measure 1.1, in the section Conservation in the Inventory Area beyond HCP/NCCP Requirements (note that such additional land acquisition may not match the size and extent of such non-Plan mitigation acre for acre due to differences in land cover types, conservation value, cost, and other factors).*
- *Other measures necessary to achieve the objectives of the Plan.*

Mitigation for covered species by non-covered projects cannot be counted towards either the mitigation requirements or the Stay-Ahead provision of the HCP/NCCP and must result in a redirection of HCP/NCCP resources toward other conservation purposes as described above.

CDFG and USFWS will, to the extent consistent with their responsibility to ensure effective mitigation proximate to the location of impact, promote mitigation in the HCP/NCCP inventory area by non-covered projects to complement and augment the conservation to be achieved by the HCP/NCCP.

PROJECT DESCRIPTION AND IMPACTS

Contra Costa County Public Works Department (a co-permittee) is seeking permit coverage for the 1.15-mile Kirker Pass Road Northbound Truck Climbing Lane Project. The project will improve safety and reduce congestion along Kirker Pass Road by constructing a truck climbing lane in the northbound direction. Pavement widening is proposed on the southeast side of the roadway to provide a 12- foot truck lane and 8-foot paved shoulder. Widening will require significant retaining walls due to the existing slopes and drainage adjacent to the roadway. This project is specifically listed as a covered transportation project in HCP/NCCP Section 2.3.2 (page 2-19). Approximately 25% of the project (0.32 mile) is located outside of the Plan boundaries. The County Public Works Department has requested that they be able to pay fees to the Conservancy and implement HCP/NCCP conservation measures to mitigate for project impacts in the portion of the project that is outside of the inventory area.

The Kirker Pass Road Project is the first “split” project proposed by a co-permittee of the Plan. It is also the first such project for which compliance with the HCP within the inventory area is mandatory.

Below are preliminary calculations for project impacts inside and outside the inventory area (impacts being discussed are highlighted in yellow below).

Kirker Pass Road Northbound Truck Climbing Lane Permanent and Temporary Impacts (Preliminary)

HCP LAND COVER TYPES	PERMANENT IMPACT AREA (ac)			TEMPORARY IMPACT AREA (ac)			TOTAL IMPACT AREA (ac)		
	Within the HCP	Outside the HCP	Total	Within the HCP	Outside the HCP	Total	Within the HCP	Outside the HCP	Total
Annual Grassland	0.053	0	0.053	0.276	0.053	0.327	0.33	0.053	0.4
Ruderal	1.812	0.686	2.498	1.553	0.438	1.991	3.37	1.124	4.4
Chaparral and Scrub	0.341	0.047	0.388	0.264	0	0.264	0.6	0.047	0.7
Non-native Woodland	0.598	0	0.598	0.004	0	0.004	0.6	0	0.6
Oak Woodland	0.071	0	0.071	0.026	0	0.026	0.1	0	0.1
Riparian Woodland	0.06	0.16	0.22	0.026	0.085	0.111	0.1	0.245	0.2
Seasonal Wetland	0	0	0	0	0	0	0	0	0
Urban	8.089	2.719	10.808	0.095	0.014	0.109	8.2	2.733	10.9
Total	11.024	3.612	14.636	2.244	0.59	2.832	13.3	4.202	17.3
Total (excluding urban)	2.935	0.893	3.828	2.149	0.576	2.723	5.1	1.469	6.4

STREAM TYPE	PERMANENT IMPACT (ft)			TEMPORARY IMPACT (ft)			TOTAL IMPACTS (ft)		
	Within the HCP	Outside the HCP	Total	Within the HCP	Outside the HCP	Total	Within the HCP	Outside the HCP	Total
Intermittent Stream < 25 ft (ft)	54	67	121	37	180	217	91	247	338

Calculations based on first draft of PSR dated 10/20/15 and submitted 10/29/15

PROPOSED MITIGATION/PERMITTING STRATEGY FOR KIRKER PASS ROAD PROJECT¹:

The Kirker Pass Road Project within the permit area will be handled as described in section 9.3.2 of the Plan. That is, the portion within the inventory area will be covered by the ECCC HCP/NCCP, pay mitigation fees, and be treated the same as any other covered project. The portion outside of the inventory area will mitigate separately by making a payment to the Conservancy and performing avoidance and minimization measures (AMMs) consistent with the Plan and set forth in separate permitting documents issued by the Wildlife Agencies.

The mitigation obligations for the portion of the project outside of the inventory area will be memorialized in a Biological Opinion from USFWS and an Incidental Take Permit issued by CDFW to the Contra Costa County Public Works Department. These documents will also memorialize that the mitigation obligation can be transferred to the Conservancy by way of a fee payment. The Contra Costa County Public Works Department and the Conservancy will base the fee payment on the impacts of the project. The base fee will be the equivalent of the Conservancy’s fee schedule for the Kirker Pass Road area and Rural Road Projects. The Wildlife Agencies are requiring that that County Public Works pay an additional fee to ensure that there is funding for an endowment and management in perpetuity for the mitigation. This fee has been calculated using the Conservancy’s adopted Contribution to Recovery calculator and the estimate is included in the table below.

Conservancy staff recommends that a \$5,000 cap be included in any agreement to cover Conservancy staff time in processing the application and documenting the mitigation. Additionally, staff recommends providing some flexibility if the Wildlife Agencies, when permitting the project require extra mitigation above and beyond the discussed acreage preservation.

The amount of the total fee payment and the obligations associated with receiving the payment will be documented in an agreement between the Conservancy and County Public Works Department similar to the Conservancy’s standard Participating Special Entity Agreement.

Estimated Fees (at 2015 fee rate) for Portion of Project Outside the Plan Area²

The anticipated impacts for the Kirker Pass Road Project that are outside of the plan area have been provided to the Conservancy in the first draft of the Project Survey Report (PSR) application. HCP/NCCP mitigation fees for these impacts (as if they were within the Plan area) would total \$79,909.43.

Estimated HCP/NCCP Fees²

	Development Fee for Rural Roads	Endowment/ Management Fee³	Staff time	Funding for other Requirements from CDFW and USFWS
Estimated Fees²	\$79,909.43	\$32,990.94	\$5,000	\$0 (at this time)

¹ This document outlines discussions with USFWS and CDFW related to permit coverage and mitigation/recovery actions consistent with the ECCC HCP/NCCP. It does not relate to other permits that may be required related to 404, 401 or other permitting regulations.

² These are preliminary estimates based on a draft application and are expected to change with project refinement.

³ Endowment/Management charge is calculated using the Conservancy’s adopted Contribution to Recovery calculator for participating special entities.

Estimated Mitigation Requirements of the Wildlife Agencies

The fees proposed above will need to satisfy USFWS and CDFW mitigation requirements. For this project, USFWS and CDFW provided a preliminary mitigation ratio estimate of 3:1 for permanent impacts to natural land cover types, and 1:1 for temporary impacts to natural land cover types. It is anticipated that the project will require 3.255 acres of mitigation².

Estimated Anticipated Mitigation Obligation²

	Acreage	Ratio	Total Mitigation (acres)
Permanent Impacts	0.893	3:1	2.679
Temporary Impacts	0.576	1:1	0.576
TOTAL			3.255

The Conservancy proposes the strategy described in this document for accepting fees for the portion of the project outside of the HCP/NCCP permit area to satisfy the Wildlife Agencies requirements. After discussions with the Wildlife Agencies, the fee structure (with the estimated impacts and fees) outlined in the above section will satisfy USFWS and CDFW requirements.

Accounting Strategy for Tracking Mitigation

Conservancy will not count the impacts of the project outside the Plan area against the Plan’s take limits. The required conservation actions that are identified in the USFWS Biological Opinion and the CDFW Incidental Take Permit and accomplished with the fee payment will not contribute to the Plan’s overall conservation requirements.

The conservation obligations would be tracked separately just as occurs for the pre-HCP projects such as the Vineyards at Marsh Creek, the Liberty Union School District project, and the William Lyon Alves Ranch project in the Pittsburg hills. Each of these performed conservation consistent with the HCP/NCCP conservation strategies and the acres are tracked separately. With the addition of the Kirker Pass Road project, a new table will be developed for the Conservancy’s Annual Report identifying and tracking such projects.

The conservation performed with the funds would be subsumed into the Preserve System and the lands managed in perpetuity consistent with the HCP/NCCP and appropriate Regional Preserve Management Plan.

ADDITIONAL BACKGROUND ON TRACKING ACTIVITIES AND FUNDS

Accounting Procedure

Funds paid to the Conservancy are currently deposited in separate interest-bearing accounts or “organizational units” within a Conservancy-controlled trust fund within the County Treasury. These organizational units are Development Fee, Wetland Impact Fee, and Temporary Impact Fee/Contribution to Recovery/Giant Garter Snake Fund. Additional categories could be created for fees collected from non-covered activities. Depositing funds into these additional categories would allow the Conservancy to easily track fees received for non-covered activities and keep them separate from other funds.

Land Purchase and Management

All land purchased for mitigation for non-covered activities will be part of the HCP/NCCP Preserve System. Lands are acquired for the Preserve System because they meet the goals and objectives of the HCP/NCCP. These mitigation funds would be directed to a property in a “high priority” area for acquisition or would follow the conservation beyond plan obligations provision. The Preserve System is designed to conserve species, habitat, waters, and wetlands using best available science.

Lands purchased to mitigate for non-covered activities would be integrated into the Preserve System and would be managed the same as Preserve lands. The HCP/NCCP requires that Preserve System lands be preserved in perpetuity. To ensure this, the HCP/NCCP requires that either a conservation easement, or, for properties owned by East Bay Regional Park District or the Conservancy, a restrictive covenant be recorded on the property (as described in Section 8.6 of the HCP/NCCP). The Preserves will be managed for the purpose of conserving natural resource values according to the terms of the HCP/NCCP.

Accounting and Tracking Procedure

Mitigation provided by a non-covered activity will not offset HCP/NCCP mitigation requirements, considered to be mitigation for covered activities, or be used toward meeting HCP/NCCP preservation goals. All covered projects are currently tracked using a database that contains detailed information on the project including the name, activity type, location, description, impacts by land cover types, fees, and conservation measures. Non-covered projects would be tracked using this same database. A checkbox would be added for “Non-covered activity” to clearly track and query projects with non-covered activities separately from covered activities to determine impact acreage by land cover types and species issues. For projects that contain both covered and non-covered activities (i.e. Kirker Pass Road Project), the covered and non-covered portions will be entered separately to clearly track the two categories.

Lands that are acquired and managed as part of the Preserve System are tracked using the acquisitions database and a GIS database. The acquisitions database includes information such as name, size, cost per acre, funding sources, and funding amount. The GIS database includes spatial information for each acquisition including preserve boundaries, land cover type, and creeks. The acreage of land preserved for non-covered activities would not be counted towards preservation goals unless the impact acres were also counted.

Reporting

The Conservancy prepares an Annual Report that summarizes implementation activities undertaken during the previous calendar year. A section that reports on non-covered activities will be added to the report. Project name, impacts summary, location of mitigation land, and summary of any actions taken on the mitigation land will be summarized in this section. As detailed above, mitigation for non-covered activities will not be included in meeting implementation goals of the HCP/NCCP and Preserve System acreage totals will exclude the acreage preserved for non-covered activity mitigation, unless impact acres are also counted.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: Proposed Interim Permitting Strategy for projects in the City of Antioch during the development of an Antioch HCP/NCCP

RECOMMENDATION

ACCEPT update on proposed interim permitting strategy for development projects in the City of Antioch during the development of an Antioch HCP/NCCP.

BACKGROUND

Staff from the East Contra Costa County Habitat Conservancy and the City of Antioch worked together to develop a grant proposal to the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) for funds to develop an HCP/NCCP to cover the City of Antioch. In September 2014, the USFWS announced Grant awards from the Cooperative Endangered Species Fund. The City of Antioch was awarded \$688,000 to develop an HCP/NCCP. The grant award requires a 25% local match.

The East Contra Costa County Habitat Conservancy has maintained a consistent position of support for the development of an Antioch HCP/NCCP and set aside funds to assist the City of Antioch with the match requirement. Through the Conservancy’s Participating Special Entity (PSE) Agreement with the Contra Costa Generating Station, LLC for impacts associated with the Oakley Generating Station, a contribution to complementary conservation planning was made in the amount of \$100,000 which is in excess of other required fees. This PSE agreement was executed in 2011 and these funds have been paid to the Conservancy. The intention was for these funds to be used to assist the City of Antioch with matching funds for the development of an HCP/NCCP if they decided to move forward with such an effort.

In October 2014, the Conservancy Governing Board authorized staff to initiate the expenditure of up to \$25,000 of these matching funds once such expenditures are eligible to be credited as

CONTINUED ON ATTACHMENT: <u>Yes</u>	ACTION OF BOARD ON: <u>February 22, 2016</u>	APPROVED AS RECOMMENDED: _____
OTHER: _____		
<u>VOTE OF BOARD MEMBERS</u>		
___ UNANIMOUS		
AYES: _____		I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
NOES: _____		
ABSENT: _____		
ABSTAIN: _____		
		BY: _____, DEPUTY

match. In August 2015, the Conservancy, in consultation with staff from the City of Antioch, contracted with Land Use Planning Services, Inc. to assist the City of Antioch with the initial work on developing an Antioch HCP/NCCP and to assist the City with determining whether to accept the grant funding. Land Use Planning Services, Inc. is staffed by Ken Schreiber who was the lead staff in developing the recently adopted Santa Clara HCP/NCCP.

Interim Permitting Strategy and the Conservancy:

Since August, staff from the City of Antioch and the Conservancy have met with Mr. Schreiber to define feasible strategies for developing the Antioch HCP/NCCP in a streamlined manner that builds on the existing ECCC HCP/NCCP as much as possible, including defining feasible approaches to interim projects. The development of an HCP/NCCP is typically a multi-year process. Even a streamlined plan-development process for the City of Antioch could take three years. During the development of an Antioch HCP/NCCP, there will be development projects that would benefit from streamlined species permitting.

As discussed at the December 2015 Conservancy Governing Board meeting, one approach to make use of the Conservancy's Participating Special Entity project permitting process. This interim permitting strategy for projects within the City of Antioch requires the Conservancy to "lend" acreage from the take limits of the East Contra Costa County HCP/NCCP permits. This strategy has been developed into a joint memo from the City of Antioch and the Conservancy addressed to USFWS and CDFW.

Mitch Oshinsky, Project Manager from the City of Antioch, will be present at the Board meeting if there are any questions for the City.

Progress to date:

- **August 2015:** Conservancy completed contracting with Land Use Planning, Inc.
- **August - October 2015:** Series of meetings among City of Antioch staff, Land Use Planning Services, Inc., and Conservancy staff to build common understanding of goals and scope of an Antioch HCP/NCCP, identify Antioch needs, discuss how best to build off of current ECCC HCP/NCCP, and identify an interim strategy.
- **October 2015:** City of Antioch developed language to include in project approvals to allow for participation in an interim process or an HCP/NCCP if/when one is adopted.
- **October 2015:** Initial outreach to project proponents who could be interested in participating in an interim process in Antioch. This is an on-going effort.
- **November 2015:** City of Antioch and Conservancy staff met with USFWS and CDFW regarding interim strategy scenarios and next steps.
- **November 2015:** Antioch City Council earmarked one-time state reimbursements to help develop an HCP/NCCP.
- **December 2015:** Conservancy Governing Board accepts update on the progress of the development of an Antioch HCP/NCCP and directs staff to provide a proposal for working with USFWS, CDFW and Antioch in assisting with an interim permitting strategy for projects within the City of Antioch.

Attachment:

DRAFT Joint memo from the City of Antioch and the East Contra Costa County Habitat Conservancy to U.S. Fish and Wildlife and California Department of Fish and Wildlife.

Letterhead---City of Antioch

Date:_____

To: James Starr, California Department of Fish and Wildlife
Eric Tattersall, U.S. Fish and Wildlife Service

From: Forrest Ebbs, Community Development Director, City of Antioch
Abby Fateman, Executive Director, East Contra Costa County Habitat
Conservancy

Subject: Antioch HCP/NCCP----Proposal for Granting Interim Project Take Coverage
Through Use of the East Contra Costa Habitat Conservation Plan/Natural
Community Conservation Plan

Introduction

For the period needed to prepare a Habitat Conservation Plan / Natural Community Conservation Plan for the City of Antioch, staff from the East Contra Costa County Habitat Conservancy (ECCCHC) and the City of Antioch (City) propose extending take coverage to projects within the City under the ECCCHC's Participating Special Entity (PSE) policies and procedures. The option of obtaining take coverage through the ECCCHC would be made available to property owners/developers to use if they meet the East Contra Costa County HCP/NCCP's (ECCC HCP/NCCP or Plan) mitigation standards and requirements. We are requesting your concurrence on this approach before we seek City Council and ECCCHC Board approval to implement it.

Need

A significant portion of the undeveloped land that will be addressed by the proposed Antioch HCP/NCCP is currently being planned for urban development, or has entered the development review process of the City and may receive approvals and entitlements from the City during the next three to four year Antioch HCP/NCCP preparation process. One large project may be approved as early as the first quarter of 2016. Presuming it would take about three to four years to complete an Antioch HCP/NCCP and receive the related permits, the value of that Plan would be significantly diminished if there is not an effective way to address species permitting and mitigation for interim projects.

Development in most of Antioch's urban expansion area is expected to need state and federal permits related to federal waters and species. The concern is that developers in the City, often in anticipation of needing a Section 7 permit, will start to secure mitigation lands in the region (or possibly outside the County), that would create stand-alone mitigation lands that may not support or be supported by the ECCC Plan's conservation strategy. This could result in:

a) mitigation purchases that do not maximize benefits to rare, threatened or endangered species because they are located in areas that do not complement or build on the ECCC HCP/NCCP conservation strategy (pages 5-25 to 5-54 of the ECCC HCP/NCCP describe the areas in which additional conservation could best augment the ECCC HCP/NCCP Conservation Strategy); and

b) mitigation purchases that are located adjacent to or even within the proposed ECCC HCP/NCCP Conservation Strategy but have different ownership, conservation instruments, management and monitoring, hindering implementation of the ECCC HCP/NCCP and providing inconsistent and inefficient conservation that fails to maximize benefits to species.

If there were no defined process for addressing development projects during the Antioch HCP/NCCP preparation period, additional challenges could develop including complicating the Antioch conservation strategy by reducing the amount of needed take and the resources for implementing the conservation strategy, potential delays to needed economic development within the City and inefficient use of limited wildlife agency staff time.

Proposal

We propose that via an agreement between the ECCCHC and the City, the ECCCHC would make take coverage available to developments in Antioch that wished to use the take coverage. Take authorization would be granted through the ECCCHC's Participating Special Entity (PSE) process. Consistent with the ECCC HCP/NCCP's PSE requirements, each project receiving take coverage would be approved by the CDFW and USFWS. This arrangement would extend from the initial agreement anticipated in Spring 2016 for a four-year period that could be extended if the Antioch HCP/NCCP was in process of preparation but not yet adopted. The take coverage would be assigned by the ECCCHC from the available coverage under the ECCC HCP/NCCP. The Antioch HCP/NCCP would include a requirement to implement the compensatory mitigation and conservation actions needed to address the impacts of the interim projects and, upon approval of the HCP/NCCP, the take coverage allocated by the ECCCHC would be "deducted" from the Antioch HCP/NCCP and "returned" to the ECCCHC. This concept for using the ECCCHC's PSE process for an Antioch HCP/NCCP-related interim project approval process was provided to the ECCCHC Governing Board on December 14, 2015. There were no objections to having staff proceed with further exploration of the concept. Staff from the City and ECCCHC are considering recommending a ceiling of up to 750 acres of take authorization under this interim project approval process.

The ECCC Plan notes, in Section 8.4, that Participating Special Entities, are "Organizations not subject to the jurisdiction of the Permittees may have projects or ongoing activities within the inventory area that could affect covered species and that may require take authorization" (see Attachment K, Plan pages 8-16 and -17).

Each PSE application requires the ECCCHC to make five findings and to obtain the concurrence of the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service (ECCCHP page 8-17). The findings are:

1. The Implementing Entity signs a contract with the Participating Special Entity binding them to the relevant terms of the HCP/NCCP.
2. The Implementing Entity finds that the proposed activity complies with all terms and requirements of the Plan, the permits, and the Implementing Agreement, and CDFW and USFWS concur.
3. The impacts of the proposed activity fall within those analyzed in the HCP/NCCP and the EIR/EIS in general type, magnitude, and effects.
4. The impacts of the proposed activity do not substantially deplete the amount of take coverage available for future project applicants considered by this Plan.
5. The proposed activity does not conflict with the conservation strategy or the ability of the Implementing Entity to meet the Plan goals and objectives.

Via findings #1 and #2, each PSE would be required to follow conditions of approval consistent with the ECCC Plan. Each PSE would pay applicable fees to the ECCCHC. Each PSE would also pay a contribution to recovery charge, consistent with current practice. This contribution to recovery charge would be used to fund the non-mitigation aspects of implementing the ECCC Plan and a portion may also be used to pay for some of the costs associated with preparing the Antioch HCP/NCCP. As with any other applicant, an Antioch project could propose to provide land in lieu of fees (though a contribution to recovery would still be required).

It is proposed that the ECCCHC and City procedure to use the PSE process to grant take authorization for covered activities in Antioch be structured as a four year agreement between the ECCCHC and the City that could be extended if the Antioch HCP/NCCP is being prepared but not yet adopted. The agreement will acknowledge that allocation of take includes the risk to the ECCCHC that if the Antioch HCP/NCCP is not completed/adopted, the take authorization granted to Antioch's PSEs will not be "returned" by an Antioch HCP/NCCP.

Justification

Given that Antioch's land cover and species are included in the ECCC HCP/NCCP Inventory Area, conservation strategy and analysis, including the EIR/EIS analysis, finding a way to link interim project approvals to the ECCC HCP/NCCP is both desired and possible.

The analysis in the ECCC HCP/NCCP encompasses an Inventory Area that included land within the City of Antioch and its future urban growth areas (see Attachment A, Plan Figure 1-1: Inventory Area). Antioch contains approximately 10 percent of the

ECCC HCP/NCCP Inventory Area (see Attachment G, Plan page 2-7). The City decided not to participate in the ECCC HCP/NCCP, but Antioch's land remained in the Plan's Inventory Area and part of the land cover analysis (e.g., see Attachment L, Plan Table 2-3, Extent of Land Use Designation Types by Jurisdiction for the Inventory Area includes Antioch's land uses) and part of the Conservation Strategy analysis (e.g. see Attachments D and E, Plan Figure 5-2: Acquisition Priorities with Initial Urban Development, and Plan Figure 5-3: Acquisition Priorities with Maximum Urban Development Area and Attachment J, Plan pages 5-31, -32 and -33 on land acquisition requirements within Zone 2). The analysis of the Independent Science Panel for the ECCC HCP/NCCP incorporated consideration of habitat resources, impacts and conservation within Antioch. Thus the adopted ECCC Plan and the related EIR/EIS includes analysis of land cover, covered species, future growth and conservation needs within the City of Antioch.

The ECCC Plan defines a flexible permit area that may move or expand under defined conditions. The Plan identifies two urban development options: an Initial Urban Development Area (Initial UDA) and a Maximum Urban Development Area (Maximum UDA)(see Attachment H, Plan pages 2-17 and 2-18). The Plan includes a map of the Initial UDA (see Attachment B, Plan Figure 2-3: Initial Urban Development Area) but does not include a map of the Maximum UDA because there is flexibility in where the Maximum UDA may be located. Lands not in the Initial UDA may be added to the UDA if they are not in an area defined as a high or medium conservation priority and if limits on impacts to land cover types for the Maximum UDA have will not be exceeded (see Attachment H, Plan page 2-18). Conservation requirements expand if impacts exceed those in the Initial UDA (see Attachments D and E, Plan Figures 5-2 and 5-3 and Attachments O, P, Q and R, Plan Tables 5-5a, 5-5b, 5-7 and 5-8 address land acquisition requirements for the Initial and Maximum Urban Development Areas, respectively).

Most of the remaining undeveloped land within Antioch is not in a high or medium priority area for conservation. Impacts covered under the ECCC Plan through the end of 2015 total approximately 450 acres of which approximately 90 acres are Annual Grasslands. The take limits for each land cover type are far from being exceeded. Likewise, the Conservancy is well ahead of the Stay Ahead requirements of the Plan. (see 2014 ECCCHA Annual Report , Attachment T, Table 14: Stay-Ahead Assessment: Land Cover and Attachment S: Figure ES-1, Stay Ahead Compliance). Therefore, developments in Antioch could be covered as PSE's consistent with the existing ECCC HCP/NCCP.

Table 1. ECCC HCP/NCCP Take Limits and Preservation Requirements Under Initial and Maximum Urban Development Areas

Land Cover	Initial Development Scenario take limits in acres and miles (attached Tables 4-2, 5-5a and 5-7)	Initial Development Scenario--- preservation requirement (attached Tables 5-5a and 5-7)	Maximum Development Scenario take limits in acres and miles (attached Table 4-3, 5-5b and 5-8)	Maximum Development Scenario--- preservation requirement (attached Tables 5-5b and 5-8)
Aquatic cover types				
Riparian woodland	30 acres	60 acres	35 acres	70 acres
Wetlands/Ponds	237 acres	349 acres	255 acres	400 acres
Total Aquatic acres*	266 acres	409 acres	289 acres	470 acres
Streams in miles				
Perennial	0.3 miles	0.6 miles	0.4 miles	0.8 miles
Intermittent	0.3 miles	0.3 miles	0.4 miles	0.4 miles
Ephemeral	4 miles	4 miles	5 miles	5 miles
Total stream miles	4.6 miles	5.2 miles	5.8 miles	6.2 miles
Terrestrial cover types				
Annual grassland	2,533 acres	13,000 acres	4,152 acres	16,500 acres
Alkali grassland	115 acres	900 acres	115 acres	1,250 acres
Oak savanna	42 acres	500 acres	165 acres	500 acres
Oak woodland	21 acres	400 acres	73 acres	400 acres
Chaparral/scrub	0	550 acres	2 acres	550 acres
Ruderal	1,271 acres		1,311 acres	
Cropland/pasture	3,983 acres	250 acres	6,570 acres	400 acres
Nonnative woodland	26 acres		26 acres	
Total terrestrial acres*	9,255 acres	15,600 acres	12,415 acres	19,600 acres
Estimated size of Preserve System**		21,450 to 27,050 acres		26,050 to 34,350 acres

* Outside parks and open space; excludes recreation and utility impacts

** Size of Preserve System larger than minimum preservation acres because of connectivity and other requirements

In addition, the ECCC HCP/NCCP analyzed conservation needs in and around Antioch and set requirements within Antioch City Limits. Most lands within Antioch are not designated in the ECCC HCP/NCCP as a high priority for conservation, and thus would be eligible for coverage under the Plan as a Participating Special Entity. However, there are a few areas within Antioch that are designated as a high priority for conservation (within which coverage would not be possible). The ECCC HCP/NCCP Plan's acquisition priorities depicted in Attachment D and E, Plan Figures 5-2 and 5-3 and Attachment J, Plan pages 5-31, -32 and 33, show that subzones 2g and 2h, both of which are in or partially within Antioch, are a high conservation priority. No projects in these areas could be covered as PSE projects under the proposed interim project. However, the remainder of land within Antioch is either within subzone 2i, which is a low priority for acquisition and has no acquisition requirements under the Plan, or are not in any acquisition analysis subzone and thus have no acquisition requirements under the Plan. Projects in these low or no conservation priority areas could be covered as PSE projects. It should also be noted that, through the acquisition of the Roddy Ranch, a significant portion of the ECCC Plan conservation requirements within the City of Antioch have already been implemented,

While the City of Antioch is not a signatory to the ECCC HCP/NCCP and has not received permits through the ECCC Plan, future development in the City was part of Plan-related analysis, including the Plan's conservation strategy and impact analysis (as discussed above), and projects in Antioch may be covered under the authority of agencies that were issued permits under the ECCC Plan. The Plan accurately notes that development in Antioch is not eligible to be covered in the same way as development in participating cities, but projects in Antioch may be and have been covered as PSE's and numerous activities within Antioch are specifically named as eligible covered activities in the Plan. Plan pages 2-18 through 2-32 and Plan Figure 2-4 address Rural Infrastructure Projects and Rural Infrastructure Operation and Maintenance Activities (see Attachment H, Plan pages 2-18-page 2-32, and Attachment C, Figure 2-4, Location of Covered Rural Infrastructure Projects). Specific projects within Antioch (e.g., eBART, Highway 4 widening, Trembath, Oakley and Upper Sand Creek Flood Control Basins, and creek channels) are eligible covered activities and several have been covered. Covered Rural Infrastructure Operation and Maintenance Projects (i.e., Roads, Flood Protection and Utilities) are identified as those within the inventory area, including Antioch.

The Plan also notes on page 4-23 (see Attachment I, Plan page 4-23) the species impacts that would occur from development in Antioch's southern expansion area. This area is the prime focus for the requested interim project process. Preparation of an Antioch HCP and NCCP is intended to be compatible with the ECCC HCP/NCCP. Use of the ECCC HCP/NCCP to provide take authorization during preparation of the Antioch Plan is consistent with the purpose of the ECCC HCP/NCCP, which is "to

protect and enhance ecological diversity and function within the rapidly urbanizing region of eastern Contra Costa County” (see Attachment F, Plan page 1-4).

The EIR/EIS prepared for the ECCC HCP/NCCP analyzed the impacts of implementing all aspects of the Plan, including impacts up to the limits defined for the Maximum UDA (see Attachments M and N, Plan Tables 4-2 and 4-3). In addition to the analysis for the Maximum UDA, a separate analysis was performed in the Cumulative Impacts section of the EIR/EIS for urban growth within the City of Antioch. Therefore, the interim process proposed herein is consistent with the existing analysis for CEQA and NEPA.

Finally, Antioch’s approved Grant Application for a Section 6 Planning Grant indicates that the Antioch HCP/NCCP will build off of the ECCC Plan and include the ECCC Plan’s list of species and a compatible conservation strategy.

Summary

The proposal is to allow the ECCCHC to grant take authorization for interim projects during preparation of the Antioch HCP/NCCP through the availability of the ECCCHC’s Participating Special Entity process for activities in the City of Antioch. This approach is consistent with the ECCC HCP/NCCP because:

- Antioch is in the ECCC HCP/NCCP Inventory Area and Antioch’s land cover, covered species and covered activities were analyzed in the ECCC Plan and EIR/EIS;
- Antioch covered project impacts will fit within the take limits of the ECCC Plan;
- The covered projects will be required to meet the conditions of approval of the ECCC Plan;
- The covered projects will not conflict with the conservation strategy of the ECCC Plan;
- The covered projects will pay the standard ECCCHC fees and a contribution to recovery required of PSE’s by the Conservancy and/or provide land in lieu of fees following the process outlined in the ECCC Plan and adopted policies;
- Coverage as PSE’s must be approved on a case-by-case basis by the CDFW and USFWS; and
- The ECCCHC/City agreement will be time and acreage limited.

This process will provide considerable benefits for the City, ECCCHC and state and federal Wildlife Agencies including:

- Development project approvals in Antioch will be consistent with the ECCC HCP/NCCP conservation strategy and thus consistent with approvals in adjacent jurisdictions that receive take coverage through the ECCC Plan;
- Elimination of potential conflict between the formation of the ECCC HCP/NCCP Preserve System and stand-alone mitigation lands that may not be in support of or supported by the ECCC Plan’s conservation strategy;

- Benefiting state and federal wildlife agencies by reducing their use of limited staff resources versus processing project-specific Section 7 mitigation plans for sites in Antioch;
- Benefiting creation and adoption of an Antioch HCP/NCCP by providing support for Antioch's innovative interim project process;
- Benefiting creation of the Antioch HCP/NCCP by having the contribution to recovery portion of PSE fees available to augment Antioch's Section 6 Grant Local Match; and
- Reducing potential delays for needed economic development within the City.

Attachments:

ECCC HCP/NCCP

- A. Figure 1-1: Inventory Area
- B. Figure 2-3: Initial Urban Development Area
- C. Figure 2-4: Location of Covered Rural Infrastructure Projects
- D. Figure 5-2: Acquisition Priorities with Initial Urban Development Area
- E. Figure 5-3: Acquisition Priorities with Maximum Urban Development Area
- F. Page 1-4
- G. Page 2-7
- H. Pages 2-17 through 2-32
- I. Page 4-23
- J. Pages 5-31, -32 and -33
- K. Pages 8-16 and -17
- L. Table 2-3: Extent of Land Cover Designation Types by Jurisdiction for the Inventory Area (acres)
- M. Table 4-2: Direct Impacts on Land-Cover Types and Covered Natural Communities under Initial Urban Development Area Scenario (acres)
- N. Table 4-3: Direct Impacts on Land-Cover Types and Covered Natural Communities under Maximum Urban Development Area Scenario (acres)
- O. Table 5-5a: Required Preservation Ratios and Estimated Acquisition Requirements for Aquatic Land-cover Types under Initial Urban Development Area
- P. Table 5-5b: Required Preservation Ratios and Estimated Acquisition Requirements for Aquatic Land Cover Types under Maximum Urban Development Area
- Q. Table 5-7: Land Acquisition Requirements for Terrestrial Land-cover Types under the Initial Urban Development Area Scenario (acres)
- R. Table 5-8: Land Acquisition Requirements for Terrestrial Land-cover Types under the Maximum Urban Development Area Scenario (acres)

2014 ECCCHC Annual Report

- S. Figure ES-1: Stay Ahead Compliance
- T. Table 14: Stay Ahead Assessment: Land Cover

CC:

City of Antioch

Steve Duran

Forrest Ebbs

Mitch Oshinsky

City Attorney

Contra Costa County

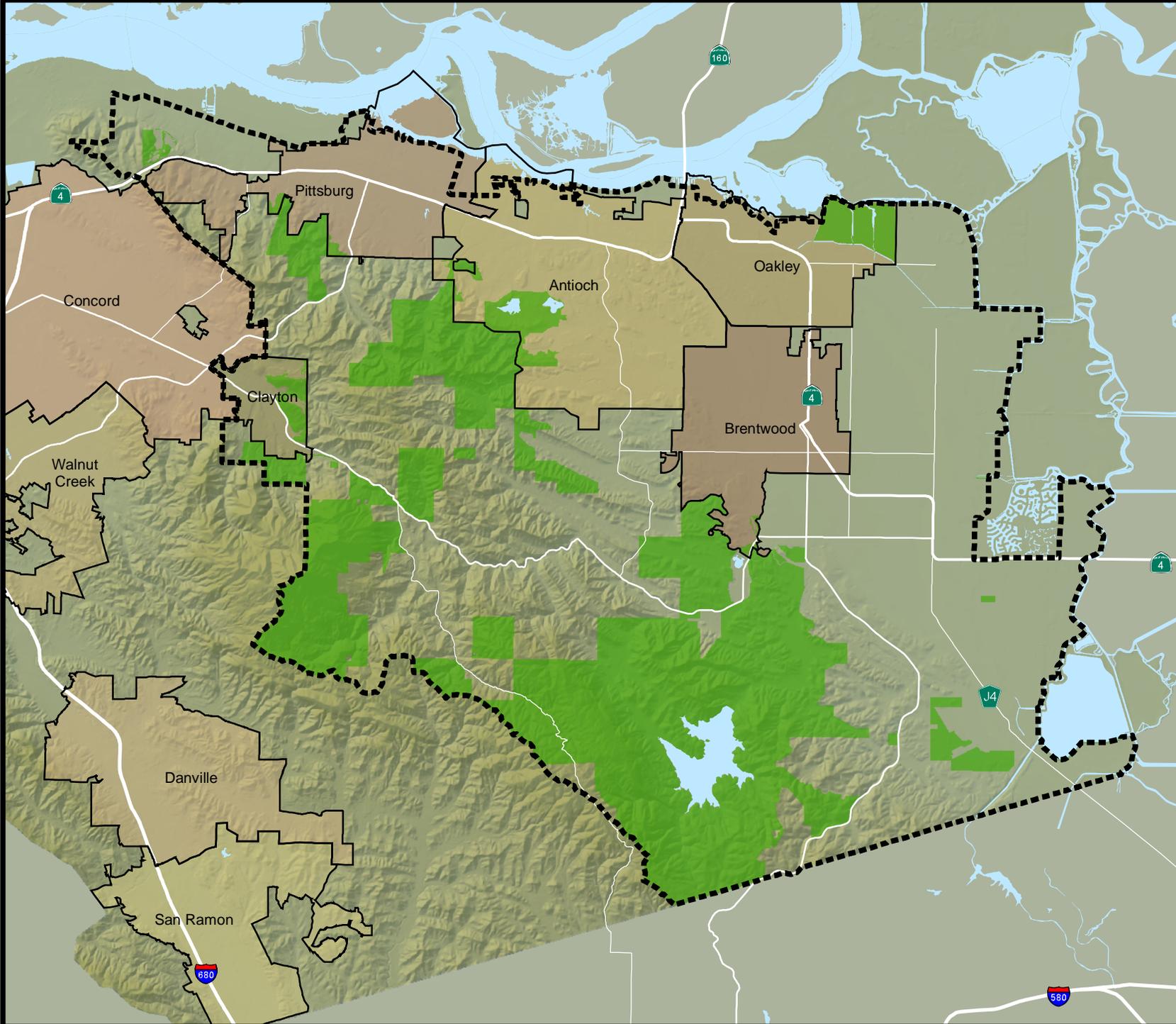
John Kopchik

Land Use Planning Services

Kenneth Schreiber

DRAFT

Attachment A: Figure 1-1 Inventory Area



Legend

 Inventory Area

 Non-urban Parks, Public Watershed Lands, and Deed Restricted Open Space in the Inventory Area

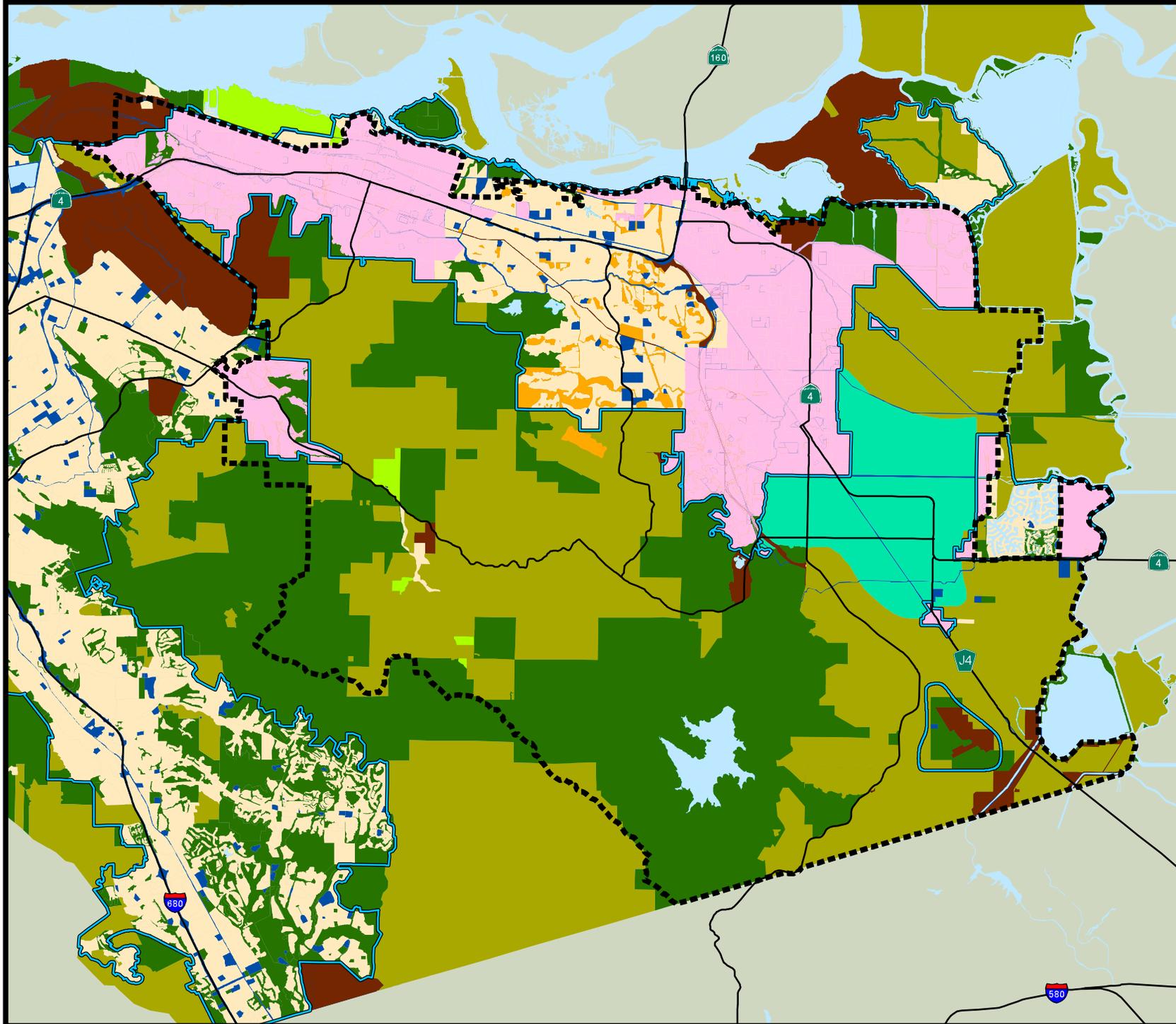
 City Limits



Miles



Attachment B: Figure 2-3 Initial Urban Development Area



Legend

-  Inventory Area
-  County Urban Limit Line
-  Initial Urban Development Area

Land Use Designations *
For Areas Outside
Initial Urban Development Area

-  Agricultural Core
-  Agriculture
-  Development
-  Open Space (Designated in General Plan)
-  Parks, Public Watershed Lands, and Deed Restricted Open Space
-  Urban Parks & Open Spaces (in Inventory Area)
-  Public Facilities
-  Public Facilities with Undeveloped Land
-  Water

* Land Use Designations were derived from County and City General Plan Maps. Designations were combined to create a simpler map.



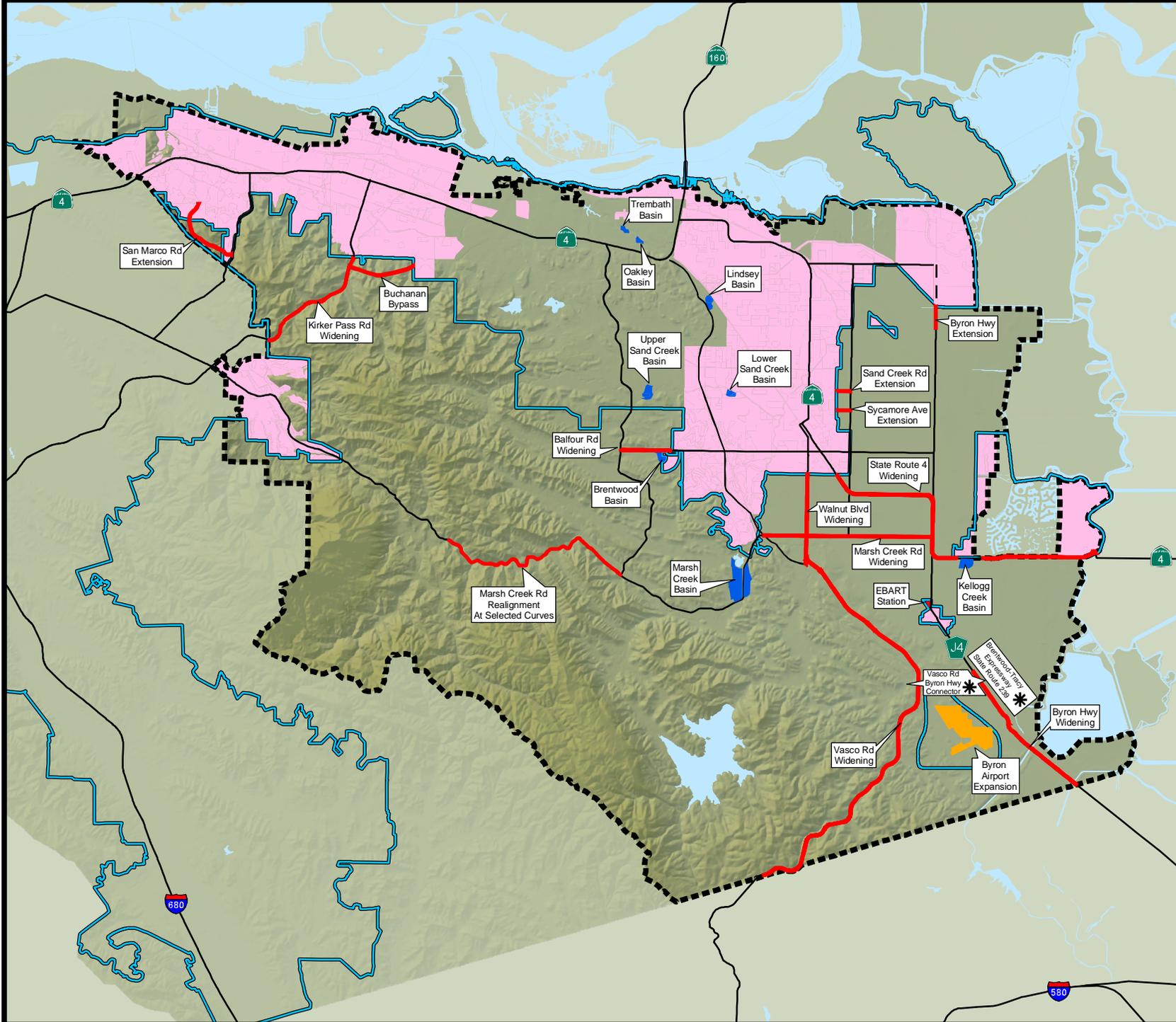
Miles



Jones & Stokes



Attachment C: Figure 2-4 Location of Covered Rural Infrastructure Projects



Legend

-  Inventory Area
-  County Urban Limit Line

Rural Infrastructure Projects

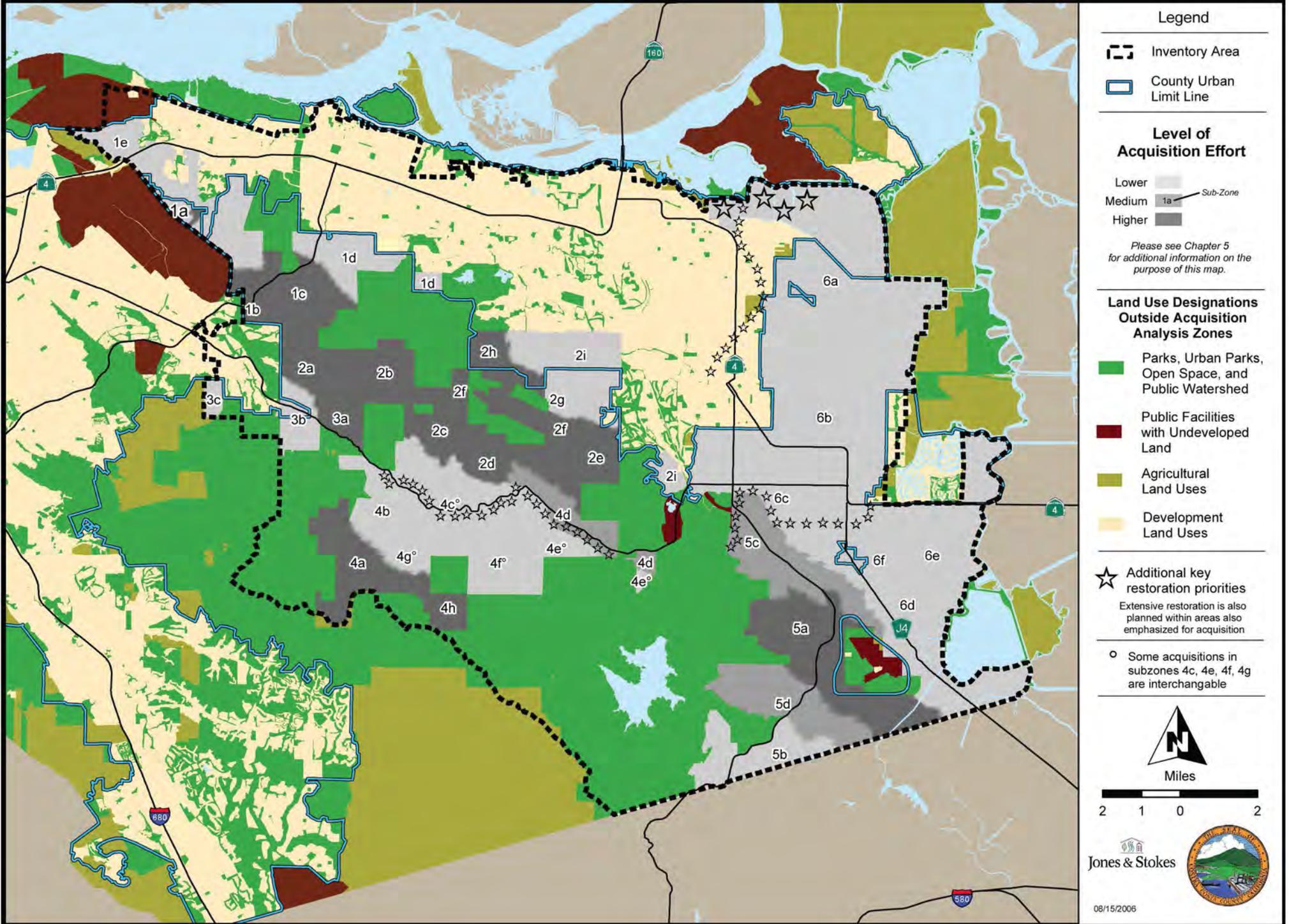
(Please see Chapter 2 for details)

-  Detention Basins
-  Transportation Projects
-  Byron Airport
-  Initial Urban Development Area (transportation & other Infrastructure projects in this area are also covered.)

* Precise location to be determined. Please see Chapter 2 for a description of alignment limitations under HCP/NCCP permit.



Attachment D: Figure 5-2 Acquisition Priorities with Initial Urban Development Area



Legend

- Inventory Area
- County Urban Limit Line

Level of Acquisition Effort

- Lower
- Medium 1a Sub-Zone
- Higher

Please see Chapter 5 for additional information on the purpose of this map.

Land Use Designations Outside Acquisition Analysis Zones

- Parks, Urban Parks, Open Space, and Public Watershed
- Public Facilities with Undeveloped Land
- Agricultural Land Uses
- Development Land Uses

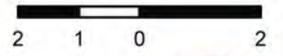
★ Additional key restoration priorities

Extensive restoration is also planned within areas also emphasized for acquisition

○ Some acquisitions in subzones 4c, 4e, 4f, 4g are interchangeable



Miles

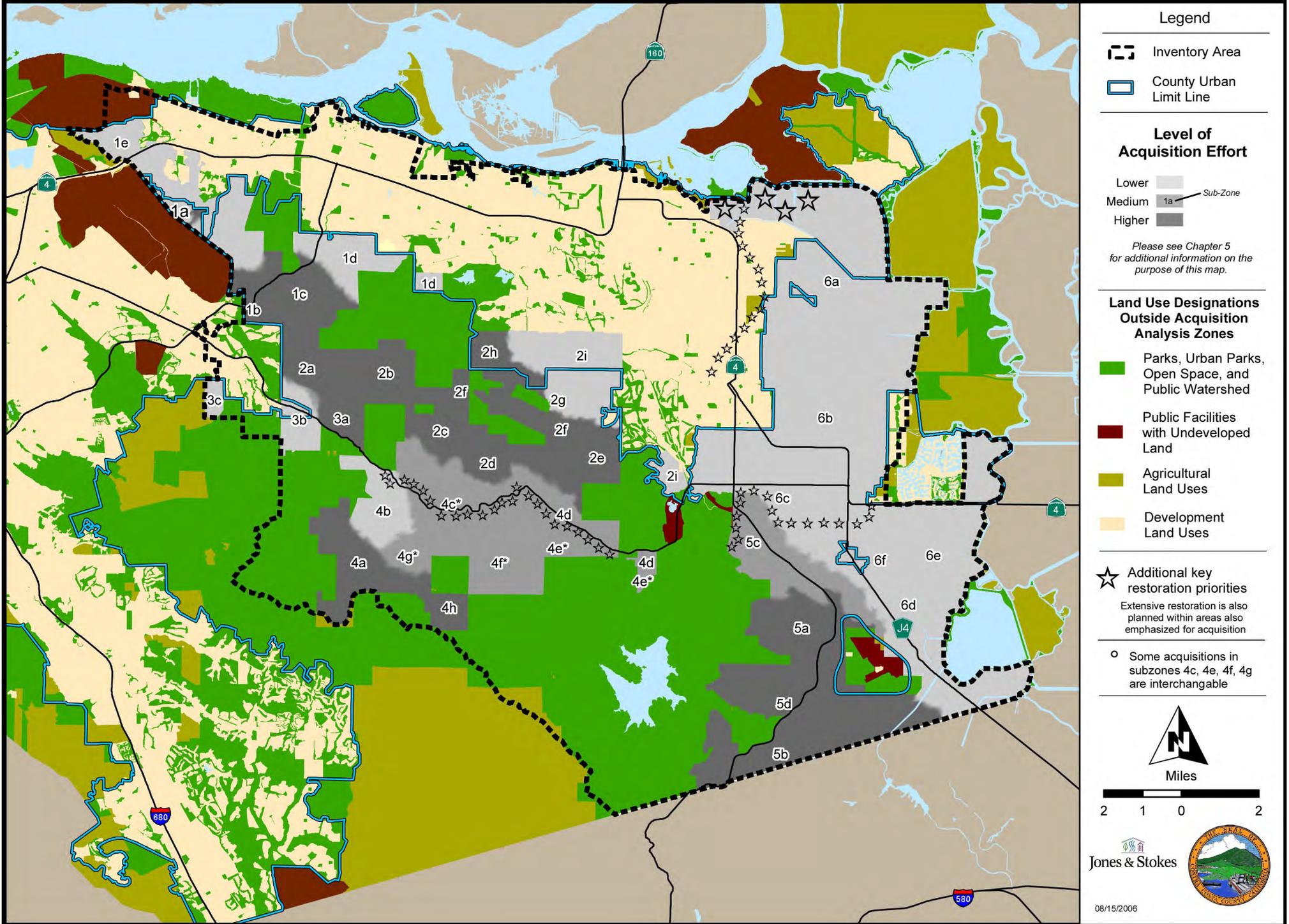


Jones & Stokes



08/15/2006

Attachment E: Figure 5-3 Acquisition Priorities with Maximum Urban Development Area



Legend

- Inventory Area
- County Urban Limit Line

Level of Acquisition Effort

- Lower
- Medium 1a Sub-Zone
- Higher

Please see Chapter 5 for additional information on the purpose of this map.

Land Use Designations Outside Acquisition Analysis Zones

- Parks, Urban Parks, Open Space, and Public Watershed
- Public Facilities with Undeveloped Land
- Agricultural Land Uses
- Development Land Uses

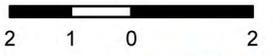
★ Additional key restoration priorities

Extensive restoration is also planned within areas also emphasized for acquisition

○ Some acquisitions in subzones 4c, 4e, 4f, 4g are interchangeable



Miles



Jones & Stokes



conservation and contribute to recovery of endangered species within East Contra Costa County while:

- Balancing open space, habitat, agriculture, and urban development;
- Reducing the cost and increasing the clarity and consistency of federal and state permitting;
- Consolidating and streamlining these processes into one, locally controlled plan;
- Encouraging, where appropriate, the multiple use of protected areas, including recreation and agriculture;
- Sharing the costs and benefits of the habitat conservation plan as widely and equitably as possible; and
- Protecting the rights of private-property owners.

1.1.3 Purpose

The purpose of this Plan is to protect and enhance ecological diversity and function within the rapidly urbanizing region of eastern Contra Costa County. To that end, the Plan describes how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on covered species and their habitats and wetlands while allowing for the growth of selected regions of the County and the cities of Pittsburg, Clayton, Oakley, and Brentwood. The Plan also addresses the need for expansion of urban infrastructure in the eastern portion of the county. The Plan therefore encompasses many of the on-going operations and maintenance activities of the County Flood Control District, as well as a variety of road construction and maintenance activities. The Plan also describes the responsibilities associated with operating and maintaining the new preserves that will be created to mitigate for the anticipated impacts. As an NCCP, this Plan will contribute to the recovery of listed species and help preclude the need to list additional covered species in the future.

The Permittees are asking USFWS to issue permits that authorize incidental take on listed species. The Permittees are also asking CDFG to issue permits that authorize take of all covered species. The Plan includes a conservation strategy to compensate for impacts to covered species. The conservation strategy provides for the conservation and management of covered species and their habitats. It is anticipated that USFWS and CDFG will issue take permits to the local jurisdictions under the federal Endangered Species Act (ESA) and the Natural Community Conservation Planning Act (NCCPA). The local jurisdictions will then be able to use those permits to authorize development and other activities within areas designated in the Plan. USFWS and CDFG will also provide assurances to local jurisdictions and Plan participants that no further commitments of funds, land, or water will be required to address impacts on covered species beyond that described in the Plan (see Chapter 9, *Funding*).

Antioch

The City of Antioch is not a participating member of the HCPA, nor will it be a signatory to the final HCP/NCCP agreement. It is therefore excluded from the permit area. It is, however, within the larger inventory area. Land use changes and population growth within Antioch will influence the surrounding area and are therefore included in this review.

Antioch is the most populous city within the inventory area. According to the 2000 census, 91,293 people live in Antioch. The city is characterized by large amounts of vacant and open land providing a considerable area for urban expansion (City of Antioch 1988, 2004). Land uses in Antioch include industrial and commercial development, but the principal land use is residential development. The northern portion of the city contains areas of industrial and commercial use, whereas the southern portion is almost entirely residential. The southern portion of Antioch has been designated for residential development. The southeastern corner of Antioch's planning area, known as Future Urban Area 2, is designated for industrial and business park development. Future Urban Area 1, also known as the Sand Creek Specific Plan, lies along the southern border of Antioch.

Approximately 10% of the inventory area is within the Antioch city limits. Antioch's jurisdiction encompasses 17,732 acres, of which 13,684 are designated for development (City of Antioch 2004). The remaining 4,048 acres are designated as open space, watershed lands, agriculture, and parklands. The majority of this land is owned or managed by East Bay Regional Park District (EBRPD). A number of other urban parks and open space areas are located near EBRPD land or are scattered throughout the city.

Unincorporated Areas of East Contra Costa County

Three-quarters of the land in the inventory area—129,414 acres—are in unincorporated areas of Contra Costa County. Development within these unincorporated areas is concentrated in small communities such as Bay Point, Knightsen, and Byron. Bay Point is the most developed unincorporated community in the inventory area. Located immediately west of Pittsburg, the Bay Point community accounts for the bulk of the 9,331 acres of developed unincorporated land. The agricultural communities of Knightsen and Byron also include residential areas and public facilities. Knightsen is east of Oakley and Brentwood; Byron is south of Brentwood.

Although the amount of agricultural land in Contra Costa County has declined over the last 50 years, agriculture remains the primary land use on the unincorporated lands of the inventory area. Most of the County's agricultural land is located in unincorporated East Contra Costa County and, within the

- Water supply and delivery facilities including water treatment plants, water supply pipelines, and canals.
- Flood control and other stream-related facilities including dams, armored creeks, detention ponds, streams, and urban stream restoration projects.
- Waste management facilities including sewage treatment plants, recycling centers, and transfer stations.

Changes in the Urban Development Area

As described in Chapter 1, the HCP/NCCP permit area that covers urban development would expand or contract as a result of local land use decisions made independently of the HCP/NCCP. The permit area for urban development (i.e., urban development area) will correspond to the County ULL or the city limits of participating cities, whichever is largest⁴. If a participating city expands or shrinks its city limit or if the County ULL shrinks or expands, the permit area for the HCP/NCCP would automatically expand or shrink to reflect the land use policy change, as long as the conditions below apply.

- The revised urban development area, together with projected impacts from covered activities outside the urban development area, does not exceed the maximum land cover or total impact projections (i.e., take limits) in Chapter 4.
- The revised urban development area excludes areas designated as high priorities for acquisition under the HCP/NCCP conservation strategy, as designated in Figure 5-3, Acquisition Priorities Under the Maximum Urban Development Area Scenario⁵ (see Chapter 5).
- The revised urban development area is consistent with successful implementation of the HCP/NCCP conservation strategy (see Chapter 5 and Figures 5-2 and 5-3).

Two urban development areas are defined for the purposes of the analysis: the *initial urban development area* and the *maximum urban development area*. The initial urban development area (Figure 2-3) is an area within the current County ULL, excluding some areas within the ULL surrounding the Byron Airport⁶ (approximately 1,800 acres). These areas have been excluded because full development of those locations may not occur during the permit term of the HCP/NCCP. The excluded areas may be added to the urban development area at

⁴ However, the applicable land use planning agency may exclude defined areas within its ULL or jurisdictional boundaries from the urban development area.

⁵ To more precisely define the boundaries of the areas into which the UDA may not extend, a Permittee may provide detailed site-specific information on topography and natural resources and must seek approval from CDFG and USFWS to define this boundary.

⁶ Note that planned expansion of the Byron Airport (up to approximately 300 acres) is covered by the HCP/NCCP; see discussion below.

such time as urban land use designations are approved in these areas, subject to the conditions described above for expanding the permit area.

The maximum urban development area is the largest area to which urban development could expand under the terms of this HCP/NCCP. The size and impacts of the maximum urban development area were established by

- analyzing areas outside the initial urban development area that are proposed for future development in the general plans of Brentwood, Clayton, Pittsburg, and the County (City of Brentwood 1993; City of Clayton 2000; City of Pittsburg 2001; Contra Costa County 2005), and
- ensuring consistency with the biological goals and objectives of this Plan and with the conservation strategy (see Chapter 5), including the conditions described above for changes to the urban development area.

The urban development area covered under the HCP/NCCP at the end of the permit term could fall anywhere in the range defined by the initial urban development area and the maximum urban development area, depending on local land use decisions that occur during the permit term.

2.3.2 Rural Infrastructure Projects

Specific projects taking place outside the ULL are also included as covered activities in this Plan. These *rural infrastructure projects* provide infrastructure that supports urban development within the urban development area (Figure 2-4). Only projects that were reasonably well defined at the time of HCP/NCCP approval are included in the Plan. The Plan would allow activities encompassing up to 933 acres for the rural infrastructure projects and activities listed below.

Projects are divided into three categories: transportation projects, flood protection projects, and utility projects. Most rural road projects covered by the Plan will be led by Contra Costa County. All flood protection projects covered by the Plan will be led by the County Flood Control District. Utility projects will likely be led by the private companies that own the utility lines.

Some of these projects could be led by state or local agencies that are not expected to be Permittees or signatories of the HCP/NCCP Implementation Agreement. Because these agencies are not subject to the jurisdiction of the Permittees (e.g., Contra Costa County), they will have to take additional administrative steps in order to receive coverage under the Plan. See Chapter 8 for details on the process by which other agencies can be included in the permit coverage offered by the Plan during implementation as Participating Special Entities.

Projects described below are capital projects. The operation and maintenance (O&M) of these projects, as well as O&M activities for existing facilities, are described in Section 2.3.3, *Specific Rural Infrastructure Activities*. All dates for

construction projects are approximate; projects built at other times during the permit term will still be covered by the Plan.

Transportation Projects

The following specific transportation-related projects are covered by this Plan. Their locations are shown in Figure 2-4.

Buchanan Bypass

The City of Pittsburg is leading planning for the Buchanan Road Bypass to implement its General Plan (City of Pittsburg 2001). Plans for the Buchanan Bypass call for a four-lane major arterial that connects Kirker Pass Road with Somersville Road and Donlon Boulevard. A preliminary route alignment with approximate limits of grading is presented in the Buchanan Road Bypass Programmatic EIR (Duncan & Jones 2003). The extension of Donlon Boulevard to connect to the Bypass is an associated project, the precise alignment and environmental impacts of which will be addressed in a project-specific EIR.

Kirker Pass Road Widening

Contra Costa County is considering adding an approximately 9,600-foot truck-climbing lane on Kirker Pass Road between Clearbrook Drive in Concord and the Pittsburg city limit. The northbound lane is from Clearbrook to the northern Hess Road intersection. The southbound lane is from the Pittsburg city limit to the southern Hess Road intersection.

Marsh Creek Road Realignment at Selected Curves

The County plans to realign selected curves of Marsh Creek Road and widen shoulders between Aspara Drive (Aspara Drive is located just east of Morgan Territory Road) and Deer Valley Road. The County intends to commence initial engineering work in 2007–2008. Construction is expected to continue beyond 2010.

Byron Airport Expansion

The Byron Airport is owned and operated by Contra Costa County. The Byron Airport Master Plan (Contra Costa County Airports 2005) describes proposed land uses at the site, including plans for additional aviation and commercial development. Future development plans include providing additional commercial services at the Byron Airport along the area bordered by Holey Road, Byron Hot Springs Road, and the existing NW–SE runway of the airport. Additional land is

reserved for aviation use along the W–E runway. The existing NW-SE and W-E runways are proposed to be extended to the southeast and east by 1,500 feet and 900 feet, respectively. A maximum of approximately 360 additional acres could be developed or otherwise impacted by the airport if the Master Plan is fully implemented. However, approximately 68 of these acres are in areas where development is restricted by Federal Aviation Administration regulations so future impacts are very unlikely there.

In 1992, USFWS issued a biological opinion and incidental take statement pursuant to Section 7 of the ESA to USACE allowing take of San Joaquin kit fox resulting from construction of the Byron Airport in accordance with the previous Master Plan (Contra Costa County Airports 1986). In 1993, CDFG issued a take permit under Section 2081 of the California Fish and Game Code allowing take of kit fox. The USFWS take statement and CDFG take permit still apply to the remaining construction planned at the airport under the current Master Plan. (The mitigation for these permits has been implemented and is summarized in Chapter 5). These permits did not cover any incidental take of species that have been listed by the federal or state governments since 1993 (e.g., California red-legged frog, California tiger salamander, vernal pool invertebrates), nor did they cover non-listed species that may become listed in the future.

The 1992 and 1993 permits from USFWS and CDFG covered approximately 200 acres of impacts to natural land cover types. At present, the developed footprint of the airport (including the grassy medians between the runways and taxiways) is approximately 112 acres. Approximately 88 acres of take coverage remains for the airport under the earlier permits.

Because this project may be funded, in part, by the Federal Aviation Administration, ESA compliance may be needed through Section 7 rather than Section 10. If this is the case, the Section 7 consultation will follow the guidelines for all Section 7 consultations in the inventory area described in Chapter 10.

Byron Highway Northern Extension

Contra Costa County, in cooperation with other agencies, is planning a variety of improvements to the Byron Highway, also known as J4. As specified in its general plan, the County plans to extend the Byron Highway north from Delta Road to East Cypress Road (Contra Costa County 2005). Preliminary engineering and environmental work on the extension is scheduled for 2006 and 2007.

Byron Highway Widening

Shoulder-widening projects to improve the safety of the Byron Highway are planned to occur in phases at Camino Diablo and from Hot Springs Road to the county line. Construction is planned for completion in 2007. The County also plans to widen the Byron Highway along the frontage of the school district office

and Byron Elementary School to provide a dual left turn lane. Preliminary engineering work is scheduled for 2005; construction is planned for completion in 2007.

Intersection improvements are also planned at the intersection of the Byron Highway and SR 4. These improvements include widening the existing pavement to provide two lanes in each direction at the intersection. Construction on the intersection improvements is not planned for completion until 2008. Funding for this project will come from Measure C, which passed in November 2004.

Vasco Road to Byron Highway Connector

The County is considering extending an existing road or building a new road to provide a connection between Vasco Road (SR 84) and the planned SR 239 (now the Byron Highway). An amendment to the County's general plan is necessary before work can begin on this project. Initial fundraising has started for studies that will support a project EIR/EIS. Because the location of this connector road is not yet determined, the HCP/NCCP will cover the footprint of this road within a study area bounded by Vasco Road, Byron Highway, Armstrong Road to the south, and Camino Diablo to the north. An extension and widening of Armstrong Road is one possible scenario that has been proposed. Connections in the southern end of the study area (i.e., at or closer to Armstrong Road) are expected to have greater impacts on natural communities and covered species than connections closer to Camino Diablo.

Brentwood-Tracy Expressway/State Route 239

A variety of organizations have raised a conceptual proposal to make the Byron Highway into a state highway (SR 239) to increase road capacity between Contra Costa and San Joaquin Counties. New planning studies to be initiated in 2005 will examine the feasibility of using the Byron Highway for an alignment of SR 239 that would extend from the Vasco Road-Byron Highway Connector described above to the County line. This project would convert the Byron Highway to an expressway or multi-lane freeway depending on the outcome of planning studies. The road will connect Brentwood with I-205 or I-580 in San Joaquin County. SR 239 may replace the Byron Highway widening project described above.

To address this future need, an alignment for SR 239 is covered within a study corridor 1,500 feet wide in Contra Costa County (the portion of the road in Alameda County is not covered by this Plan) that extends from Byron to the Alameda County line. The location of the study corridor has not been determined but may be centered on the current Byron Highway. The study corridor may also extend west of the Highway to the railroad tracks or to the east (where less-sensitive cultivated land cover types predominate) closer to the community of Discovery Bay (e.g., along Marsh Creek Road). The final chosen study area must include room for road alignments that will be consistent with the

conservation strategy in Chapter 5 (e.g., avoid large patches of alkali grassland and alkali wetland targeted for preservation east of the Bryon Highway).

Although the HCP/NCCP covers only the portion of this project in Contra Costa County, project impacts will need to be considered as a whole (in both counties) for the anticipated Section 7 consultation with USFWS. Mitigation measures in the HCP/NCCP will guide the Section 7 consultation for the portion of the project in Contra Costa County.

eBART

The Contra Costa Transportation Authority (CCTA) and the San Francisco Bay Area Rapid Transit District (BART) have completed the SR 4 East Corridor Transit Study, which recommends short-term and long-term public transit improvements, along with the planned highway and roadway improvements, from SR 242 in the west to the County Line in the east. One such recommendation is eBART. This rail service extension would run in the median of SR 4 from Bay Point to Loveridge Road and then in an existing railroad right-of-way through Brentwood and on to Byron. New station locations proposed include Brentwood, Antioch, Oakley, Pittsburg and Byron, as well as modifications to the existing Pittsburg/Bay Point BART Station to allow cross-platform transfers between the eBART trains and BART trains. Specific locations are still being studied and may be modified as part of the environmental review process. In November 2002, a preferred conceptual alternative was selected. EIR/EIS studies were initiated in 2005 and a Draft EIR/EIS is expected in 2007.

This covered project includes right-of-way acquisition and any road or railroad infrastructure needed specifically to support eBART, including railroad crossing signals, traffic signalization, parking lots, and additional lanes on existing roads. The project will include construction of four station lots and park & ride lots along the route. Two of these stations, in Brentwood and Oakley, will be within the UDA and are therefore already covered by this Plan. One will be in Antioch and the other will be near Byron. The Byron station will probably be inside the UDA, but could move outside the UDA during the environmental review process. The Antioch and Byron stations are also covered by the Plan.

BART will be the lead agency in the CEQA process. The Federal Transit Administration will be lead agency under NEPA. The eBART project team is a partnership among BART, the Contra Costa Transportation Authority (CCTA) and the communities in East Contra Costa County and receives policy direction from a Policy Advisory Committee made of elected officials from BART, cities in eastern Contra Costa County, and the County. CCTA will be the lead agency for purchase of right-of-way. BART will be the lead agency on the design and construction of these stations. To receive take coverage under the Plan, CCTA or BART would have to apply to the HCP/NCCP Implementing Entity as a Participating Special Entity (see description of this process in Chapter 8). If a

federal agency is involved in funding the project, ESA compliance will need to be obtained through the Section 7 process.

Vasco Road Widening/State Route 84

Vasco Road will be widened and portions realigned as a safety and capacity enhancement from the SR 4 Bypass to I-580 in Alameda County. The initial improvements will address safety issues. Later phases will provide a four-lane divided expressway to standards suitable for route adoption by Caltrans as SR 84.

Various Road Widening or Extension Projects

- **Bethel Island Road Widening.** Bethel Island Road, a north-south road east of Oakley, will be widened from a two-lane road to a four-lane arterial from East Cypress to Gateway Road on Bethel Island. A new bridge will be constructed over Dutch Slough. Only the portion of the road-widening project within the inventory area is covered by the HCP/NCCP.
- **Cypress Road Widening.** In the same vicinity as Bethel Island Road, Cypress Road, an east-west road, will be widened to a four-lane arterial from SR4 to Bethel Island Road. The new road will have a grade separation at the Burlington Northern railroad crossing and a new signal at SR4. Most if not all of this road-widening project would be within the UDA in Oakley.
- **Sand Creek Road Extension.** An east-west road in the Brentwood area, Sand Creek Road would be extended eastward approximately one-third of a mile from the Brentwood City Limits to connect to Sellers Avenue. The extended road would be a four-lane arterial.
- **Sycamore Avenue Extension.** An east-west road in the Brentwood area just south of Sand Creek Road, Sycamore Avenue would be extended approximately one-third of a mile eastward from the Brentwood City Limits to connect to Sellers Avenue. The extended road would be a two-lane roadway.
- **Walnut Boulevard Widening.** An north-south road in the Brentwood area, Walnut Boulevard would be widened from two to four lanes over an approximately 2.2 mile segment from the Brentwood City Limit south to the State Route 4 Bypass and Vasco Road.
- **Marsh Creek Road Widening.** An east-west road south of Brentwood, Marsh Creek Road will be widened from two to four lanes over an approximately 4 mile segment from the State route 4 Bypass east to the existing State Route 4 near Discovery Bay.
- **Balfour Road Widening.** An east-west road in the Brentwood area, Walnut Boulevard would be widened from two to four lanes over an approximately 1.3 mile segment from the Brentwood City Limit west to Deer Valley Road.

- **San Marco Road Extension.** The City of Pittsburg proposes in its General Plan to extend San Marco Road from the current San Marco subdivision south and east to connect to Bailey Road at or near the Bailey Estates Subdivision. The roadway would be two to four lanes. A precise alignment has not been determined. The portion of this road extension outside the initial UDA is covered by the HCP/NCCP. The portion inside the initial UDA will be covered inside the Urban Development Area. The portion of the proposed road extension outside the initial UDA is approximately one mile long. The UDA may change in this area as a result of the new Pittsburg ULL. If this change occurs, the portion of the San Marco Road Extension that crosses open space is still subject to the road design requirements in Table 6-6.
- **State Route 4 Widening to Discovery Bay.** SR 4 is a mix of two and four lanes. Oakley and the County are proposing to expand the portions of SR 4 that are currently two lanes to four lanes to improve traffic flow and safety. These two-lane portions occur between Oakley and Discovery Bay and cross the County's agricultural core. This project is covered by the HCP/NCCP.

Bridge Replacement, Repair, or Retrofit

Contra Costa County maintains more than 50 bridges in the inventory area on public roads; most of these bridges are outside the ULL. During the permit term, these bridges may need repair, seismic or other safety retrofit, or complete replacement. The replacement, repair, or retrofit of all County-maintained bridges within the inventory area constitute a covered activity. Increasing the number of lanes on a bridge is not a covered activity unless it is associated with a road construction project specifically covered by this Plan.

Road Safety Improvements

Contra Costa County must upgrade the safety of existing rural roads as conditions change and traffic on these roads increases. Road safety improvements will be covered by the Plan. The following types of road safety projects covered by this Plan include the activities listed below.

- Installing traffic signals, signs, flashing beacons, or other safety warnings.
- Painting new lane striping.
- Installing "rumble" strips or other safety markers.
- Increasing road lane widths or adding turn lanes (but not increasing the number of lanes).
- Minor curve realignment for safety purposes (less than 250 feet long and less than 0.25 acre of new ground disturbance).

- Installing retaining walls, metal beam guard rails, or other safety barriers. Median barriers that could inhibit wildlife movement will require approval by USFWS and CDFG.
- Constructing, resurfacing, or regrading road shoulders.
- Other road safety improvements that do not result in a significant change in road width or alignment or that are approved for coverage by USFWS and CDFG.

An example of an upcoming project that falls into this category is the Balfour Road Shoulder-Widening Project. The County plans to widen the pavement of Balfour Road from 20 feet to 32 feet on Balfour Road between Deer Valley Road and the Brentwood City Limit to provide safety shoulders. This project is scheduled for initiation in 2006 and for completion in 2007–2008.

Expanding the number of lanes on existing roads could be considered road safety improvements, but such activities are not covered by this Plan unless associated with a specific road project cited in this chapter.

New Bicycle Trails

The first countywide bicycle and pedestrian plan for Contra Costa County was prepared in 2003 (Contra Costa Transportation Authority 2003). This plan outlines policies for the maintenance and expansion of the existing network of more than 350 miles of bikeways and trails to more than 600 miles. The majority of these existing and new projects are within the UDA and would therefore be covered by this Plan automatically. Many of the proposed bike trail projects occur on existing or proposed roads (on-street trails); consequently, they would have minimal or no additional impacts on natural communities beyond the road projects listed above. Proposed off-street trails occur along railroad rights-of-way or along creeks.

County bike trail projects outside the UDA that are covered by this Plan include (Contra Costa Transportation Authority 2003) the following.

- Kirker Pass Road trail (5.2 miles⁷, on-street).
- Evora Road trail (2.3 miles, on-street).
- Marsh Creek–Camino Diablo bikeway (12.5 miles, on-street).
- Vasco Road trail (8.6 miles, on-street).
- Deer Valley Road trail (6.5 miles, on-street).
- Balfour Road trail (2.4 miles, on-street).
- East County SR 4 trail (7.3 miles, on-street).

⁷ Approximate mileage presented for total unbuilt trail segment; length within inventory area and outside the initial UDA may be less than this amount.

- Bryon–Bethel Island bikeway (10.2 miles, on-street and off-street).
- Union Pacific Rail trail (19.5 miles, off-street).
- De Anza National Trail–Rock Slough–Bethany Reservoir bikeway (8.5 miles, off-street in eastern edge of inventory area).
- Mokelumne Crest to Coast trail (11.1 miles, off-street, from Brentwood east to Sierras).
- Cypress Road trail (on and off-street).
- Marsh Creek regional trail (4.5 miles, off-street along Marsh Creek above and below Marsh Creek Reservoir).
- Big Break regional trail (2.5 miles, off-street; some outside the inventory area).
- SR 4 Bypass trails (off-street).
- Other trail projects approved for coverage by USFWS and CDFG.

Flood Protection Projects

The County Flood Control District is responsible for providing flood protection within formally designated drainage areas (formed drainages) within Contra Costa County. Construction and maintenance of flood protection facilities, including detention basins, reservoirs, creeks, and canals, are funded by development fees and assessments in each formed drainage. Drainages of the County Flood Control District span city and county boundaries, so the District has jurisdiction both in unincorporated portions of the County and within cities, including the city of Antioch⁸. Specific projects and activities of the County Flood Control District are proposed in the District's 5-year Capital Improvement Program. The following projects outside the initial UDA or within the city of Antioch are proposed for coverage in the HCP/NCCP.

Construction and Expansion of Detention Basins

The County Flood Control District maintains and operates several detention basins in the inventory area for flood and sedimentation control. Two existing facilities need to be expanded to meet the growing population of the inventory area (Table 2-5). Two of these basins, Lower Sand Creek and Deer Creek, are within the Brentwood city limits and are therefore automatically covered by the Plan as urban development. Three other basins, Lindsey, Trembath, and Oakley, are within Antioch. Although urban development in Antioch is not covered by the Plan, these projects are covered because they are projects of the County Flood Control District.

⁸ The East Antioch Creek watershed (Drainage Area 56) and West Antioch Creek watershed (Drainage Area 55) lie primarily within Antioch.

All the proposed and expanded basins are off-stream. The total footprint of the new and expanded basins is approximately 400 acres. One of the sites, Marsh Creek, functions as detention basins but is classified by the Flood Control District as a reservoir; it is discussed below.

Expansion of County Flood Control Reservoirs

The County Flood Control District also maintains and operates small flood control detention basins (they are often called reservoirs although they have no water supply function) inside and outside the initial UDA that support urban development. The County Flood Control District proposes to expand the Marsh Creek Reservoir substantially (Table 2-5).

Marsh Creek Reservoir Expansion

The original design capacity of the Marsh Creek Reservoir was to hold runoff from 50-year storm events. Over time, the storage capacity of the detention basin has diminished substantially due to silting and vegetation growth. Dredging and vegetation removal are no longer viable options to restore this capacity because of the reservoir's high habitat value and the need to minimize disturbing sediment contaminated with mercury. Mercury mines active in upper Marsh Creek from the 1860s to the 1950s have greatly increased the deposition of mercury into Marsh Creek (Slotten et al. 1996, 1997, 1998). Much of this mercury-laden sediment has been accumulating in the Marsh Creek reservoir behind the dam.

The County Flood Control District wishes to restore and expand the reservoir's flood storage capacity to accommodate 100-year flood events to provide additional protection to the expanded development downstream in Brentwood. To accomplish this, the County Flood Control District in 2002 acquired 211 acres immediately south of the reservoir on both sides of Marsh Creek Road (152 acres on the west side of the road and 59 acres on the east side). All or a portion of this land would be used to detain additional water during high flow events only. The land elevation to the south of the reservoir would be lowered by up to 5–10 feet, and small channels would be installed to connect this new basin with either Marsh Creek, the south side of the reservoir, or both (Detjens pers. comm.). The new basin would be designed to flood once every 5–10 years and drain within 72 hours. The elevation of the new basin would be higher than that of the wet pool of the reservoir; accordingly, the wet pool would not be expanded. In addition, mercury-laden sediment in the reservoir would not be disturbed. The project is currently scheduled in the County's Capital Improvement Program for 2009.

The land is currently grazed by cattle and would continue to be grazed even during use as a dry detention basin; consequently, most of the time this area would function as a grassland or pasture. It is expected that portions of the new basin would need to be dredged periodically to remove accumulated sediment, possibly every 10–15 years.

Riparian habitat along Marsh Creek on land owned by the County Flood Control District is of high quality but discontinuous and presents some of the best riparian restoration opportunities in the inventory area. (The Marsh Creek Reservoir Expansion project would have little or no impact on riparian vegetation.) In addition, the grassland adjacent to the creek could be restored to a more native grassland, valley oak savanna (similar to the valley oak savanna on the Los Vaqueros property nearby), expanded cottonwood-willow forest, or a combination of these land cover types. Habitat on this site could also be improved for San Joaquin kit fox. All these restoration options may be compatible with the site's use as a high-flow detention basin. The County Flood Control District is interested in exploring restoration opportunities on this site and partnering with the HCP/NCCP Implementing Entity to accomplish them. Because of the uncertainty in the project design, these restoration elements would be developed with the Implementing Entity, CDFG, and USFWS when project funding becomes available.

This project is a covered activity as long as restoration opportunities described above are considered in project design and there is no change in the potential exposure of covered species to biologically available mercury as a result of the project.

Channel Improvement and Widening

The County Flood Control District maintains extensive networks of creek channels in the inventory area, mostly through urban areas within the initial UDA. Many of these channels require improvement or widening to increase flood capacity and provide greater opportunity for habitat restoration that is compatible with flood protection. All such projects inside the UDA within participating cities are covered projects under the Plan (as urban development). The County Flood Control District plans several channel improvement/widening projects within developed areas outside the initial UDA or in Antioch, all of which are covered by this Plan within the inventory area. Planned projects include, but are not limited to:

- Install storm drain line and improve unnamed creek near Port Chicago Highway and Skipper Road in Bay Point (Project DA 48B) (only that portion of the project inside the inventory area is covered by the Plan).
- Improve West Antioch Creek near 10th Street in Antioch (Project DA 55).

Utility Construction

Public and private utility infrastructure such as electric transmission lines, gas pipelines, petroleum pipelines, telecommunications lines, or cellular telephone stations may be covered activities outside the UDA and outside the HCP/NCCP preserves (see discussion in Section 2.3.4 for coverage of utility construction and maintenance within preserves). Because of the uncertainty in their location and

project footprint, coverage for these projects will be decided on a case-by-case basis by the Implementing Entity, USFWS, and CDFG. This will allow alternative siting or redesign, if possible, to avoid or minimize impacts on covered species and natural communities. See Section 2.3.3 below for a discussion of utility operation and maintenance outside the UDA.

Park and Recreation Facilities

Park and recreation facilities may be covered activities outside the UDA and outside the HCP/NCCP preserves. Because of the uncertainty in their location and project footprint, coverage for these projects will be decided on a case-by-case basis by the Implementing Entity, USFWS, and CDFG. This will allow alternative siting or redesign, if possible, to avoid or minimize impacts on covered species and natural communities.

2.3.3 Rural Infrastructure Operation and Maintenance Activities

Road Operation and Maintenance

All routine road O&M activities that occur within the UDA are covered by this Plan. The Contra Costa County Department of Public Works also maintains and operates roads within the inventory area outside the initial UDA. The routine O&M of these County-maintained roads outside the UDA is also a covered activity under this Plan, including the following routine or emergency activities.

- Signage maintenance or replacement.
- Traffic control device maintenance or replacement.
- Guardrail, fence, or crash cushion inspection, maintenance, or replacement (median or shoulder barriers should be replaced with structures that are both safe for vehicles and compatible with wildlife movement whenever possible; replacement should at least not make wildlife movement more difficult).
- Pavement maintenance or resurfacing.
- Replacing pavement striping or markers.
- Tree trimming or removal for safety.
- Debris collection and removal on roads, trash racks, and shoulders.
- Natural disaster damage repair.
- Storm damage repair.
- Vehicle accident repair and cleanup.

- Weed control (the use of herbicides is not covered by the federal permit and therefore its use cannot result in take of federally listed species).
- Mowing of medians and shoulders for fire hazard reduction.
- Grading shoulders (up to 12 feet from the edge of paved or unpaved roadways).
- Grading existing dirt roadways.
- Repair or replacement of retaining walls.
- Culvert or drop structure maintenance, repair, retrofit, or replacement.
- Curb, gutter, and sidewalk maintenance, repair, retrofit, or replacement.
- Bridge repair and maintenance.
- Ditch, catch basin, or hydraugers clearing.
- Landscaping maintenance.
- Other routine road O & M activities approved for coverage by USFWS and CDFG.

All activities will follow the best management practices (BMPs) and avoidance/minimization measures described in Chapter 6.

Flood Protection Facility Operation and Maintenance

All facilities operated by the County Flood Control District require both routine scheduled and periodic unscheduled maintenance that is driven by immediate needs. In addition, emergency repairs are occasionally needed following major storm events or other natural disasters. Many of the District's facilities were built by them or other federal agencies and are required by these federal agencies to be maintained to certain design standards.

Maintenance of existing flood protection facilities within the inventory area that are subject to existing Memorandums of Understanding (MOUs) or Streambed/Lakebed Alteration Agreements with CDFG are covered subject to the requirements of those existing MOUs or Agreements. The following routine, periodic, and emergency operation and maintenance activities outside the initial UDA (most are within the city of Antioch) are covered by this Plan (these activities are automatically covered inside the UDA under the urban development category).

- Cleaning concrete channels.
- Dam maintenance.
- Ditch cleaning.
- Flapgate servicing.

- Grading access roads as needed to maintain access and safety.
- Maintaining and cleaning hydraugers.
- Mowing, herbicide use, or tree trimming for vegetation control as needed to maintain design flood capacity, fire hazard reduction, or safety of :
 - channels and reservoirs,
 - uplands in reservoir basins
 - access roads,
 - levees, or
 - within rights-of-way
 - Note: the use of herbicides is not covered by the federal permit and therefore its use cannot result in take of federally listed species.
- Maintaining landscaping along flood control channels and other facilities.
- Removing debris or log jams from channels, reservoirs, or trash racks.
- Rodent control on levees, dams, and other structures to ensure structural integrity including rock placement and limited pesticide use (the use of pesticides is not covered by the federal permit and therefore its use cannot result in take of federally listed species).
- Repair or replacement of drainage structures, fences, or retaining walls.
- Repair of channel banks damaged by erosion or slope failure.
- Silt removal within non-tidal areas of natural channels or reservoirs to maintain design flood capacity; activity may include temporary dewatering to allow silt removal (silt removal in Marsh Creek Reservoir is not a covered activity because of the potential to mobilize high concentrations of mercury in the sediment).
- Sub drain servicing.
- Emergency cleanup of material spills into channels, creeks, or reservoirs.

Some of these activities occur in tidally influenced creeks that may affect or may take listed species not covered by the Plan (e.g., salt marsh harvest mouse, California clapper rail, black rail). These activities are covered by the Plan only for impacts on covered species. Additional compliance may be needed to allow the activity to proceed.

All covered activities will follow the best management practices (BMPs) and avoidance/minimization measures described in Chapter 6.

Utility Line or Facility Operation and Maintenance

There are many pipelines and cables in the inventory area outside the initial UDA that are maintained by private companies such as Pacific Gas & Electric

Company (PG&E), other natural gas companies, petroleum companies, or telecommunications companies. These companies also operate and maintain electric substations, gas valve stations, radio broadcasting towers, and cellular telephone towers, among other facilities. The routine O&M of existing facilities on disturbed ground (e.g., concrete pads, gravel) is not expected to result in take of covered species. However, the routine maintenance of linear facilities such as gas pipelines, electric transmission and distribution lines, and telecommunication lines may result in take of covered species.

Maintenance or repair of linear facilities may involve vegetation clearing (e.g., mowing, disking, herbicide spraying, tree trimming) or excavation of underground utility lines for inspection, maintenance, or replacement. Many utility lines are expected to cross the HCP/NCCP Preserve System. The routine and emergency O&M of utility lines in the inventory area outside the UDA is a covered activity under this Plan, except for the use of pesticides, which is not covered by the federal permit. Any utility not subject to the jurisdiction of one of the Permittees can request coverage under the HCP/NCCP as a Participating Special Entity as described in Chapter 8. Some energy or water utilities may already have their own endangered species permits for their activities (e.g., PG&E is developing its own HCP for operations and maintenance activities) and will therefore not require coverage under this Plan.

2.3.4 Activities within the HCP/NCCP Preserves

Some activities expected to occur within the HCP/NCCP Preserve System may adversely affect some covered species (see Chapter 4 for more details). These effects are expected to be of limited severity and generally temporary. Because they may result in take, these activities require coverage under this Plan. All activities within HCP/NCCP preserves will be designed to avoid or minimize take of covered species. The ESA and NCCP permits will cover the activities of HCP/NCCP Implementing Entity personnel, their contractors, and lessees consistent with this Plan.

Management and Recreational Facilities

This category includes the construction and maintenance of recreational facilities such as trails, parking lots, restrooms, wildlife observation platforms, and educational kiosks that are built and/or used in accordance with the guidelines in this Plan (see Chapter 5, *Conservation Strategy*, for more details). This category also includes construction, maintenance, and use of facilities needed to manage the preserves, including but not limited to preserve field offices, maintenance sheds, carpports, roads, bridges, fences, gates, wells, stock tanks, and stock ponds. All preserve management structures will be constructed to minimize impacts on covered species and vegetation communities. Facilities existing at the time of land acquisition will be used whenever possible.

development (see Chapter 2). Some activities and projects that are outside the scope of this HCP/NCCP may nonetheless contribute to cumulative impacts on covered species. Specific projects and activities not covered by this Plan that may, in conjunction with this Plan, have an impact on covered species are described below. Additional potential cumulative impacts can be found in the EIR/EIS for this Plan.

4.6.1 Urban Development in Antioch

Under its current General Plan, the City of Antioch would expand urban development through a combination of infill and building up to its southern city limit. Table 4-8 summarizes the impacts of this development on land cover types in the inventory area. While infill development primarily affects ruderal land cover, build-out to the southern city limit would remove up to 2,544 acres of annual grassland.

The potential expansion of urban development in Antioch would affect several species covered by this Plan. The southward expansion of Antioch would affect core habitat for San Joaquin kit fox and degrade or potentially eliminate the widest and most suitable potential movement route for the species (see Chapter 5 for a more detailed evaluation of these movement routes). All four covered bird species would be affected by Antioch's expansion. Suitable California red-legged frog and California tiger salamander habitat is present within the proposed expansion area; urban development would remove or isolate ponds and degrade streams. A small amount of core habitat as well as movement habitat for Alameda whipsnake is located within Antioch. Primary and secondary habitat for both big tarplant and Brewer's dwarf flax are found in the proposed expansion area.

4.6.2 Los Vaqueros Reservoir Expansion

The Los Vaqueros Reservoir was initiated in 1988 when voters approved bonds for the development of a new reservoir to improve water quality and provide emergency storage. The Los Vaqueros facility, owned by CCWD, captures and stores Delta water for the residents of Contra Costa County. Planning for expansion of the existing reservoir is currently underway. The planned expansion has the potential to affect several covered plant and animal species as well as covered vegetation communities. The cumulative effects of the project will be considered before mitigation is developed.

The expansion project anticipates potential disturbance of up to 2,254 acres of all land cover types⁴. The largest anticipated impacts would be on annual grasslands

⁴ All impact estimates of the Los Vaqueros Reservoir expansion project are from the CALFED Los Vaqueros Reservoir Expansion Study Final Planning Report, April 9, 2004, available at the project web site: www.lvstudies.com.

Acquisition Requirements for Zone 1

The Implementing Entity will acquire at least 1,450 acres of annual grassland in Subzones 1b and 1c to create an important connection from Black Diamond Mines Regional Preserve to Detachment Concord. An important goal of conservation in this area will be to provide a large block of contiguous annual grassland or oak savanna to support western pond turtle, California tiger salamander, California red-legged frog, and other covered species. This preserve will also enhance movement between the existing protected areas. Detachment Concord supports western burrowing owl, western pond turtle, California tiger salamander, and California red-legged frog, (Tetra Tech 2002). Two ponds in the upper ridge of the inland unit of Detachment Concord are known to support California tiger salamander (Tetra Tech 2002) and may link salamanders traveling over the ridge from within the inventory area (Orloff pers. comm.).

The Implementing Entity will acquire approximately 85 acres of annual grassland in Subzone 1a consistent with the MOU between Discovery Builders (Seeno Homes) and the HCPA regarding this site (see Section 9.7 of the Implementing Agreement for more details). This site will provide an important linkage for California tiger salamander between Detachment Concord and permanently protected open space in Pittsburg. A substantial population of California tiger salamander occurs in this area whose source is likely ponds in Detachment Concord (Gan pers. comm.). Wetland enhancement and restoration on permanently protected open space in Pittsburg will likely enhance the population of California tiger salamander in this area. Land in Subzone 1a will also provide foraging habitat for golden eagle and a buffer zone between development and known golden eagle nests on the west side of the ridge line in Detachment Concord (Hale pers. comm.).

The Implementing Entity will acquire at least 25% of Subzone 1d. Acquisition in this Subzone will be focused in the southern half of the Subzone in order to secure annual grasslands that will provide better linkage between Black Diamond Mines Regional Preserve and Detachment Concord. Lands acquired in this Subzone will provide habitat for grassland-dependent covered species such as western burrowing owl.

There is no land acquisition requirement for Subzone 1e because of the expected development and the existing public land within it (see Figure 2-3). However, if land is acquired in this Subzone to meet other requirements (e.g., overall annual grassland requirement), it must be contiguous with lands acquired in Subzones 1a, 1b, or 1c, or with Detachment Concord.

Acquisition Requirements for Zone 2

The Implementing Entity will acquire at least 60% of Subzone 2a. Acquisitions in Subzone 2a will focus on the northwestern and southeastern corners of this Subzone to increase the size of habitat connections between Black Diamond Mines Regional Preserve, Detachment Concord, and Clayton Ranch (EBRPD). Acquisition of land in the northwestern and southeastern corners of Subzone 2a will protect the headwaters of two tributaries of Mount Diablo Creek. The Implementing Entity will also acquire land in Subzone 2b or 2c or both to

connect Black Diamond Mines Regional Preserve and Clayton Ranch. The connection must be at least 0.5 mile wide to provide an adequate movement route that minimizes edge for Alameda whipsnake, California tiger salamander, California red-legged frog, and other covered species⁸. The additional requirements below apply to Zone 2.

- The Implementing Entity will acquire at least seven of the 13 ponds in Subzone 2c to provide breeding habitat for tricolored blackbird, California tiger salamander, western pond turtle, or California red-legged frog. This Subzone is the only one with a specific requirement to protected ponds because it has an unusually high density of unprotected ponds compared with the rest of the inventory area. Protection of most of these ponds will protect an important core population of California red-legged frog, California tiger salamander, and western pond turtle in the center of the Preserve System. For example, research on the movement patterns of California tiger salamanders shows that there is a clear relationship between the linear distance between breeding sites and the amount of genetic exchange between those sites (Trenham et al. 2001; Shaffer and Trenham in press). The Science Advisors Report prepared for the Merced County HCP/NCCP recommends a rule of thumb to retain sets of at least 4–6 breeding sites within about 1 km of each other to maintain maximum connectivity for this species. Preservation of at least seven ponds in Subzone 2c will exceed this recommended density of breeding sites for tiger salamander.
- The Implementing Entity will acquire 90% of the remaining chaparral in Subzones 2a, 2b, and 2c (i.e., 90% of 135 acres) to protect patches of chaparral that serve as modeled core habitat for Alameda whipsnake and provide important assumed linkages for whipsnake populations between Mount Diablo State Park and Black Diamond Mines Regional Preserve. Preservation of these patches will also protect suitable habitat for Mount Diablo manzanita. USFWS has identified the area between Mount Diablo State Park and Black Diamond Mines Regional Preserve as critical for Alameda whipsnake recovery because it will provide connectivity between these core areas of whipsnake habitat (U.S. Fish and Wildlife Service 2002b).
- The Implementing Entity will acquire land in Subzone 2a to protect the known population of Mount Diablo manzanita.
- Land acquired in Subzone 2f for the San Joaquin kit fox movement route must also include the two known occurrences of big tarplant and the known occurrence of round-leaved filaree in Deer Valley. Where possible, land acquired to meet kit fox and big tarplant requirements should also include sites known to support alkali soils in Deer Valley (Olson pers. comm.).
- Land acquired in Subzones 2h must include the two known occurrences of big tarplant.

⁸ There is no accepted width of habitat for these species to provide adequate movement; viable movement routes vary according to landscape conditions (e.g., topography, vegetation) and length of the route. One-half mile was chosen for this area as an achievable minimum goal (given parcel sizes and configurations) to provide suitable breeding habitat for the target species within the habitat linkage.

- Land acquired in Subzone 2h must include the known occurrences of Mount Diablo manzanita and Brewer's dwarf flax (Mundie & Associates and City of Antioch 2002).
- Land acquired in Subzone 2d must include the known occurrence of round-leaved filaree.
- If preacquisition field surveys show modeled suitable habitat for silvery legless lizard in Subzone 2h to be suitable for this species, the Implementing Entity will give these sites a high acquisition priority.
- The Implementing Entity will acquire land that supports suitable habitat for vernal pool invertebrates wherever possible.

Additional land acquisition in Zone 2 is required to protect San Joaquin kit fox movement routes. See discussion of these requirements in *Land Acquisition Requirements in Zones 2 and 4 to Protect Kit Fox Movement Routes* below.

Acquisition Requirements for Zone 3

The Implementing Entity will acquire at least 90% of the modeled suitable core habitat for Alameda whipsnake in Subzone 3a (i.e., 90% of 177 acres) to protect the largest block of chaparral/scrub in the inventory area outside existing public lands. The requirement to protect 90% was the maximum feasible target for this Subzone based on parcel size and configuration to help meet the biological goal to contribute substantially to the recovery of Alameda whipsnake in the inventory area. The Implementing Entity will also acquire land in Subzone 3a to increase the width of the linkage between the large chaparral patch in the Subzone and other chaparral patches in Mount Diablo State Park. All land acquired in this Subzone must contribute to this linkage and must be connected to Clayton Ranch through existing protected lands or HCP/NCCP preserves. Protection of 90% of core habitat and the protection of perimeter and movement habitat around it will provide a key linkage between existing protected Alameda whipsnake habitat in Mount Diablo State Park and Black Diamond Mines Regional Preserve and will contribute to the recovery of Alameda whipsnake. Acquisition of land within Subzone 3a will also protect headwater tributaries of Irish Canyon Creek.

There are no acquisition requirements in Subzones 3b and 3c, but land acquired within these Subzones can count towards land cover acquisition requirements.

Acquisition Requirements for Zone 4

As described above in *Land Acquisition under Different Urban Development Areas*, land acquisition requirements in Zones 4, 5, and 6 differ according to the amount of urban development that is covered under the HCP/NCCP. Minimum land acquisition requirements under the initial urban development area were designed to meet all biological goals and objectives and regulatory requirements in the event that build-out in the inventory area does not exceed the initial UDA.

Acquisition under Initial Urban Development Area. Land acquisition in Zone 4 will be focused in two primary areas: along Marsh Creek in the Briones Valley (Subzone 4d) and upstream (Subzone 4c), and the Upper Marsh Creek Subbasin (Subzones 4a, 4c, 4e, 4f, 4g, and 4h). Acquisition in Subzone 4d will also meet

8.3.9 Consultants and Contractors

Consultants will be retained to meet any technical or scientific needs that cannot be effectively or efficiently addressed through in-house staff due to insufficient expertise or availability. It is expected that consultants will be utilized more heavily during the early stages of Plan implementation, becoming less necessary as the Implementing Entity develops and becomes more familiar with the Preserve System. Contractors will be needed for construction tasks requiring specialized skills or the use of heavy equipment, such as road grading, restoration grading, plant propagation, restoration planting, and water-well construction and maintenance.

8.4 Participating Special Entities

Organizations not subject to the jurisdiction of the Permittees may have projects or ongoing activities within the inventory area that could affect covered species and that may require take authorization. Such organizations may include school districts, water districts, irrigation districts, transportation agencies, local park districts, geologic hazard abatement districts, or other utilities or special districts that own land or provide public services. These agencies, known as Participating Special Entities, can request coverage under the HCP/NCCP during Plan implementation; such coverage would provide take authorization for their projects. In addition, there may be cases where an organization that is subject to the land use jurisdiction of the Permittees seeks take authorization for activities that do not require land use permits (pipeline maintenance projects, for example). Such cases may also be addressed through the provisions described below for providing take coverage to Participating Special Entities.

The Participating Special Entity will submit a complete application for the proposed activity directly to the Implementing Entity with copies to the local jurisdiction in which the project occurs, CDFG, and USWFS. This application will contain the following components.

- A detailed description of the activity proposed for coverage under the HCP/NCCP.
- A map of the proposed activity area.
- An analysis of the potential impacts of the proposed activity on covered species and their habitats.
- The results of required planning surveys (described in Chapter 6, *Conditions on Covered Activities*).

In order to grant take authorization to these local agencies, the Implementing Entity will need a legally enforceable contractual relationship with the Participating Special Entity. The Implementing Entity will issue a Certificate of Inclusion to the Participating Special Entity that will allow the proposed activity

to be covered under the HCP/NCCP if the conditions listed below are met. A template of the Certificate of Inclusion is found as an exhibit to the Implementing Agreement (Appendix B).

- The Implementing Entity signs a contract with the Participating Special Entity binding them to the relevant terms of the HCP/NCCP.
- The Implementing Entity finds that the proposed activity complies with all terms and requirements of the Plan, the permits, and the Implementing Agreement, and CDFG and USFWS concur.
- The impacts of the proposed activity fall within those analyzed in the HCP/NCCP and the EIR/EIS in general type, magnitude, and effects.
- The impacts of the proposed activity do not substantially deplete the amount of take coverage available for future project applicants considered by this Plan.
- The proposed activity does not conflict with the conservation strategy or the ability of the Implementing Entity to meet the Plan goals and objectives.

The Certificate of Inclusion will be issued to the Participating Special Entity upon payment of the fee specified in the contract and completion of any and all other steps required by contract to occur prior to issuance of the Certificate of Inclusion. The Implementing Entity may require Participating Special Entities to pay fees over and above those specified in Chapter 9 to cover indirect costs of extending permit coverage under the HCP/NCCP, including the costs of Implementing Entity staff time to assist with permit coverage, a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery. The Certificate of Inclusion will include an attached map depicting the parcel number, acreage, and owner of lands to which the take authorization(s) would apply. Also see the Implementing Agreement for additional details and procedures that apply to Participating Special Entities.

8.5 Local Implementing Ordinances

To implement the HCP/NCCP on the local level, each participating jurisdiction must adopt an implementing ordinance that will reference the HCP/NCCP and the jurisdiction's obligations under the Plan. Most importantly, the ordinance will establish the fees on local applicants seeking coverage under the Plan, as described in Chapter 9. Ordinances will be finalized and adopted by each jurisdiction not later than 90 days after Permit issuance by CDFG and USFWS. A draft template of the HCP/NCCP implementing ordinance is found in Appendix F.

Attachment L

Table 2-3. Extent of Land Use Designation Types by Jurisdiction for the Inventory Area (acres)

	Agricultural Core	Agriculture	Development	Open Space* (planned)	Protected Lands**	Public Facilities	Public Facilities with Undeveloped Land	Urban Parks and Open Space	Water	Total
Brentwood		96	7,000		86	829	298	1,182		9,492
Clayton		5	1,413		518	28	2	485		2,451
Oakley		0	5,497		1,164	529	399	132	42	7,763
Pittsburg		90	6,198	376	151	897	65	848	7	8,631
Antioch		240	12,415		1,238	1,296	246	1,196	144	16,774
Unincorporated County	11,081	64,409	3,886	709	41,393	1,270	4,089	532	1,539	128,908
Total	11,081	64,839	36,409	1,085	44,550	4,848	5,100	4,374	1,731	174,018

* Open space areas that are designated in city or County general Plans but are in private ownership and are not further constrained by conservation easements or dedicated development rights

** Regional and other non-urban parks, public watershed lands, and private open space lands with deed restrictions

Table 4-2. Direct Impacts on Land-Cover Types and Covered Natural Communities under Initial Urban Development Area Scenario (acres)

Land-Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact		Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Initial UDA	Rural Infrastructure		
Terrestrial Land-Cover Types²						
Annual grassland	58,840	34,853 (59)	2,016	517	2,533 (7)	32,320
Alkali grassland	1,997	1,618 (81)	0	115	115 (7)	1,503
Rock outcrop ³	119	5 (4)	0	0	0 (0)	5
Ruderal	6,188	5,786 (93)	1,200	71	1,271 (22)	4,514
Subtotal Grassland Vegetation Community ⁴	67,144	42,261 (63)	3,216	704	3,920 (9)	38,341
Oak savanna	5,894	3,204 (54)	40	2	42 (1)	3,163
Oak woodland	24,198	11,914 (49)	21	0	21 (<1)	11,892
Subtotal Oak Woodland Vegetation Community ⁴	30,092	15,118 (50)	61	2	63 (<1)	15,055
Chaparral/scrub	3,016	791 (26)	0	0	0 (0)	791
Riparian woodland/scrub	448	366 (82)	20	10	30 (8)	336
Wetlands, Ponds, and Streams						
Wetland (undetermined)	483	392 (81)	84	15	99 (25)	294

Land-Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact			Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Initial UDA	Rural Infrastructure			
Alkali wetland complex	380	200 (52)	10	19	28 (14)	171	
Seasonal wetland complex	121	107(89)	18	0	18 (17)	89	
Aquatic	1,823	206 (11)	12	0	12 (6)	193	
Pond	165	116 (70)	6	1	7 (6)	109	
Slough/channel	213	109 (51)	72	0	72 (66)	37	
Subtotal	3,186	1,130 (35)	203	34	237 (21)	893	
Perennial and intermittent streams (miles) ⁵	408.9	257.6 (63)	0.4	0.2	0.6 (0)	257.0	
Ephemeral creeks (miles) ⁵	n/a	n/a	3.0	1.0	4.0 (n/a)	n/a	
Subtotal All Natural Land-Cover Types	103,886	59,666(57)	3,500	750	4,250 (7)	55,416	
Cultivated Land-Cover Types							
Cropland	20,516	20,258 (99)	2,934	39	2,973 (15)	17,286	
Pasture	4,491	3,600 (80)	1,057	20	1,077 (30)	2,522	
Orchard	3995	3,994 (100)	516	21	537 (13)	3,457	
Vineyard	2,031	1,792 (88)	638	19	657 (37)	1,134	
Subtotal	31,034	29,643 (96)	5,145	99	5,244 (18)	24,399	

Land-Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact		Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Initial UDA	Rural Infrastructure		
Other Land Cover Types						
Nonnative woodland	51	44 (87)	24	2	26 (60)	18
TOTAL	134,970	89,353 (66)	8,670	851	9,521 (11)	79,833
Recreation and Utility Impacts ⁶				275	275	
GRAND TOTAL				1,126	9,796 (11)	79,558

¹ Parks and Open Space are defined in Table 2-2; they represent lands that are permanently protected for conservation purposes

² Number may not add exactly due to rounding

³ Some rock outcrops occur within oak savannah or oak woodland but all are assigned to the grassland community for the purposes of this analysis

⁴ Excludes wetland land cover types

⁵ Stream data not included in impact totals because it is an overlay data set (i.e., it overlaps with the land cover type data and is measured in linear miles in this table rather than acres).

⁶ Impacts of new recreational facilities (e.g., new trails, staging areas, remote camp sites) within HCP/NCCP preserves were assumed to be 50 acres and impacts of new utilities were assumed to be 225 acres. These impacts were not separated by land cover type because of the uncertain location of these facilities. Impacts from these activities are expected to occur in proportion to the extent of all land cover types.

Table 4-3. Direct Impacts on Land-Cover Types and Covered Natural Communities under Maximum Urban Development Area Scenario (acres)

Land Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact		Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Maximum UDA	Rural Infrastructure		
Terrestrial Land Cover Types²						
Annual grassland	58,840	34,853 (59)	3,634	517	4,152 (12)	30,701
Alkali grassland	1,997	1,618 (81)	0	115	115 (7)	1,503
Rock outcrop ³	119	5 (4)	0	0	0 (0)	5
Ruderal	6,188	5,786 (93)	1,240	71	1,311 (23)	4,474
Subtotal Grassland Vegetation Community ⁴	67,144	42,261 (63)	4,875	704	5,578 (13)	36,683
Oak savanna	5,894	3,204 (54)	163	2	165 (5)	3,040
Oak woodland	24,198	11,914 (49)	73	0	73 (1)	11,841
Subtotal Oak Woodland Vegetation Community ⁴	30,092	15,118 (50)	236	2	238 (2)	14,880
Chaparral/scrub	3,016	791 (26)	2	0	2 (<1)	789
Riparian woodland/scrub	448	366 (82)	25	10	35 (10)	331
Wetlands, Ponds, and Streams						
Wetland (undetermined)	483	392 (81)	86	15	100 (26)	292

Land Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact			Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Maximum UDA	Rural Infrastructure			
Alkali wetland complex	380	200 (52)	12	19	31 (16)	168	
Seasonal wetland complex	121	107 (89)	31	0	31 (29)	76	
Aquatic	1,823	206 (11)	12	0	12 (6)	193	
Pond	165	116 (70)	7	1	8 (7)	108	
Slough/channel	213	109 (51)	72	0	72 (66)	37	
Subtotal	3,186	1,130 (35)	221	34	255 (23)	875	
Perennial and intermittent streams (miles) ⁵	408.9	257.6 (63)	0.5	0.3	0.8 (0)	256.8	
Ephemeral creeks (miles) ⁵	n/a	n/a	4.0	1.0	5.0 (n/a)	n/a	
Subtotal All Natural Land Cover Types	103,886	59,666 (57)	5,358	750	6,108 (10)	53,558	
Cultivated Land Cover Types							
Cropland	20,516	20,258 (99)	3,506	39	3,545 (17)	16,714	
Pasture	4,491	3,600 (80)	1,446	20	1,466 (41)	2,134	
Orchard	3,995	3,994 (100)	626	21	647 (16)	3,347	
Vineyard	2,031	1,792 (88)	893	19	912 (51)	879	
Subtotal	31,034	29,643 (96)	6,470	99	6,570 (22)	23,074	

Land Cover Type	Total in Inventory Area	Outside Parks, Open Space ¹ (% of total)	Estimated Direct Impact		Total Impact (% outside Parks, Open Space)	Remain Outside Parks and Open Space
			Urban Development in Maximum UDA	Rural Infrastructure		
Other Land Cover Types						
Nonnative woodland	51	44 (87)	24	2	26 (60)	18
TOTAL	134,970	89,353 (66)	11,853	851	12,704 (14)	76,650
Recreation and Utility Impacts ⁶				275	275	
GRAND TOTAL				1,126	13,029 (15)	76,375

¹ Parks and Open Space are defined in Table 2-2; they represent lands that are permanently protected for conservation purposes

² Number may not add exactly due to rounding

³ Some rock outcrops occur within oak savannah or oak woodland but all are assigned to the grassland community for the purposes of this analysis

⁴ Excludes wetland land cover types

⁵ Stream data not included in impact totals because it is an overlay data set (i.e., it overlaps with the land cover type data and is measured in linear miles in this table rather than acres).

⁶ Impacts of new recreational facilities (e.g., new trails, staging areas, remote camp sites) within HCP/NCCP preserves were assumed to be 50 acres and impacts of new utilities were assumed to be 225 acres. These impacts were not separated by land cover type because of the uncertain location of these facilities. Impacts from these activities are expected to occur in proportion to the extent of all land cover types.

Attachment O

Table 5-5a. Required Preservation Ratios and Estimated Acquisition Requirements for Aquatic Land-Cover Types under Initial Urban Development Area

Aquatic Land Cover Type	Estimated Impact ¹ (acres)	Required Preservation Ratio	Estimated Preservation Requirement ¹ (acres)	Minimum Available in Acquisition Analysis Zones ² (acres)
Riparian woodland/scrub	30	2:1	60	205
Wetlands and Ponds				
Perennial wetlands ³	74	1:1	74	231
Seasonal wetlands ^{3,4}	43	3:1	129	172 ⁵
Alkali wetland ⁴	28	3:1	84	168
Ponds	7	2:1	14	80
Slough/channel	72	0.5:1	36	137
Aquatic (open water)	12	1:1	12	123
Total Aquatic Land Cover Types (acres)	266		409	1,117
Perennial streams (miles) ⁶	0.3	2:1	0.6	18 ⁷
Intermittent streams (miles) ⁶	0.3	1:1	0.3	184 ⁷
Ephemeral streams (miles)	4	1:1	4	184 ⁷

Attachment O

Notes:

- ¹ Impact estimates are based on the initial urban development area (Table 4-2). Actual acquisition requirements will be based on field-delineated resources at impact sites and application of the required preservation ratios in this table. Restoration, creation, and enhancement of aquatic land cover is required in addition to preservation of aquatic land cover as compensation for impacts. See Conservation Measures 2.1.1 and 2.2.2 for these requirements.
 - ² Many land cover types were underestimated in the mapping conducted for this HCP/NCCP, so these figures represent minimum acreages of what is available for preservation. See Chapter 3 for a discussion of the mapping limitations.
 - ³ Undetermined wetlands could be seasonal wetlands or perennial wetlands (e.g., freshwater marsh). Seasonal wetlands will be mitigated at a preservation ratio of 3:1; perennial wetlands will be mitigated at a preservation ratio of 1:1. This table assumes 75% of undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.
 - ⁴ Seasonal and alkali wetland acreage was quantified as the minimum polygon encompassing clusters of seasonal pools or drainages (i.e., wetland complexes). Impacts and land acquisition requirements will be tracked by jurisdictional wetland boundary, so estimates in this table overstate the expected impacts to and preservation of these land cover types. Impact restrictions and preservation ratios apply only to wetted acres.
 - ⁵ The actual amount of seasonal wetlands available for preservation in the inventory area is unknown because of a lack of field surveys. The allowable impact to seasonal wetlands by covered activities will be capped at the amount required to preserve seasonal wetlands at the required 3:1 ratio. For example, if only 30 acres are preserved, allowable impacts will be capped at 10 acres.
 - ⁶ Maximum allowable impacts for perennial and intermittent streams could not be separately estimated. Cumulative impacts for these two categories were estimated at 0.6 miles. For the purposes of this table, it is assumed that the impacts are evenly split between the two categories.
 - ⁷ The approximate length of all streams of all types in the Acquisition Analysis Zone is 184 miles.
-

Attachment P

Table 5-5b. Required Preservation Ratios and Estimated Acquisition Requirements for Aquatic Land-Cover Types under Maximum Urban Development Area

Aquatic Land Cover Type	Estimated Impact ¹ (acres)	Required Preservation Ratio	Estimated Preservation Requirement ¹ (acres)	Minimum Available in Acquisition Analysis Zones ² (acres)
Riparian woodland/scrub	35	2:1	70	205
Wetlands and Ponds				
Perennial wetlands ³	75	1:1	75	232
Seasonal wetlands ^{3,4}	56	3:1	168	172 ⁵
Alkali wetland ⁴	31	3:1	93	168
Ponds	8	2:1	16	80
Slough/channel	72	0.5:1	36	137
Aquatic (open water)	12	1:1	12	123
Total Aquatic Land Cover Types (acres)	289		470	1,117
Perennial streams (miles) ⁶	0.4	2:1	0.8	184 ⁷
Intermittent streams (miles) ⁶	0.4	1:1	0.4	184 ⁷
Ephemeral streams (miles)	5	1:1	5	184 ⁷

Attachment P

Notes:

- ¹ Impact estimates are based on the initial urban development area (Table 4-2). Actual acquisition requirements will be based on field-delineated resources at impact sites and application of the required preservation ratios in this table. Restoration, creation, and enhancement of aquatic land cover is required in addition to preservation of aquatic land cover as compensation for impacts. See Conservation Measures 2.1.1 and 2.2.2 for these requirements.
 - ² Many land cover types were underestimated in the mapping conducted for this HCP/NCCP, so these figures represent minimum acreages of what is available for preservation. See Chapter 3 for a discussion of the mapping limitations.
 - ³ Undetermined wetlands could be seasonal wetlands or perennial wetlands (e.g., freshwater marsh). Seasonal wetlands will be mitigated at a preservation ratio of 3:1; perennial wetlands will be mitigated at a preservation ratio of 1:1. This table assumes 75% of undetermined wetlands are perennial wetlands and 25% are seasonal wetlands.
 - ⁴ Seasonal and alkali wetland acreage was quantified as the minimum polygon encompassing clusters of seasonal pools or drainages (i.e., wetland complexes). Impacts and land acquisition requirements will be tracked by jurisdictional wetland boundary, so estimates in this table overstate the expected impacts to and preservation of these land cover types. Impact restrictions and preservation ratios apply only to wetted acres.
 - ⁵ The actual amount of seasonal wetlands available for preservation in the inventory area is unknown because of a lack of field surveys. The allowable impact to seasonal wetlands by covered activities will be capped at the amount required to preserve seasonal wetlands at the required 3:1 ratio. For example, if only 30 acres are preserved, allowable impacts will be capped at 10 acres.
 - ⁶ Maximum allowable impacts for perennial and intermittent streams could not be separately estimated. Cumulative impacts for these two categories were estimated at 0.8 miles. For the purposes of this table, it is assumed that the impacts are evenly split between the two categories.
 - ⁷ The approximate length of all streams of all types in the Acquisition Analysis Zone is 184 miles.
-

Attachment Q

Table 5-7. Land Acquisition Requirements for Terrestrial Land-cover Types under the Initial Urban Development Area Scenario (acres)

	Total in Inventory Area	Inside Parks and Open Space ¹ (%)	Outside Parks and Open Space	Estimated and Allowable Impact ² (% outside parks and open space)	Remain Outside Parks and Open Space	HCP/NCCP Preservation Requirement for Compensation and Recovery ³ (% Remaining Outside Parks & Open Space)	Minimum Preserved ⁴ (% of Total after Impacts)
Annual grassland	58,840	23,987 (41%)	34,853	2,533 (7%)	32,320	13,000 (40%)	36,987(66%)
Alkali grassland	1,997	379 (19%)	1,618	115 (7%)	1,503	900 (60%)	1,279 (68%)
Oak savanna	5,894	2,690 (46%)	3,204	42 (1%)	3,163	500 (16%)	3,190 (55%)
Oak woodland	24,198	12,284 (51%)	11,914	21 (<0%)	11,892	400 (3%)	12,684 (52%)
Chaparral/scrub	3,016	2,225 (74%)	791	0 (0%)	791	550 (70%)	2,775 (92%)
Cropland and pasture	25,007	1,149 (5%)	23,858	4,050 (17%)	19,808	250 (1%)	1,399 (7%)
Total	118,953	42,715 (36%)	76,238	6,762 (9%)	69,476	15,600 (22%)	58,315 (52%)

¹ Refers to permanently protected parks and open space. See text and Table 2-2 for more information.

² Assumes the initial urban development area. The percentage is the proportion of the land cover type outside public lands and open space.

³ These acreage requirements represent the minimum required under the HCP/NCCP to compensate for impacts of covered activities and contribute to the recovery of covered species. Actual acquisition of these land cover types may be greater than the minimum requirements because the Plan also includes connectivity and other requirements that will result in additional acquisitions and because parcels purchased to meet a specific requirement will contain additional acres of non-target land cover types.

⁴ Min. preserved = HCP/NCCP requirement + existing parks and open space. More of each land cover type is expected to be preserved due to need to acquire parcels rather than specific areas of each land cover type. The percentage is the proportion of the land cover type preserved in existing public lands and HCP/NCCP Preserves after full HCP/NCCP implementation (i.e., after impacts have occurred).

Attachment R

Table 5-8. Land Acquisition Requirements for Terrestrial Land-cover Types under the Maximum Urban Development Area Scenario (acres)

	Total in Inventory Area	Inside Parks and Open Space ¹ (%)	Outside Parks and Open Space	Estimated and Allowable Impact ² (% outside parks and open space)	Remain Outside Parks and Open Space ²	HCP/NCCP Preservation Requirement for Compensation and Recovery ³ (% Remaining Outside Parks & Open Space)	Minimum Preserved ⁴ (% of Total after Impacts)
Annual grassland	58,840	23,987 (41%)	34,853	4,152 (12%)	30,701	16,500 (54%)	40,487 (74%)
Alkali grassland	1,997	379 (19%)	1,618	115 (7%)	1,503	1,250 (83%)	1,629 (87%)
Oak savanna	5,894	2,690(46%)	3,204	165 (5%)	3,040	500 (16%)	3,190 (56%)
Oak woodland	24,198	12,284 (51%)	11,914	73 (1%)	11,841	400 (3%)	12,684 (53%)
Chaparral/scrub	3,016	2,225 (74%)	791	2 (<1%)	789	550 (70%)	2,775 (92%)
Cropland and pasture	25,007	1,149 (5%)	23,858	5,011 (21%)	18,847	400 (2%)	1,549 (8%)
Total	118,953	42,715 (36%)	76,238	9,518 (12%)	66,720	19,600 (29%)	62,315 (57%)

¹ Refers to permanently protected parks and open space. See text and Table 2-2 for more information.

² Assumes the maximum urban development area. The percentage is the proportion of the land cover type outside public lands and open space.

³ These acreage requirements represent the minimum required under the HCP/NCCP to compensate for impacts of covered activities and contribute to the recovery of covered species. Actual acquisition of these land cover types may be greater than the minimum requirements because the Plan also includes connectivity and other requirements that will result in additional acquisitions and because parcels purchased to meet a specific requirement will contain additional acres of non-target land cover types.

⁴ Min. preserved = HCP/NCCP requirement + existing parks and open space. More of each land cover type is expected to be preserved due to need to acquire parcels rather than specific areas of each land cover type. The percentage is the proportion of the land cover type preserved in existing public lands and HCP/NCCP Preserves after full HCP/NCCP implementation (i.e., after impacts have occurred).

Figure ES-1. Stay Ahead Compliance

This is a graphical representation of data in Table 14.

The chart compares conservation achieved to impacts incurred according to the specific guidelines set forth in the Stay Ahead Provision.

The green bars display the percent of the land cover acquired as a percent of the conservation required.

The red bars display the percent of land cover impact incurred as a percent of the impact limits.

To comply with the Stay Ahead Provision, for terrestrial land covers the green bars need to be not more that 5% below the red bars.

With the extensive conservation effort to date, progress toward conservation goals have met, exceeded or vastly exceeded Stay Ahead Provision requirements.

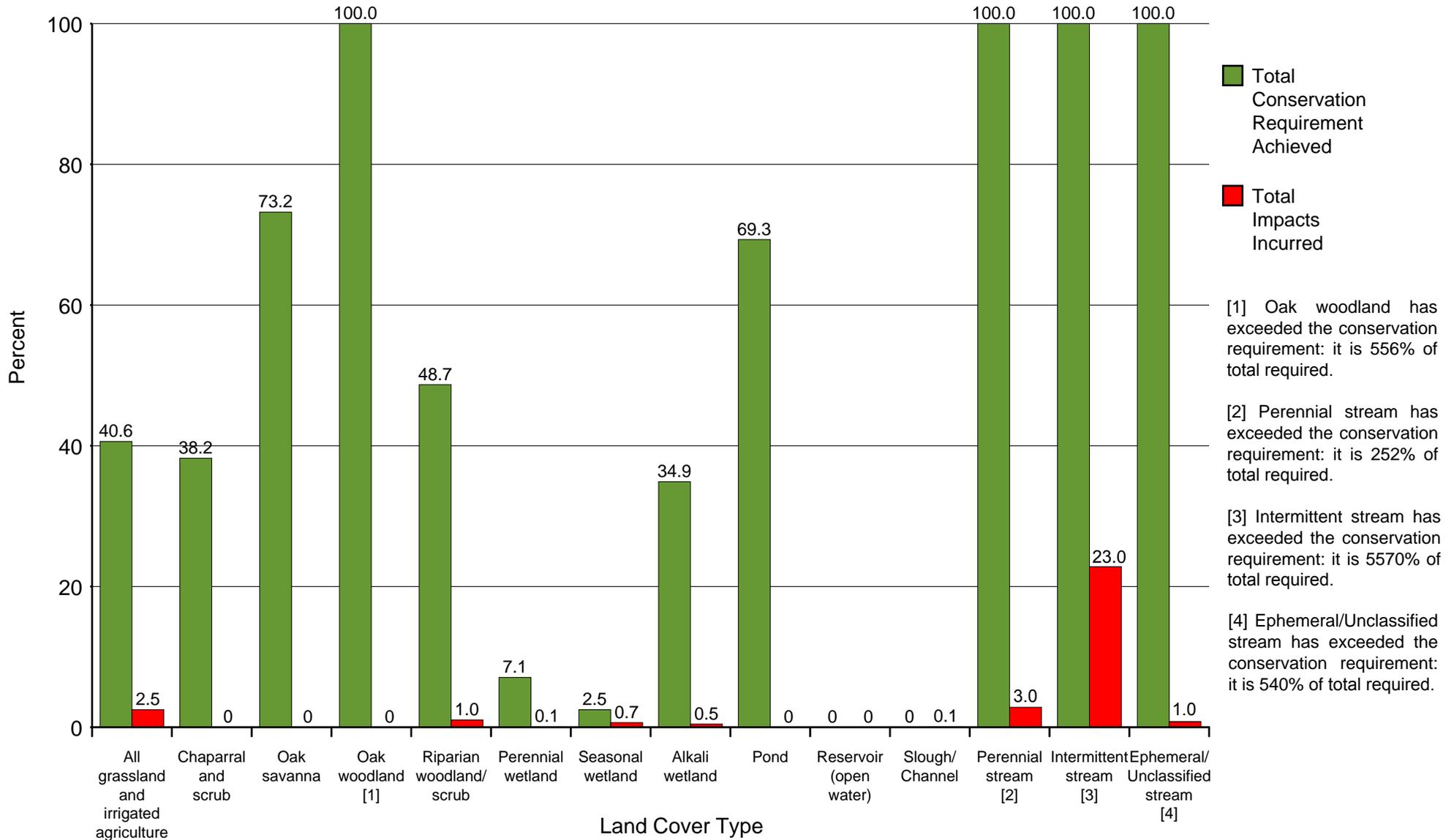


Table 14. Stay-Ahead Assessment: Land Cover

Land Cover Type	Conservation			Impacts			Stay-Ahead		
	Protection Required (acres)	Protection, Creation, Restoration to date (acres)	% of Required	Estimated Impacts (acres)	Impacts to date (acres)	% of Impacts	Acres Required to be Ahead	Acres Ahead	% Ahead ³ (Conservation % to Impacts %)
Terrestrial									
All grassland & irrigated agriculture	18,150	7,368	40.6%	12,148	349	2.5%	454	7,065	38%
Chaparral and scrub	550	210	38.2%	2	0	0.0%	0	210	38%
Oak savanna	500	366	73.2%	165	0	0.0%	0	366	73%
Oak woodland	400	2,224	555.9%	73	0	0.0%	0	2,224	556%
<i>Subtotal terrestrial</i>	<i>19,600</i>	<i>10,168</i>	<i>52%</i>	<i>12,388</i>	<i>349</i>	<i>3%</i>	<i>553</i>	<i>9,615</i>	<i>49%</i>
Aquatic									
Riparian woodland/scrub	70	34	49%	35	1	1%	1	34	48%
Perennial wetland ¹	75	5	7%	75	0	0%	0	5	7%
Seasonal wetland	168	19	2%	56	0	1%	5	19	2%
Alkali wetland	93	32	35%	31	0	0%	0	32	34%
Pond	16	11	69%	8	0	0%	0	11	69%
Reservoir (open water) ²	12	0	0%	12	0	0%	0	0	0%
Slough/Channel	36	0	0%	72	0	0%	0	0	0%
<i>Subtotal aquatic</i>	<i>470</i>	<i>102</i>	<i>22%</i>	<i>289</i>	<i>1</i>	<i>0%</i>	<i>2</i>	<i>100</i>	<i>21%</i>
Stream (length in linear feet)									
Perennial stream	4,224	10,646	252%	2,112	56	3%	113	10,589	249%
Intermittent stream	2,112	120,630	5570%	2,112	479	23%	360	117,287	5553%
Ephemeral stream ⁴	26,400	142,530	540%	26,400	253	1%	106	142,425	539%
<i>Subtotal stream length</i>	<i>32,736</i>	<i>273,805</i>	<i>836%</i>	<i>30,624</i>	<i>788</i>	<i>3%</i>	<i>843</i>	<i>270,301</i>	<i>834%</i>
Totals									
Acres	38,820	10,270	26%	24,825	351	1%	460	9,966	25%
Linear feet	32,736	270,822	827%	30,624	788	3%	578	270,301	825%

¹Perennial wetlands are equivalent permanent wetlands.

² Reservoir (open water) is equivalent to aquatic.

³ The Plan allows a 5% deviation from Stay Ahead requirements. For terrestrial land cover, the Plan provides that Stay Ahead be measured against the following categories: chaparral, oak savanna, oak woodland and the sum of all grassland and irrigated agricultural land cover types

⁴ Many of the streams identified as "classification pending" will ultimately be classified as ephemeral. As such, they are tracked as ephemeral streams for the purposes of the Stay-Ahead provision.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: February 22, 2016
TO: Governing Board
FROM: Conservancy Staff (Abigail Fateman)
SUBJECT: 2016 Public Advisory Committee (PAC) Referral

RECOMMENDATION

Consider the following actions related to the Conservancy’s Public Advisory Committee (PAC):

- a) **REVIEW** the PAC recommendations on member terms, attendance policy, selection process, geographic distribution and whether PAC membership seats should be held by individuals or organizations
- b) **CONSIDER** directing staff to implement PAC or other Governing Board recommendations related to the composition and operation of the PAC.

DISCUSSION

PAC Background and Role

Pursuant to requirements in the Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP” or “Plan”), the Board initiated the Public Advisory Committee in February 2008 and established a quarterly meeting schedule. The PAC reports to the Board and provides input to the Board and staff on aspects of Plan implementation.

The Board action initiating the PAC requires the composition of the PAC to be reviewed annually. On December 8, 2014, the Board reaffirmed PAC representation for 2015 without change, and directed staff to 1) outreach to existing PAC members to increase participation, 2) expand, to the extent practicable, the issues brought to the PAC, and 3) have this item return to the Board to discuss attendance requirements and required composition of the PAC. At its December 2015 meeting, the Board referred specific operational questions back to the PAC. They requested input from the PAC

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>February 22, 2016</u>	APPROVED AS RECOMMENDED: _____
OTHER: _____	
<u>VOTE OF BOARD MEMBERS</u>	
___ UNANIMOUS	
AYES: _____	I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN. ATTESTED _____ <i>John Kopchik, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
BY: _____, DEPUTY	

on: PAC member terms, attendance policy, selection process, geographic distribution and whether PAC membership seats should be held by individuals or organizations.

PAC Composition

The composition of the Public Advisory Committee is established in Chapter 8 of the Plan and includes three representatives from each of the four stakeholder groups listed below. The current composition of the PAC is below:

Private Permit Seekers	Conservation Advocates	Landowners/Agriculturalists	Suburban/Rural Residents
East Bay Leadership Council: Josh Huber	California Native Plant Society: Lesley Hunt	Agricultural/Natural Resource Trust of Contra Costa County: Liz DiGiorgio	Dick Vrmeer
Discovery Builders Inc.: Noelle Ortland	Friends of Marsh Creek Watershed: Barry Margesson	Brentwood Agricultural Land Trust: Kathryn Lyddan	Sharon Osteen
Home Builders Association of Northern California: Lisa Vorderbeueggen	Save Mount Diablo: Juan Pablo Galvan	Contra Costa County Farm Bureau: Mike Vukelich	Kelly Davidson

Staff members from interested public agencies and members of the public are welcome to attend and participate in committee meetings. Despite formal membership, members of the public are welcome to participate in discussions and be part of Committee recommendations.

PAC Comments on Board Referral

The Public Advisory Committee discussed the referral from the Governing Board and did not indicate a need to change the way the committee operates. There was a verbal commitment from the organizations present to maintain engagement in the process. They indicated that there is not a need to institute more strict guidelines for PAC membership. With almost the entire PAC represented at the meeting the following feedback was provided on the specific topics referred from the Board:

Terms: The PAC did not feel that terms (or term limits) would be helpful in PAC operation. They indicated that continuity is important in the PAC discussion and in providing input on HCP/NCCP implementation policies. Instituting terms would create additional work for the Board, Staff and PAC members in having to apply, review and select members.

Attendance Policy: There are four meetings a year. The expectation is that all members would be present at every meeting. Missing one meeting, with notification to staff in advance is acceptable. Missing more than one meeting is not acceptable. Public members do not have the option of having an alternate, and the attendance expectation needs to be more lenient. However, staff should be notified prior to every absence.

Geographic Scope Represented: The PAC indicated that they did not have concerns regarding the geographic distribution of stakeholders on the Committee.

Individual vs. Agency Representation: The PAC indicated that they preferred that agencies hold seats (and not individual staff). They indicated that a staff person be listed as the primary participant and that it was that person's responsibility to make sure that the agency was represented at the meeting.

Selection Process: There was minimal discussion of the selection process.