



EAST CONTRA
COSTA COUNTY
HABITAT
CONSERVANCY

GOVERNING BOARD

REGULAR MEETING

Wednesday, June 16, 2010
12:00 p.m.

City of Pittsburg
City Council Chambers, Ante-Chambers Room
65 Civic Avenue, Pittsburg, CA 94565

City of Brentwood

City of Clayton

City of Oakley

City of Pittsburg

Contra Costa County

AGENDA

- 1) **Introductions and pledge of allegiance.**
- 2) **Public Comment** on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meetings on March 17, 2010 and May 27, 2010.**
- 4) **Consider the following administrative actions:**
 - a) **ADOPT the Conflict of Interest Code.**
 - b) **DISCUSS new liaison committees.**
- 5) **Consider PROVIDING direction and authorization to Executive Director on formalizing “Policy on Land Acquisition in Wind Turbine Areas”, as reformatted and revised since the Governing Board Meeting on December 16, 2009.**
- 6) **Consider APPROVING the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan Annual Report 2008/2009.**
- 7) **Consider AUTHORIZING staff to execute a Participating Special Entity Agreement with Shell Oil Products to extend take coverage for the Coalinga-Avon Pipeline Repair Project.**
- 8) **Consider the following actions related to Conservancy finances:**
 - a) **ACCEPT a mid-year status report on the 2010 Conservancy Budget.**
 - b) **AUTHORIZE staff to amend existing contracts for on-going biological and conservation planning services with:**
 - **ICF Jones and Stokes (multi-year contract): increase the payment limit by \$150,000 from \$367,000 to \$517,000, and extend the term through December 31, 2010;**

- **H.T. Harvey and Associates: increase the payment limit by \$22,000 from \$68,000 to \$90,000 and extend the term through December 31, 2010.**
- c) **AUTHORIZE staff to amend an existing a contract for legal services with Resources Law Group to increase the payment limit by \$45,000, from \$120,000 to \$165,000, and extend the term to December 31, 2010.**

Adjourn to Closed Session

9) Closed Session: Conference With Real Property Negotiators

Property APN's: 001-021-001; -008; & -009, 005-170-009 & -010, 005-160-006, and 005-180-002 (Byron area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

Reconvene Open Session

10) Report on any actions taken in Closed Session.

11) Adjourn. Next meeting is September 15, 2010 at the City of Oakley.

If you have questions about this agenda or desire additional meeting materials, you may contact John Kopchik of the Contra Costa County Department of Conservation and Development at 925-335-1227.

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

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Governing Board Meeting Record for March 17, 2010 and May 27, 2010**

RECOMMENDATION

APPROVE the Meeting Records from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meetings on March 17, 2010 and May 27, 2010.

DISCUSSION

Please find the draft meeting records attached.

CONTINUED ON ATTACHMENT: <u>Yes</u>	
ACTION OF BOARD ON: <u>June 16, 2010</u>	APPROVED AS RECOMMENDED: _____
OTHER _____	
<u>VOTE OF BOARD MEMBERS</u>	
<u> </u> UNANIMOUS	
AYES: _____	I HEARBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
NOES: _____	
ABSENT: _____	
ABSTAIN: _____	
ATTESTED _____	<i>Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY</i>
BY: _____, DEPUTY	

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting
March 17, 2010
Oakley City Hall

- 1) **Introductions.** The Chair recommended the meeting begin with the Pledge of Allegiance and would like to do so at future meetings.

Governing Board members in attendance were:

Bruce Connelley	Councilman, City of Oakley (Chair)
Will Casey	Councilman, City of Pittsburg (Alternate for Mr. Evola, Vice Chair)
Federal Glover	Supervisor, Contra Costa County
Hank Stratford	Major, City of Clayton

Other Attendees:

Joe Ciolek	Agricultural/Natural Resource Trust of Contra Costa County
Wayne Lind	Bay Area Rapid Transit District

Conservancy Staff members in attendance were:

John Kopchik	Conservancy Staff
Abby Fateman	Conservancy Staff
Krystal Hinojosa	Conservancy Staff

- 2) **Public Comment.** Mr. Connelley, as a member of the public, urged those present to oppose AB 2336 for the Eradication of Striped Bass. He disturbed a draft letter the Oakley City Council is sending to Assemblymember Jared Huffman in opposition to the Bill.
- 3) **Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board Meeting of December 16, 2009.** The Board approved the Meeting Record. (4-0: Connelley, Glover, Casey, Stratford).
- 4) **Consider ACCEPTING update on the Souza II Wetland Restoration Project and recent field surveys.** The Board accepted the update on the Souza II Wetland Restoration Project and recent field surveys. Ms. Fateman provided a powerpoint presentation highlighting construction of the Souza II Wetland Restoration Project. Ms. Fateman updated the Board on recent field surveys for fairy shrimp on Preserve System properties. Fairy shrimp and California Tiger Salamander were found on Souza II, fairy shrimp were also found on Souza I. Ms. Fateman also reported on recent efforts to enhance riparian habitat through planting buckeye and acorn trees on a future Preserve property. Activities were conducted by staff and volunteers from Save Mount Diablo. Mr. Connelley suggested involving youth group volunteers within the local community for future volunteer activities. (4-0: Connelley, Glover, Casey, Stratford).
- 5) **Consider the following actions related to legislative matters:**

a) **ACCEPT** report on briefing booklet, “California Habitat Conservation Planning Coalition, Cooperative Endangered Species Conservation Fund: Fiscal Year 2011 Funding Request”

b) **ACCEPT** report on Conservancy correspondence and meetings with Administration and Congressional representatives as part of continued efforts to pursue the Conservancy’s 2010 Legislative Platform in conjunction with the California Habitat Conservation Planning Coalition.

c) **AUTHORIZE** letter of support to Contra Costa County for grant application to Caltrans Community-Based Transportation Planning (CBTP) to fund for the **Knightsen/Byron Area Transportation Study**. Mr. Kopchik provided an overview of Item 5 (A-C). The Board accepted the reports for Items (a) and (b). Mr. Glover asked how well the Conservancy has done in receiving funding from the U.S Fish and Wildlife Service’s Cooperative Endangered Species Conservation Fund. Mr. Kopchik stated it is a competitive process but he feels we have received about 15% of federal aid available nationally during each annual cycle. Mr. Kopchik expressed the need for support by Congressman Garamendi for increased federal aid to HCP’s. Mr. Glover offered to call Mr. Garamendi on behalf on the Conservancy. The Board Approved Item C authorizing the Chair to sign the letter of support for the Contra Costa County Transportation Planning Division grant application. Mr. Ciolek, as a public comment, stated that the Agricultural and Natural Resources Trust of Contra Costa County will be providing comments to the County on the project. (4-0: Connelley, Glover, Casey, Stratford).

6) **Consider ACCEPTING** report on 2010 Adjustment of Mitigation Fees. **The Mitigation Fees have been adjusted pursuant to the indices and procedures set forth in East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP)**. The Board accepted the update for the 2010 Adjustment of Mitigation Fees. (4-0: Connelley, Glover, Casey, Stratford).

7) **Consider APPROVING** minor correction to the “Protocol for Covering Communication Towers Under the HCP/NCCP” previously approved by the Governing Board on December 17, 2008. Mr. Kopchik provided a background on the development of the Protocol and the reason for the proposed minor correction. The Board approved the minor correction to the “Protocol for Covering Communication Towers Under the HCP/NCCP. (4-0: Connelley, Glover, Casey, Stratford).

8) **Consider AUTHORIZING** staff to execute a Participating Special Entity Agreement with the Bay Area Rapid Transit District (BART) to extend take coverage for the eBART Phase I project. Mr. Kopchik provided a background of the project, the Agreement, including the Contribution to Recovery for \$3,219.33. Mr. Lind representing BART provided an additional summary on the details of the Phase I project and noted Phase II of the project will commence within the next 2 years and will be seeking take coverage from the Conservancy. The Board approved the Participating Special Entity Agreement with BART for the eBART Phase I Project. (4-0: Connelley, Glover, Casey, Stratford).

9) **Consider AUTHORIZING** staff to execute a Participating Special Entity Agreement with the California Department of Transportation (Caltrans) to extend take coverage for the State Route 4 Median Buffer and Shoulder Widening Project. Mr. Kopchik provided background on the project and the Agreement, including the various fee components and the contribution to recovery. Mr. Kopchik explained that a giant garter snake contribution was included and the funds would need to be reserved for a future project

to benefit the species. The Board approved the Participating Special Entity Agreement with Caltrans for the State Route 4 Median Buffer and Shoulder Widening Project. (4-0: Connelley, Glover, Casey, Stratford).

10) Consider ACCEPTING report on the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2008/2009 Annual Report. REVIEW the Draft, PROVIDE initial comments, REFER the Draft to the Public Advisory Committee (PAC) and the agencies signatory to the HCP/NCCP Implementing Agreement, and SCHEDULE consideration of approval of the document for the June 16, 2010 Governing Board meeting. Mr. Kopchik provided a summary on the development of the report and the recommendations related to soliciting review. Mr. Connelley went over several comments on the document and asked that they be addressed. The Board accepted the report on the Draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2008/2009 Annual Report and approved all actions proposed for this Item. 4-0: Connelley, Glover, Casey, Stratford).

11) AUTHORIZE staff to execute contracts for on-call maintenance services with the following companies:

- **Pacific OpenSpace: \$25,000 with a term through December 31, 2010;**
- **Restoration Resources: \$50,000 with a term through December 31, 2010; and**
- **Thunder Mountain Enterprises, Inc: \$25,000 with a term through December 31, 2010.**

Mr. Stratford asked how the amount of each contract is determined and Mr. Kopchik explained that each contract amount is a retainer cap. Mr. Connelley asked about the implications of some contractors proposing higher hourly rates than others. Mr. Kopchik stated that efficiency and quality were additional considerations and that the purpose of suggesting three contractors was, in part, to test the cost effectiveness of the various firms (e.g., a firm may charge somewhat more per hour but accomplish the work necessary with fewer hours). Mr. Glover expressed interest in having multiple contractors as opposed to working with just one. Mr. Connelley also requested that a copy of the RFP be included in the meeting packet in the future. The Board authorized staff to execute contracts for on-call maintenance services. (4-0: Connelley, Glover, Casey, Stratford).

12) Adjourn. Next regular meeting will be June 16, 2010 at the City of Pittsburg. Mr. Kopchik expressed the possibility of calling a special meeting in April for land acquisitions closing in April.

Draft Meeting Record

East Contra Costa County Habitat Conservancy
Governing Board Meeting (Special Meeting)
May 27, 2010
Supervisor Glover's Office, Pittsburg

1) Introductions. Pledge of Allegiance.

Governing Board members in attendance were:

Bruce Connelley	Councilman, City of Oakley (Chair)
Federal Glover	Supervisor, Contra Costa County
Hank Stratford	Mayor, City of Clayton
Erick Stonebarger	Vice Mayor, City of Brentwood

Other Attendees:

Ben Johnson	Councilman, City of Pittsburg
Jim Gwerder	Souza Realty and Development

Conservancy Staff members in attendance were:

John Kopchik	Conservancy Staff
Krystal Hinojosa	Conservancy Staff

2) **Public Comment.** Mr. Gwerder expressed appreciation for the special meeting of the Board and commented on the hard work of Conservancy staff.

3) **Consider AUTHORIZING the Executive Director to execute an amendment to the block grant Agreement with the California Wildlife Conservation Board (grant agreement number SG-8015TM) to address expenditure of lease revenue and possible extension of agreement term after seeking approval from the Chair that the amendment to the Agreement is consistent with the intent of the Board.** Mr. Kopchik provided an overview. Mr. Connelley expressed concern on the option to use lease revenue to fund park rangers, police and fire services by East Bay Regional Park District (EBRPD), indicating that he felt these services were not sufficiently related to species. Mr. Kopchik expressed that the remote properties on Vasco Road covered by the amendment were primarily being purchased for species rather than park regions. Public access will not be possible for years and will then be limited. General property supervision, oversight of range management, protection against trespass and dumping and fire fighting services are also important for protecting species. Such costs were factored into the HCP/ Likewise, EBRPD will be contributing toward the acquisition that results in the lease revenue. Mr. Connelley also expressed concern about the Conservancy's need to help oversee the expenditures. Mr. Kopchik explained that general provisions are intended for the block grant Agreement Amendment. Expenditure of lease revenue will be memorialized in a separate agreement to be discussed later on the agenda between the Conservancy and EBRPD and such assurances can be addressed there. The Board authorized the Executive Director to execute an amendment to the block grant Agreement with the California Wildlife Conservation Board pending approval from the Chair that the amendment is consistent with the intent of the Board. (4-0: Connelley, Glover, Stratford, Stonebarger).

Adjourn to Closed Session

4) Closed Session: Conference With Real Property Negotiators

Property: APN 001-011-047 (Byron area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

5) Closed Session: Conference With Real Property Negotiators

Property: APN 001-021-007 (Byron area)

Agency Negotiators: John Kopchik and Abby Fateman

Negotiating Parties: Conservancy and East Bay Regional Park District

Under negotiation: Price and payment terms

Reconvene Open Session

6) Report on any actions taken in Closed Session. The Chair reported on the following closed session items:

- Item 4: The Board approved executing a funding agreement for the property, pending the Chair's concurrence with the final version of the funding agreement
- Item 5: The Board approved executing a funding agreement for the property, pending the Chair's concurrence with the final version of the funding agreement

Adjourn. Next meeting June 16, 2010 at the City of Pittsburg.

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Administrative Matters**

I. RECOMMENDATION

- A. ADOPT a Conflict of Interest Code. DIRECT the Secretary to the sign the Code and submit it to the County Board of Supervisors for approval.
- B. DISCUSS the establishment of a Habitat and Regional Parks Partnership Liaison Committee and a Flood Control and Water Conservation Committee.

II. BACKGROUND

The Joint Exercise of Powers Agreement (JEPA) creating the East Contra Costa County Habitat Conservancy requires the Conservancy to establish a Conflict of Interest Code, a Habitat and Regional Parks Partnership Liaison Committee and a Flood Control and Water Conservation Committee. Conservancy staff has been reviewing the JEPA and other foundational documents to ensure that the Conservancy is fulfilling the wide array of responsibilities assigned to it. Staff recommends the Board take action on these items from the JEPA.

III. DISCUSSION

A. Conflict of Interest Code

The JEPA requires the Conservancy to adopt a Conflict of Interest Code. The attached draft Code for the Conservancy was prepared by Conservancy staff

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 16, 2010 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS
___ UNANIMOUS
AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

I HERABY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MEETING RECORD OF THE CONSERVANCY GOVERNING BOARD ON THE DATE SHOWN.
ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY
BY: _____, DEPUTY

with guidance from County Counsel. It incorporates the standard form conflict of interest code approved by the State Fair Political Practices Commission. The Code would not require any additional filings for officials such as County Supervisors who must already report all interests held throughout the entire County. Other officials without such pre-existing requirements would need to file a Form 700 with original signature, though such officials may be able to rely wholly or partially on forms filed for other jurisdictions, depending on geographic jurisdiction and filing requirements of the other agency, though an original signature would be necessary on any duplicate form filed with the Conservancy. The County Board of Supervisors is the code reviewing body for all local entities with jurisdiction only in Contra Costa County, and the Board of Supervisors must approve the Conflict of Interest Code for the Conservancy. The Code would take effect upon approval by the Board of Supervisors.

B. Formation of New Committees

The JEPA requires that the Conservancy establish a Habitat and Regional Parks Partnership Liaison Committee consisting of up to three Agency representatives and up to three representatives of the East Bay Regional Park District (EBRPD) to promote coordination with EBRPD. The Conservancy Board appoints Conservancy representatives to the Liaison Committee; EBRPD may appoint its representatives. Liaison Committee representatives may be elected officials or may be staff of the Conservancy or EBRPD. The Habitat and Regional Parks Partnership Liaison Committee shall make recommendations to the Board regarding ways to coordinate implementation of the Conservation Plan with EBRPD's activities in the Conservation Plan area and regarding the preparation and submittal of grant applications in conjunction with EBRPD.

The JEPA also requires that the Conservancy establish a Flood Control and Water Conservation Committee consisting of up to three Conservancy representatives and up to three representatives of the Flood Control District to promote coordination with the Flood Control District. The Conservancy Board appoints Conservancy representatives to the Committee; the Flood Control District may appoint its representatives. Committee representatives may be elected officials or may be staff of the Conservancy or the Flood Control District. The Flood Control and Water Conservation Committee shall make recommendations to the Board regarding ways to coordinate implementation of the Conservation Plan with the Flood Control District's activities in the Conservation Plan area.

Conservancy staff frequently consults and meets with EBRPD and Flood Control staff. Now that HCP/NCCP implementation is moving beyond the start-up period, staff would like to discuss the matter with the Board and consider if it is now timely to approach EBRPD and Flood Control about a more formal liaison structure.

Adopted _____
Date

Secretary of the Conservancy

Conflict of Interest Code
of the
East Contra Contra Costa County Habitat Conservancy

The Political Reform Act (Gov. Code § 81000, et. seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (Tit. 2, Cal. Code of Regs. § 18730) which contains the terms of a standard conflict of interest code. After public notice and hearing, it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Title 2, California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of the East Contra Costa County Habitat Conservancy (Conservancy).

Persons serving in designated positions shall file their disclosure statements with the Conservancy Secretary. The Conservancy Secretary will retain copies of the statements and will make them available for public inspection and reproduction. (Gov. Code, § 81008.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been

determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to

have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$420.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$420 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from

any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action.

Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$420 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

1Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and

verified by the designated employee as if it were an original. See Government Code section 81004.

2See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

3For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

4Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

5A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

6Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter
(Register 81, No.2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter
(Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter
(Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed
8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and
amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93;
operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental
Health Planning Council filed 11-22-93 pursuant to title1, section 100, California Code of
Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.

12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47).
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4 filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).
24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).
25. Editorial correction of History24 (Register 2003, No. 12).
26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

Appendix A

<u>Designated Positions</u>	<u>Disclosure Category</u>
Members of the Conservancy Governing Board	1
Secretary of the Conservancy	1
Treasurer of the Conservancy *	
Auditor Controller of the Conservancy*	
Executive Director and other Contra Costa County Department of Conservation and Development staff members assigned to provide direct support to Conservancy	1
Consultants**	1

* These officials have no disclosure obligations under this code. They are listed for disqualification purposes only. These officials file statements of economic disclosures under Government Code Section 87200.

**The Conservancy may determine in writing that a consultant is hired to perform a range of duties that is limited in scope and thus is not required to comply with disclosure requirements. The written determination is a public record and shall be retained for public inspection.

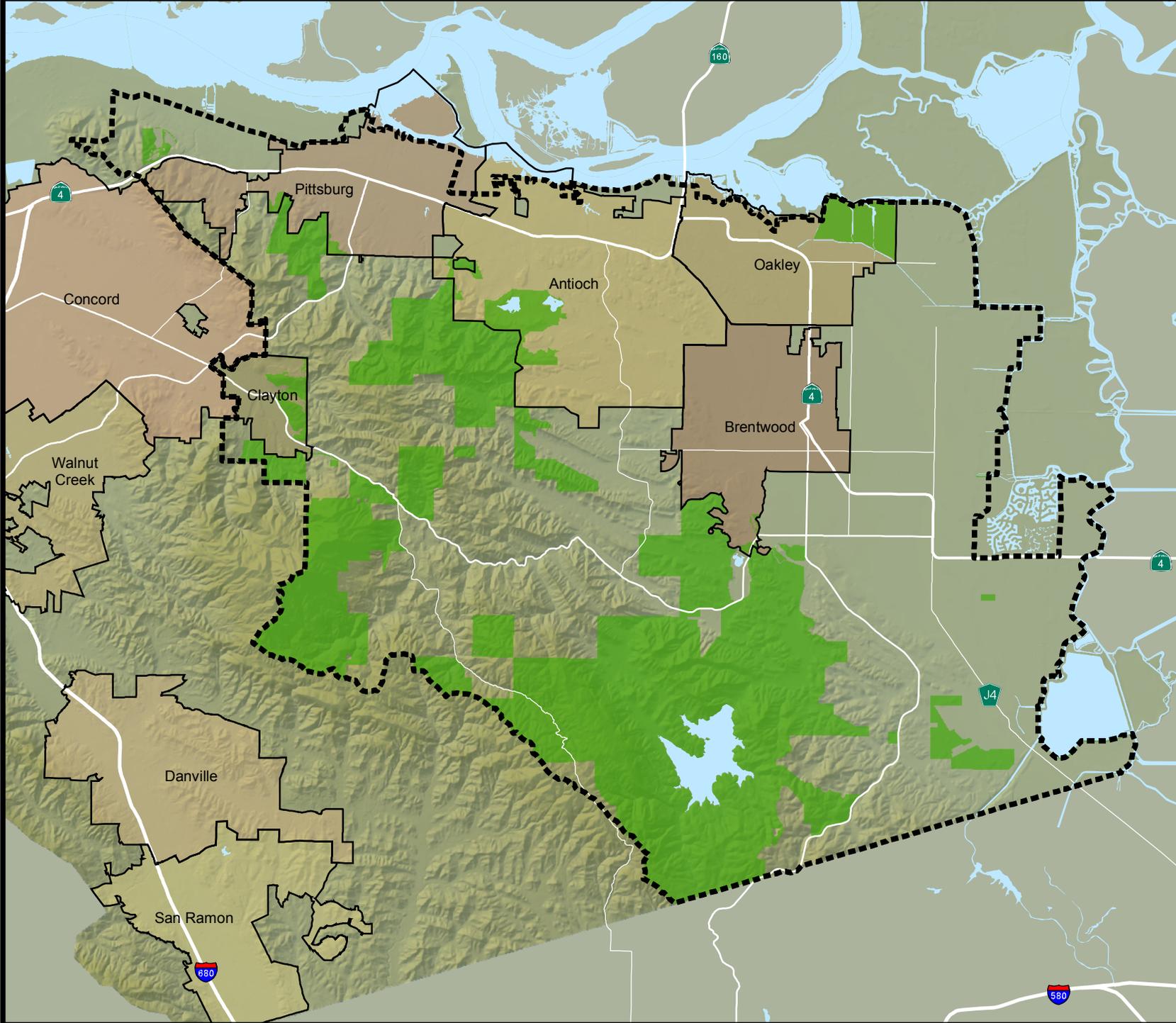
Appendix B

Designated Positions in Category 1 must report:

All investments, interests in real property, interests in business entities, sources of income, sources of gifts, and status as a director, officer, partner, trustee, employee, or holder of any position of management in any business entity. These financial interests are reportable only if located within the Conservancy's area of jurisdiction¹ or if the business entity is doing business or planning to do business in the Conservancy's area of jurisdiction¹ (and such plans are known by the designated filer) or has done business within the Conservancy at any time during the two years prior to the filing of the financial disclosure statement.

¹ The Conservancy's area of jurisdiction is defined in the January 18, 2007 Joint Exercise Of Powers Agreement Creating the East Contra Costa County Habitat Conservancy as the Plan Area of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan (HCP/NCCP). The Plan Area is set forth in Figure 1.1 of the HCP/NCCP (copy attached).

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



Jones & Stokes



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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board Meeting
FROM: Conservancy Staff
SUBJECT: Policy on Land Acquisition in Wind Turbine Areas

RECOMMENDATION

PROVIDE direction and authorization to Executive Director on formalizing “Policy on Land Acquisition in Wind Turbine Areas”, as reformatted and revised since the Governing Board Meeting on December 16, 2009.

DISCUSSION

At the December 16, 2009 meeting, the Board authorized staff to approve the Policy on Land Acquisition in Wind Turbine Areas (Policy). The Policy had been modified based on guidance provided by the Board at the September 16, 2009 meeting. Staff has been working with the wildlife agencies to develop a format for memorializing the Policy and requests further guidance and authorization from the Board on finalizing the letter that would memorialize the Policy. A draft letter is attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 16, 2010 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

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

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

ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

DRAFT LETTER MEMORIALIZING WIND POLICY 6-16-10

John Kopchik
East Contra Costa County Habitat Conservancy
651 Pine Street, North Wing, 4th Floor
Martinez, California 94553

Dear Mr. Kopchik:

The purpose of this ~~Policy letter~~ is to clarify provisions of the East Contra Costa County Habitat Conservation Plan /Natural Community Conservation Plan (HCP/NCCP) as they relate to land acquisition in wind turbine areas and better achieve the goals and objectives set forth in the HCP/NCCP. Regarding wind turbines, ~~the an~~ intent of the HCP/NCCP is, and will continue to be, to ~~reduc~~ing the overall effects of wind turbines on the covered species ~~and including~~ raptors and other migratory birds within the HCP/NCCP Preserve System while recognizing that reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area would continue. Please respond to affirm that the East Contra Costa County Habitat Conservancy (Conservancy) concurs with this letter and will implement the HCP/NCCP in accordance with it.

The East Contra Costa County Habitat Conservancy (Conservancy) and fee simple owner of an HCP/NCCP Preserve System property will retire wind leases, require turbine reconfiguring and/or take other measures to reduce the biological impacts of wind turbines on Preserve System Lands, as more specifically set forth below, unless the Conservancy and fee simple owner lack the legal authority or control to do so or unless these turbines are shown to have minimal adverse impacts with USFWS and CDFG concurrence. Of the various options presented herein, retiring wind leases and removal of turbines will reduce the overall effects of wind turbines on the covered species and raptors more than the other options.

The following clarifying provisions apply to purchasing lands for the HCP/NCCP Preserve System within the wind turbine areas:

PART ONE

In order to reduce impacts from all wind turbines within the Preserve System, USFWS, CDFG and the Conservancy have agreed that the following measures and conditions shall apply:

1. There will be no lands credited to the Preserve System with severed wind rights unless and until all the wind rights are also acquired, and measures described below to reduce the biological impacts of wind turbines are being implemented, other than the Vaquero Farms South and Vaquero Farms North properties.
2. The Conservancy, CDFG and USFWS acknowledge that non-renewal of wind leases and removal of turbines will eliminate impacts. Prior to the Conservancy and the future owner of the subject Preserve System lands choosing to renew wind leases on Preserve System lands, the reasons for this decision will be provided to USFWS and CDFG in a letter authorized by the Conservancy Board.

3. During the term of existing wind leases, the Conservancy, CDFG and USFWS will cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities. The following measures will be considered to reduce the biological effects: preparing and implementing an Avian Protection Plan, sitting of turbines to minimize impacts, reduction in the number of turbines, not increasing the current energy output during repowering, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects.
4. If wind leases are renewed on future acquisitions, CDFG, USFWS, the Conservancy and the fee simple owner of the Preserve System lands in question will meet and confer to discuss and agree on the measures that will be included in such renewal to reduce the effects of wind turbine operations on covered species. ~~provided that the parties recognize that these measures will continue to permit reasonable generation of electricity from the Contra Costa County's (County) wind energy resource area.~~ The following measures will be considered to reduce the biological effects: preparing and implementing an Avian Protection Plan, sitting of turbines to minimize impacts, reduction in the number of turbines, not increasing the current energy output during repowering, road removal and reduction, restoration of past effects from wind activity, or other measures that limit or reduce the impact of wind projects. This measure will also apply to Vaquero Farms, should the Conservancy and the future fee simple owner of the land subsequently secure the wind rights.
5. If measures to reduce biological effects fail to reduce the impacts of wind turbines to a biologically sustainable level as determined by CDFG, and USFWS and Conservancy, the Conservancy, CDFG and USFWS will meet and confer to discuss and agree on supplementary measures that may be taken to reduce the impacts of wind turbines within the Preserve System to a biologically sustainable level, including but not limited to removal of turbines and retirement of leases at the next available opportunity.
6. Prior to any Preserve System land acquisition with wind turbines, the Conservancy, USFWS, CDFG and future fee simple owner will agree on i) a structure of the transaction that allows the wind turbine review process outlined above to take place at the appropriate time; and ii) how the future wind turbine review process will be conducted; to ensure the acquisition meets the intent described above.
7. The Conservancy, USFWS, and CDFG recognize that the Souza 1 property was identified in the HCP/NCCP as an existing acquisition and an initial component of the Preserve System. The Conservancy and the fee simple owner of this property are strongly encouraged to pursue the range of measures outlined above.

PART TWO

The Conservancy, USFWS, and the CDFG support the following measures to address impacts related to wind turbines on Vaquero Farms South, and ~~when applicable, on any future turbines on~~ Vaquero Farms North:

1. Continue to pursue acquisition of all wind rights.
2. Cooperate in reviewing and providing input on applications to modify or extend existing wind generation activities, including re-powering activities.
3. Improve accounting for wind turbine infrastructure impacts. The HCP/NCCP excludes a 50-foot buffered width around each wind turbine string from land acquisition credits. If re-powering projects result in substantially larger turbines, the Conservancy, USFWS, and CDFG will meet and agree on a larger buffer and associated reduced credit to the Preserve System.
4. The HCP/NCCP does not specify a minimum mapping unit for mapping roads and other supporting infrastructure (i.e., storage areas) in the Preserve System nor does it specify exclusion of such features from land acquisition credits. In order to more accurately account for the physical infrastructure, the area of the roads and supporting infrastructure will be mapped to a minimum mapping unit of 0.1 acre and excluded from grassland and other land cover acquisition credits (roads will generally be mapped as ruderal unless paved, in which case they will be mapped as urban; building and corporation yards will be mapped as urban). With this approved accounting, removal and reclamation of wind power infrastructure will result in an increase in land acquisition credits when natural land cover is restored. Conversely, expansion of wind turbines and supporting infrastructure will result in a decrease in land acquisition credits as natural land cover types are converted to disturbed land cover types.

~~The Policy may only be revised upon mutual agreement of the signatories set forth below.~~

If you have any questions Please contact Ms. Cay C. Goude with USFWS at (916) 414-6600 or Mr. Scott Wilson, Environmental Program Manager with CDFG at (707) 944-5584.

Sincerely,

Cay C. Goude

Assistant Field Supervisor

Sacramento Fish & Wildlife Office

Charles Armor

Regional Manager

Bay Delta Region, California Department of Fish and Game

**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: 2008/2009 Annual Report.

RECOMMENDATION

APPROVE the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan 2008/2009 Annual Report.

DISCUSSION

Enclosed please find the first Annual Report (Report) for the East Contra Costa County Habitat Conservancy (Conservancy) covering the start-up period of the HCP/NCCP, the first two full years of implementation of the Plan. The Annual Report is a required component of the Plan that allows Staff, the Governing Board, regulatory agencies, stakeholders, and partners to review the status of Plan implementation.

At the March 17, 2010 Governing Board meeting the draft Report was presented to Board members for review and comments. Per Board direction the document was revised and referred to the Public Advisory Committee and regulatory agencies to seek comment on the structure and content. Staff has revised the document again to reflect all comments received. Major changes include: addition of an Executive Summary and accompanying charts, various efforts to make the document more concise and general editing for clarity and consistency. Staff recommends approval.

[IN THE ELECTRONIC VERSION OF THIS DOCUMENT, THE ANNUAL REPORT IS IN A SEPARATE FILE]

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: June 16, 2010 APPROVED AS RECOMMENDED: _____
OTHER _____

VOTE OF BOARD MEMBERS

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

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

ATTESTED _____
Catherine Kutsuris, SECRETARY OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

BY: _____, DEPUTY

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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: **Agreement with Equilon Enterprises (dba Shell Oil Products US) to Extend Take Coverage**

RECOMMENDATION

AUTHORIZE staff to execute a Participating Special Entity Agreement with Equilon Enterprises (dba Shell Oil Products US) to extend take coverage for the Coalinga-Avon Pipeline Repair Project.

DISCUSSION

As part of the Coalinga-Avon Pipeline Repair (Project), Equilon Enterprises (dba Shell Oil Products US) (Shell) will perform targeted repairs on three sites along the Coalinga-Avon Pipeline at the Los Vaqueros Reservoir. Shell owns and operates the Coalinga-Avon Pipeline which runs in an east/west direction north of and downstream of the spillway for dam for the Los Vaqueros Reservoir. Routine tests on the pipeline detected three areas along the pipeline which need to be repaired. The repair work will occur at these three sites:

- Dig Site 1: is located in the valley floor northeast of the reservoir dam.
- Dig Site 2: is located on a hillside northwest of the reservoir dam.
- Dig Site 3: is located further up the hillside northwest of the reservoir dam.

(See Figure 1 & 2 and the Project Description in the Application and Planning Survey Report for more information on the Project and its location.)

The Project is within habitat suitable for several species covered by the East Contra Costa County Habitat Conservation / Natural Community Conservation Plan (HCP/NCCP). Shell has requested take authorization for the Project through the Conservancy as a Participating Special Entity. Chapter 8.4 of the HCP/NCCP provides that entities with projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP may apply to the Conservancy for take coverage as a Participating Special Entity. Shell does not require any local agency land use permits for this project. Therefore, in order to receive permit coverage under the HCP/NCCP, the Conservancy and Shell must enter into an agreement obligating compliance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits. The agreement must describe and bind Shell to perform all avoidance, minimization, and mitigation measures applicable to the Project.

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

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

Key provisions of the Agreement:

- The Project impacts are reflected in the table below:

Land Cover Type	Impact Type
	Temporary
Annual Grassland	0.267

- The Agreement provides that Shell will reimburse the Conservancy for staff costs associated with processing Shell’s request for take coverage, up to a maximum reimbursement of \$5,000.
- As set forth in the Agreement (page 6), Shell will also pay the Conservancy **\$11,402.64** which amount includes all HCP/NCCP mitigation fees necessary for the Project as well as a Contribution to Recovery for Endangered Species.
- The table below summarizes the required fees, contribution to recovery and administrative costs:

SHELL FEE SUMMARY	
Development fees:	\$5,701.32
Contribution to Recovery for Endangered Species:	\$5,701.32
TOTAL FEES	\$11,402.64
Maximum Administrative Costs	\$5,000.00
MAXIMUM AMOUNT TO BE PAID	\$16,402.64

- The Fees and Administrative Costs must be paid before work commences. Shell anticipates starting work June 30, 2010 and to be completed by July 30, 2010.
- Staff proposes a Contribution to Recovery of \$5,701.32. As set forth in the HCP/NCCP, the Conservancy may charge the Participating Special Entity a Contribution to Recovery to help the Conservancy cover certain costs associated with the HCP/NCCP that are not included in the mitigation fees (for example, the costs of preserve management beyond the permit term, the costs of exceeding mitigation requirements and contributing to the recovery of covered species, etc.). For the PG&E CCLP project, PG&E agreed to pay a

\$50,000 Contribution to Recovery (10% of the fee amount). All impacts in the PG&E project were temporary impacts and did not count against Conservancy take limits. The eBART project agreed to pay a contribution to recovery equal to the development fees required for impacts (e.g. 100%). This was due to the small scale of the project and fees as compared to the PG&E project. Some of the impacts were permanent but the area was highly disturbed. Given the small scale of the Shell project, the proposed limited temporary impacts associated with the repair work and the more pristine location (relative to eBART), staff proposes a \$5,701.32 Contribution to Recovery. This amount is equal to the development fees required for impacts and is considered consistent with the amount charged of eBART.

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

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

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

Attachments:

- PSE Agreement, including:
 - Main body of agreement

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

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

BETWEEN

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, Implementing Entity, and EQUILON ENTERPRISES dba SHELL OIL PRODUCTS US, a Participating Special Entity

1.0 PARTIES

This Agreement is made and entered into by the **East Contra Costa County Habitat Conservancy** (“Conservancy”) and **Equilon Enterprises dba Shell Oil Products US** (“Participating Special Entity” or “PSE”) as of the Effective Date.

2.0 RECITALS

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

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

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

- 2.5 The Conservancy has received authorization from the United States Fish and Wildlife Service (“USFWS”) under incidental take permit TE 160958-0, and the California Department of Fish and Game (“CDFG”), under incidental take permit 2835-2007-01-03, for the Take of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law, while carrying out certain development and other activities.
- 2.6 The Conservancy may enter into agreements with participating special entities that allow certain activities of theirs to be covered by the Federal Permit and the State Permit, subject to the conditions in the Implementing Agreement (“IA”), the HCP/NCCP and the Permits.
- 2.7 PSE is responsible for the Coalinga-Avon Pipeline Repair Project and seeks extension of the Conservancy’s permit coverage for targeted repairs on (3) sites along the Coalinga-Avon Pipeline at the Los Vaqueros Reservoir.
- 2.8 The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and is hereby incorporated into this Agreement by reference.

3.0 DEFINITIONS

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

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

- 3.4 **“CDFG”** means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.5 **“CESA”** means the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.6 **“Changed Circumstances”** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of the IA and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.7 **“Covered Activities”** means those land uses and conservation and other activities described in Chapter 2.3 of the HCP/NCCP to be carried out by the Conservancy or its agents that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.8 **“Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. The Take of Fully Protected Species is not allowed. The Take of extremely rare plants that are Covered Species is allowed only as described in Section 6.3 and the IA.
- 3.9 **“Effective Date”** means the date when this Agreement is fully executed.
- 3.10 **“Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.11 **“Federal Permit”** means the federal incidental Take permit issued by USFWS to the Conservancy and other local agencies pursuant to Section 10(a)(1)(B) of FESA (permit number TE 160958-0), as it may be amended from time to time.
- 3.12 **“FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.13 **“Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.14 **“HCP/NCCP” or “Plan”** means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan.
- 3.15 **“Implementing Agreement” or “IA”** means the “Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan,” dated January 22, 2007.
- 3.16 **“Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered

without permits from either the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or, from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act, or CDFG under section 1602 of the Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.

- 3.17 **“Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.
- 3.18 **“Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.19 **“Party”** or **“Parties”** means any or all of the signatories to this Agreement.
- 3.20 **“Permit Area”** means the area within the Plan Area where the Conservancy has received authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities.
- 3.21 **“Permits”** means the Federal Permit and the State Permit.
- 3.22 **“Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.23 **“Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.24 **“Proposed Activities”** means the activities described in Exhibit 1 that will be covered by the extension of the Conservancy’s take authorization.
- 3.25 **“State Permit”** means the state Take permit issued to the Conservancy and other local agencies pursuant to Section 2835 of the California Fish and Game Code (permit number 2835-2007-01-03), as it may be amended from time to time.
- 3.26 **“Take”** has the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.27 **“Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Plan developers and USFWS at the time of the Plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by the Plan that could not

reasonably have been anticipated at the time of Plan development, and that result in a substantial adverse change in the status of one or more Covered Species.

- 3.28** “USFWS” means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.29** “Wildlife Agencies” means USFWS and CDFG.

4.0 **PURPOSES**

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

5.0 **AVOIDANCE, MINIMIZATION AND MITIGATION OF IMPACTS**

5.1 **General Framework**

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

5.2 **Surveys and Avoidance Measures**

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

5.3 **No Take of Extremely Rare Plants or Fully Protected Species**

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

5.3.1 Golden Eagle

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

5.4 Fees and Dedications

As set forth in the Application, PSE agrees to pay the Conservancy **\$11,402.64** which amount includes all HCP/NCCP mitigation fees necessary for the Proposed Activities as well as a contribution to recovery of endangered species. The overall payment amount is based on a summation of individual HCP/NCCP mitigation fees and a contribution to recovery as follows:

Development fees: \$5,701.32

Contribution to recovery of endangered species: \$5,701.32

All fees and the contribution to recovery must be paid in full before any ground-disturbance associated with the Proposed Activities occurs. If any fee or the contribution toward recovery is not paid in full during the current calendar year (2010), the amount of all fees and the contribution to recovery will be increased or decreased each following year, beginning in 2011, until such time as all fees and the contribution to recovery are paid in full. All fees and the contribution to recovery will be increased or decreased according to the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. The contribution to recovery will be adjusted according to the formula set forth in Chapter 9.3.1 for the wetland mitigation fee. Fee and contribution to recovery amounts will be adjusted annually on March 15, beginning in 2011. If PSE pays all fees and the contribution to recovery during the period from January 1 to March 14, all fee and contribution to recovery amounts will be subject to the March 15 fee adjustments unless construction of the Proposed Activities has commenced by March 14. If payment is made during this period and construction does not commence before March 15, PSE will be required to submit an additional payment for any increases to fees or the contribution to recovery and will be entitled to a refund without interest for any decreases to fees or the contribution to recovery.

6.0 TAKE AUTHORIZATION

6.1 Extension of Take Authorization to PSE

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

6.2 Duration of Take Authorization

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

7.0 RIGHTS AND OBLIGATIONS OF PSE

7.1 Rights

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

7.2 General Obligations

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

7.3 Obligations In The Event of Suspension or Revocation

In the event that USFWS and/or CDFG suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of the IA, PSE will remain obligated to fulfill its mitigation,

enforcement, management, and monitoring obligations, and its other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all Proposed Activities implemented prior to the suspension or revocation.

7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

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

7.5 Obligations In The Event Of Changed Circumstances

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

7.6 Obligation to Compensate Conservancy for Expenses Incurred

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

8.0 REMEDIES AND ENFORCEMENT

If PSE fails to comply with the terms of this Agreement, the IA, the HCP/NCCP, or the Permits, the Conservancy may withdraw the Certificate of Inclusion and terminate any Take authorization extended to PSE. The Conservancy shall also have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the IA, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof. PSE shall defend, indemnify, protect, and hold harmless the Conservancy from and against any claim, loss, damage, cost, expense, or liability directly or indirectly arising out of or resulting from (i) PSE's breach of this Agreement or the inaccuracy of any representation or warranty made by PSE in this Agreement, or (ii) PSE's, performance or failure to perform a mandatory

or discretionary obligation imposed by this Agreement, including without limitation claims caused by or arising out of the negligence, recklessness, or intentional misconduct of any representative, employee, or agent of PSE. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

9.0 FORCE MAJEURE

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

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

10.0 MISCELLANEOUS PROVISIONS

10.1 Calendar Days

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

10.2 Notices

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

John Kopchik
East Contra Costa County Habitat Conservancy
c/o Contra Costa County Department of Conservation and Development
651 Pine Street, North Wing, 4th Floor
Martinez, CA 94553
Email: john.kopchik@dcd.cccounty.us
Phone: 925-335-1227

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

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

10.3 Entire Agreement

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

10.4 Amendment

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

10.5 Attorneys' Fees

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

10.6 Governing Law

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

10.7 Duplicate Originals

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

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

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

10.9 No Third Party Beneficiaries

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

10.10 References to Regulations

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

10.11 Applicable Laws

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

10.12 Severability

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

10.13 Due Authorization

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

10.14 No Assignment

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

10.15 Headings

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

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

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: _____ DATE: _____
JOHN KOPCHIK, Executive Director

EQUILON ENTERPRISES dba SHELL OIL PRODUCTS US

By: _____ DATE: _____
P.W. ALLEY, General Counsel



East Contra Costa County
Habitat Conservation Plan
Natural Community
Conservation Plan

City of Brentwood
City of Clayton
City of Oakley
City of Pittsburg
Contra Costa County
ECCC Habitat Conservancy

Template prepared by the
ECCC Habitat Conservancy

651 Pine Street, North Wing, 4th Floor
Martinez, CA 94533-0095
Phone: 925/335-1290
Fax: 925/335-1299
www.cocohcp.org

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

Project Applicant Information:

Project Name: Coalinga-Avon Pipeline Repair
Project Applicant's Company/Organization: Equilon Enterprises LLC dba Shell Oil Products US
Contact's Name: Michael Elmore, 20945 S. Wilmington Avenue, Carson, CA 90810
Contact's Phone: 310.816.2208 Fax: [enter fax number]
Contact's Email: Michael.Elmore@shell.com
Mailing Address: as above

Project Description:

Lead Planner: Mike Elmore on behalf of Equilon Enterprises
Project Location: at Los Vaqueros Reservoir
Project APN(s) #: 005-020-003; 005-100-002
Number of Parcels/Units: (3) proposed dig sites located on two parcels owned by CCWD
Size of Parcel(s): N/A
Project Description/Purpose (Brief): Repairs of existing Coalinga-Avon Pipeline at (3) locations

Biologist Information:

Biological/Environmental Firm: Harmsworth Associates
Lead Contact: Paul Galvin
Contact's Phone: 714-389-9527 Fax: 714-389-9534
Contact's Email: pgalvin9@cox.net
Mailing Address: 29 Vacaville
Irvine
CA 92602

East Contra Costa County HCP/NCCP Planning Survey Report for Coalinga-Avon Pipeline Repair Participating Special Entity

I. Project Overview

Project proponent: Mike Elmore

Project Name: Coalinga-Avon Pipeline Repair

Application Submittal Date: June 8, 2010

Jurisdiction: Contra Costa County Participating Special Entity

- City of Oakley
- City of Pittsburg
- City of Clayton
- City of Brentwood

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

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

Total Parcel Acreage: N/A

Acreage of land to be permanently disturbed²: All impacts are temporary

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

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

Acreage of land to be temporarily disturbed³: 0.267 (Impacts are temporary--instead of calculating area of indirect effects, applicant is paying full development fee)

Project Description

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

City/County Application Number:

Anticipated Construction Date:

June 30-July 31, 2010

Project Description:

The project area is located just downstream of the outlet to the Los Vaqueros Reservoir, Contra Costa County, California; and is located within the Byron Hot Springs USGS 7.5 minute quadrangle (Exhibit 1). Shell Oil Products US owns and operates the existing Coalinga-Avon pipeline, which runs in an east/west direction north of and downstream of the outlet to the Los Vaqueros Reservoir. Routine tests have confirmed several damaged areas along the pipeline which need to be repaired.

The repair work would occur at three sites (Figure 2);

- Dig 1 located in the valley floor northeast of the reservoir outlet
- Dig 2 located on a hillside northwest of the reservoir outlet
- Dig 3 located further up the hillside on the northwest of the reservoir outlet.

All work and all impacts would be temporary; once the pipeline repairs are complete the area would be re-contoured to its original conditions.

Dig site 1

Dig site is located in the valley floor northeast of the reservoir outlet on the far side of Kellogg Creek (Photographs 1 and 2). The Dig site is on an existing dirt road, near the gate. The dig site would be approximately 8x12 ft with a total impact area of 20x20 ft (0.009 acre) to allow for work space. Access to dig site 1 is via an existing dirt road that goes right through the site. Work would be conducted with a backhoe and a pick-up truck. Minimal equipment is required for this repair work.

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

Dig site 2

Dig site 2 is located on a hillside northwest of the reservoir outlet (Photographs 3 and 4). The dig site would be approximately 8x12 ft with a total impact area of 20x20 ft (0.009 acre) to allow for work space. Access to Dig site 2 is via an existing dirt road and then across non-native grassland to the dig site, the dirt road is 300 feet away from the dig site. Equipment would drive from the dirt road directly to the dig sport over the existing grassland. No grading would be required but grasses would be crushed and disturbed. A 15 foot wide area would be required for a temporary disturbance of 15x300 ft (0.1 acre) at Dig Site 2. Work would be conducted with a backhoe and a pick-up truck. Minimal equipment is required for this repair work.

Dig site 3

Dig site 3 is located further up the hillside northwest of the reservoir outlet (Photographs 5 and 6). The dig site would be approximately 8x12 ft with a total impact area of 20x20 ft (0.009 acre) to allow for work space. Access to Dig site 3 is via an existing dirt road and then across non-native grassland to the dig site, the dirt road is 400 feet away from the dig site. Equipment would drive from the dirt road directly to the dig sport over the existing grassland. No grading would be required but grasses would be crushed and disturbed. A 15 foot wide area would be required for a temporary disturbance of 15x400 ft (0.14 acre) at Dig Site 3. Work would be conducted with a backhoe and a pick-up truck. Minimal equipment is required for this repair work.

Project Restoration:

All work and all impacts would be temporary; once the pipeline repairs are complete the area would be re-contoured to its original conditions. Prior to grading at each site, the existing vegetation would be mowed and seeds bagged. Once work is complete and the site contours restored the salvaged seed would be spread back over the disturbed area to assist in rapid restoration of the site.

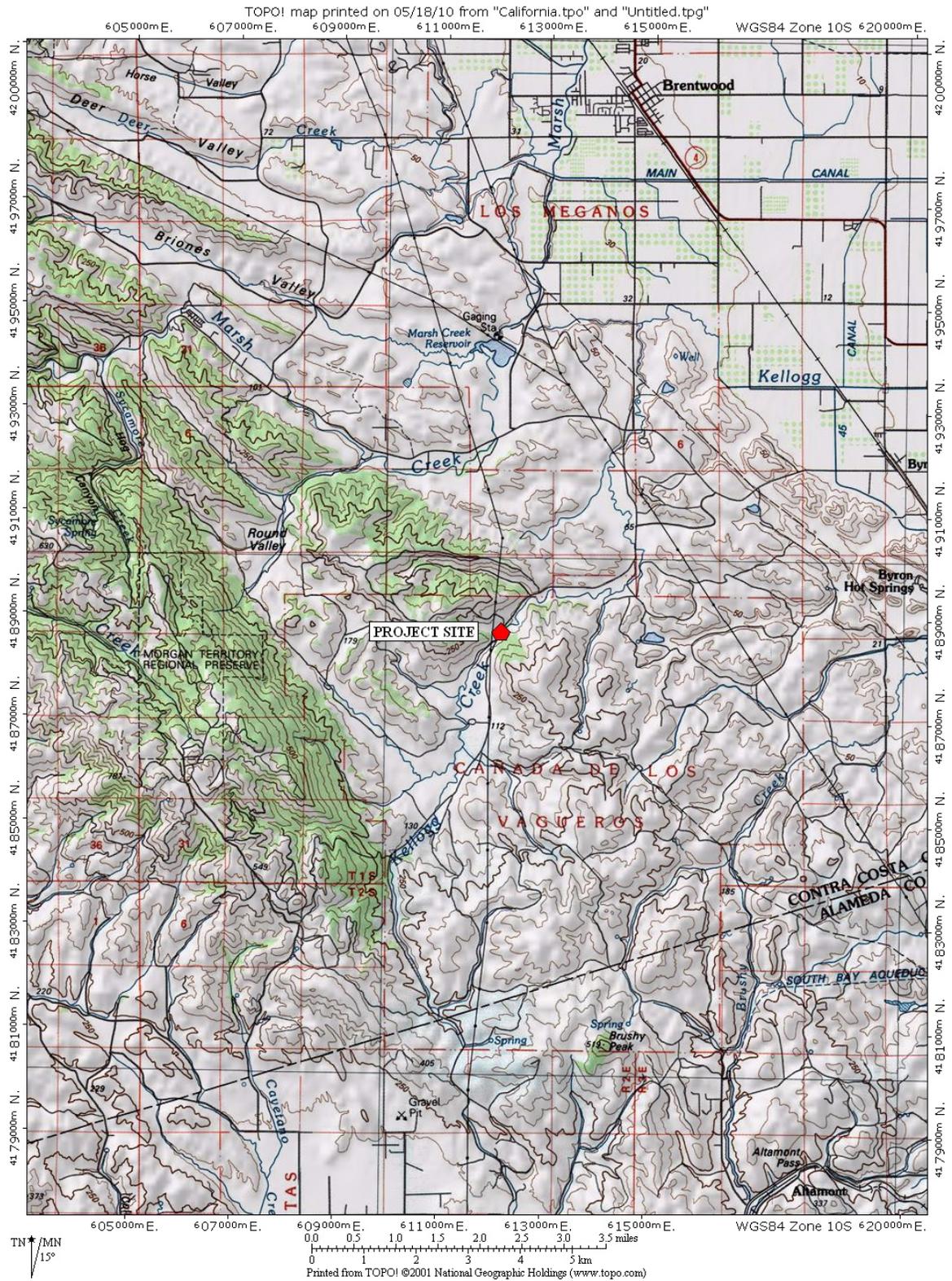
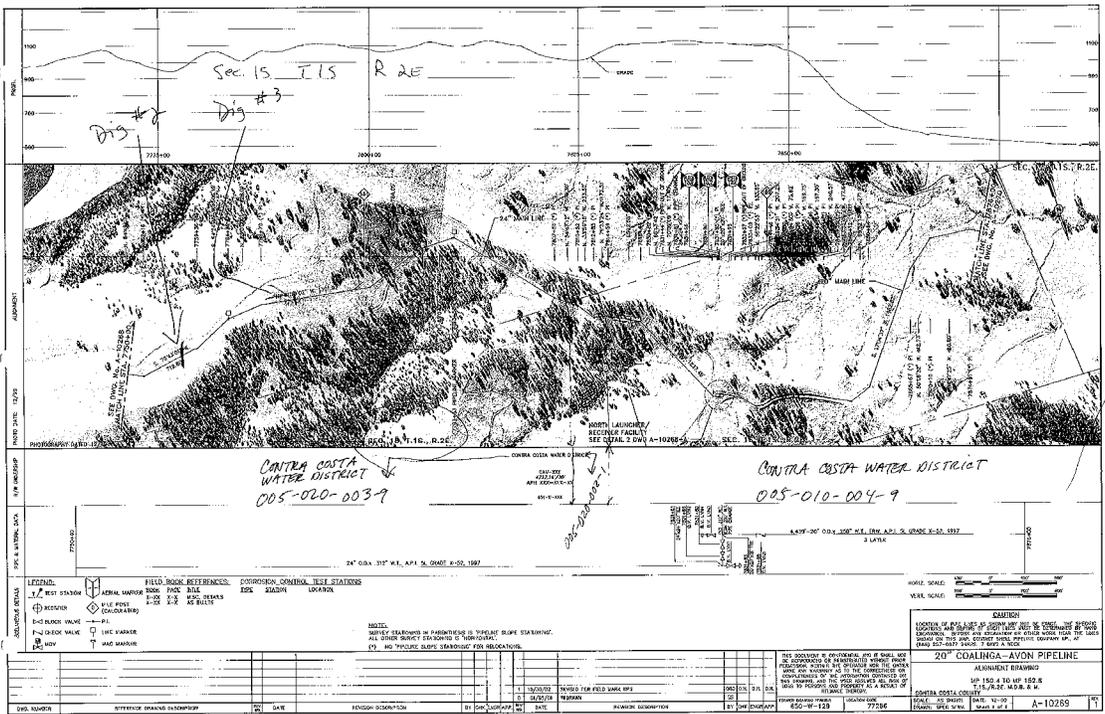
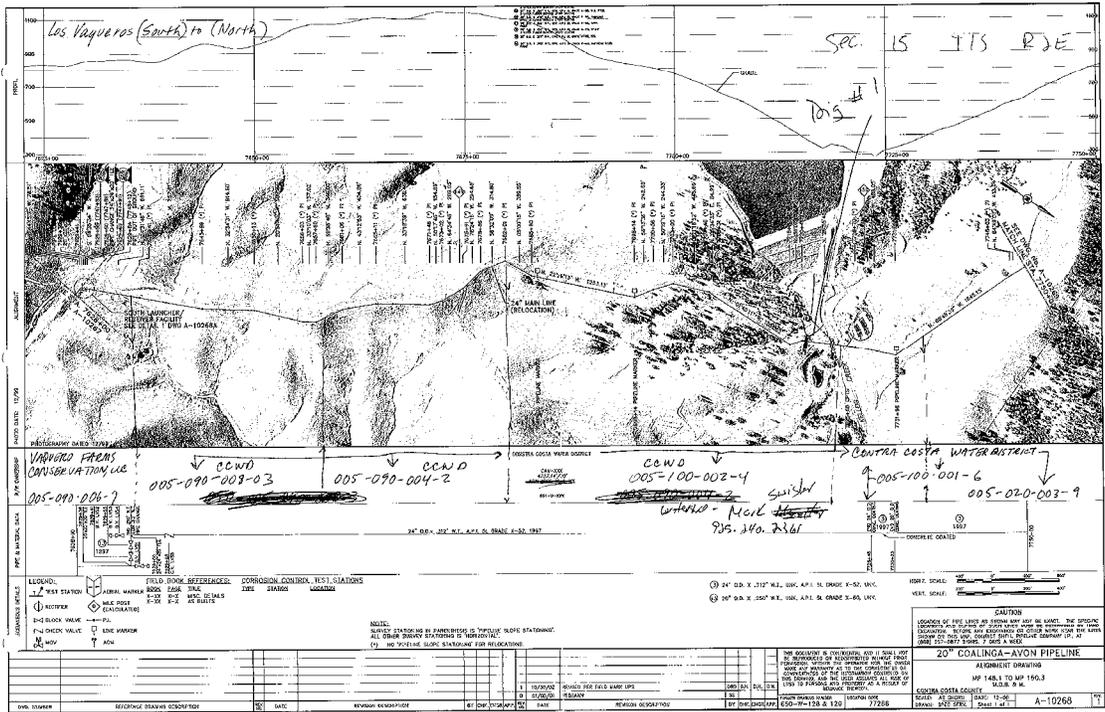
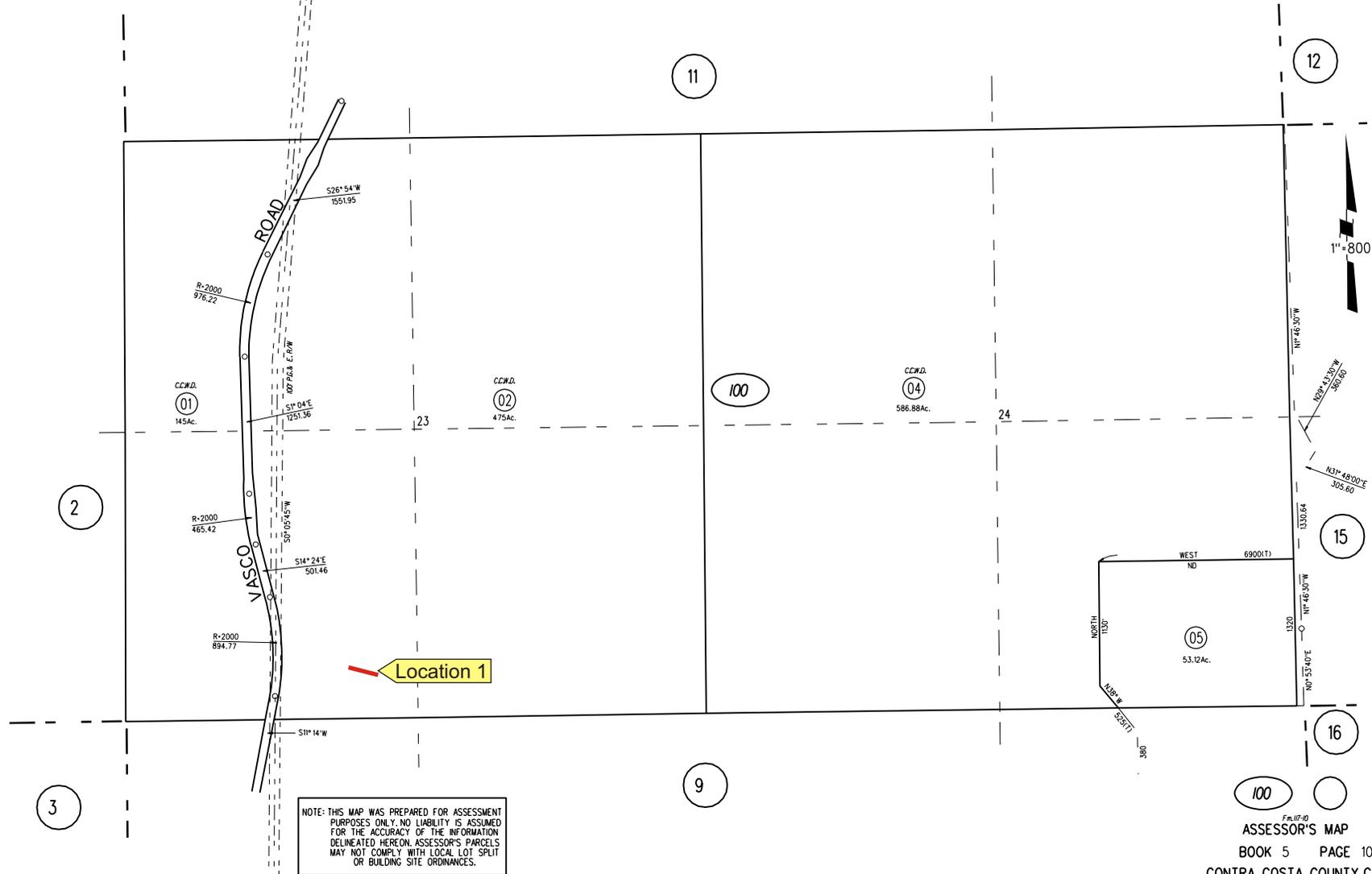


Figure 1: Project vicinity map.



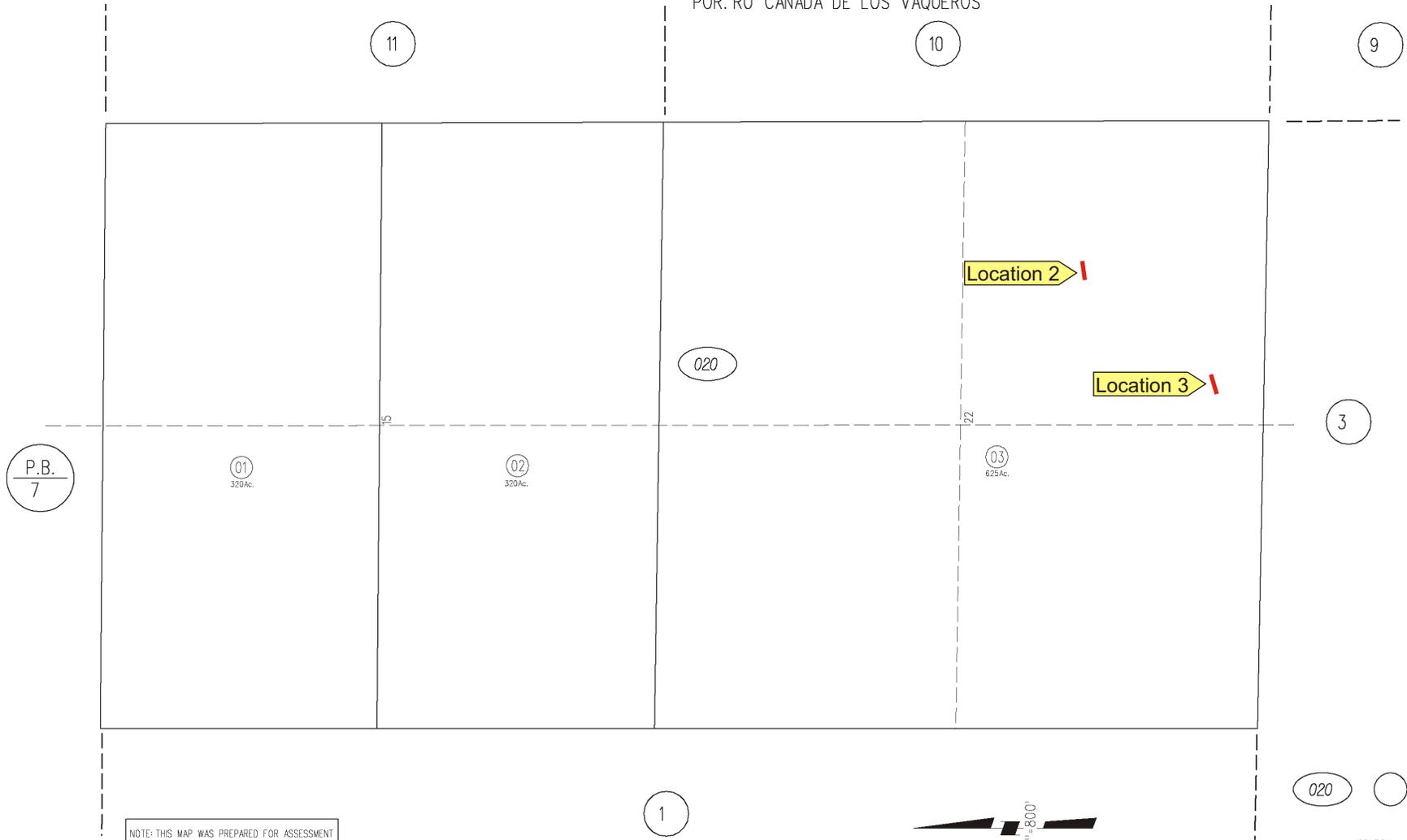
SEC. 23 & 24 T1S R2E M.D.B. & M.
 POR. RO. CANADA DE LOS VAQUEROS



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

Note: Locations are approximate, and may appear larger than scale.

SEC. 15 & 22 T1S R2E M.D.B. & M.
POR. RO CANADA DE LOS VAQUEROS



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION DELINEATED HEREON. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL LOT SPLIT OR BUILDING SITE ORDINANCES.

Fm.117-2 & 49-07 1961 ROLL
ASSESSOR'S MAP
BOOK 5 PAGE 02
CONTRA COSTA COUNTY,CALIF.

Note: Locations are approximate, and may appear larger than scale.



NOT TO SCALE

Source: Google Earth; Applied Planning, Inc.; Harmsworth Associates, May 2010.



NOT TO SCALE



Approximate Limits of Work (Dig) Area



Staging Area Footprint
(temporary equipment and material storage)

Source: Google Earth; Applied Planning, Inc.; Harmsworth Associates, May 2010.



Temporary Overland Access Area

Existing Service Road (unpaved)



NOT TO SCALE



Approximate Limits of Work (Dig) Area



Staging Area Footprint (temporary equipment and material storage)



Temporary Overland Access Area

Existing Service Road (unpaved)



NOT TO SCALE



Approximate Limits of Work (Dig) Area



Staging Area Footprint (temporary equipment and material storage)

II. Existing Conditions and Impacts

Land Cover Types

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

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

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

Land Cover Type (acres, except where noted)	Acreage of Land to be “Permanently Disturbed” by Project ^b	Acreage of Land to be “Temporarily Disturbed” by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Grassland^a				
<input checked="" type="checkbox"/> Annual grassland	none	0.267	[click and type]	[click and type]
<input type="checkbox"/> Alkali grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Ruderal	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Chaparral and scrub	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Oak savanna ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Oak woodland	[click and type]	[click and type]	[click and type]	[click and type]
Jurisdictional wetlands and waters				
<input type="checkbox"/> Riparian woodland/scrub	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Permanent wetland ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Seasonal wetland ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Alkali wetland ^a	[click and type]	[click and type]	[click and type]	[click and type]

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Aquatic (Reservoir/Open Water) ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Slough/Channel ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Pond ^a	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Stream (acres) ^{a, d}	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Total stream length (feet) ^{a, d}	[click and type]	[click and type]	[click and type]	[click and type]
Stream length by width category				
<input type="checkbox"/> ≤ 25 feet wide	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> > 25 feet wide	[click and type]	[click and type]	[click and type]	[click and type]
Stream length by type and order ^e				
<input type="checkbox"/> Perennial	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Intermittent	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Ephemeral, 3 rd or higher order	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Ephemeral, 1 st or 2 nd order	[click and type]	[click and type]	[click and type]	[click and type]
Irrigated agriculture^a				
<input type="checkbox"/> Cropland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Pasture	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Orchard	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Vineyard	[click and type]	[click and type]	[click and type]	[click and type]

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
Other				
<input type="checkbox"/> Nonnative woodland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Wind turbines	[click and type]	[click and type]	[click and type]	[click and type]
Developed				
<input type="checkbox"/> Urban	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Aqueduct	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Turf	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Landfill	[click and type]	[click and type]	[click and type]	[click and type]
Uncommon Vegetation Types (subtypes of above land cover types)				
<input type="checkbox"/> Purple needlegrass grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Wildrye grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Wildflower fields	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Squirreltail grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> One-sided bluegrass grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Serpentine grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Saltgrass grassland (= alkali grassland)	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Alkali sacaton bunchgrass grassland	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Other uncommon vegetation types (please describe)	[describe additional uncommon vegetation types here]			
Uncommon Landscape Features or Habitat Elements				
<input type="checkbox"/> Rock outcrop	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Cave ^a	[click and type]	[click and type]	[click and type]	[click and type]

Land Cover Type (acres, except where noted)	Acreage of Land to be "Permanently Disturbed" by Project ^b	Acreage of Land to be "Temporarily Disturbed" by Project ^b	Acreage of Land Proposed for HCP/NCCP Dedication on the Parcel ^c	
			Stream Setback	Preserve System Dedication
<input type="checkbox"/> Springs/seeps	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Scalds	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Sand deposits	[click and type]	[click and type]	[click and type]	[click and type]
<input type="checkbox"/> Mines ^a	—	—		—
<input type="checkbox"/> Buildings (bat roosts) ^a	—	—		—
<input type="checkbox"/> Potential nest sites (trees or cliffs) ^a	—	—		—
Total (Developed Acres)	None	0.267		

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

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

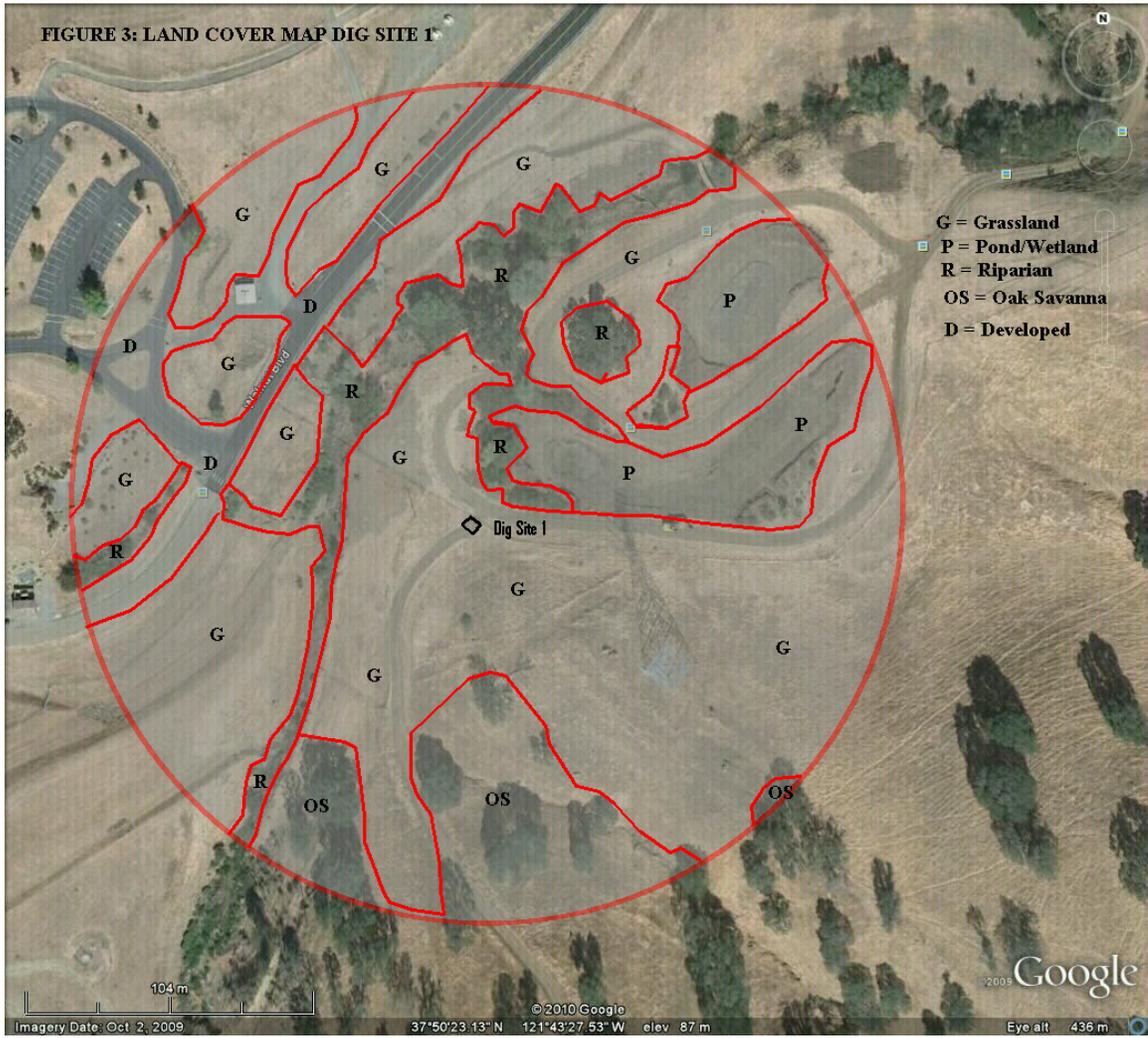
^c Dedication of land in lieu of fees must be approved by the local agency and the Implementing Entity before they can be credited toward HCP/NCCP fees. See Section 8.6.7 on page 8-32 of the Plan for details on this provision. Stream setback requirements are described in Conservation Measure 1.7 in Section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

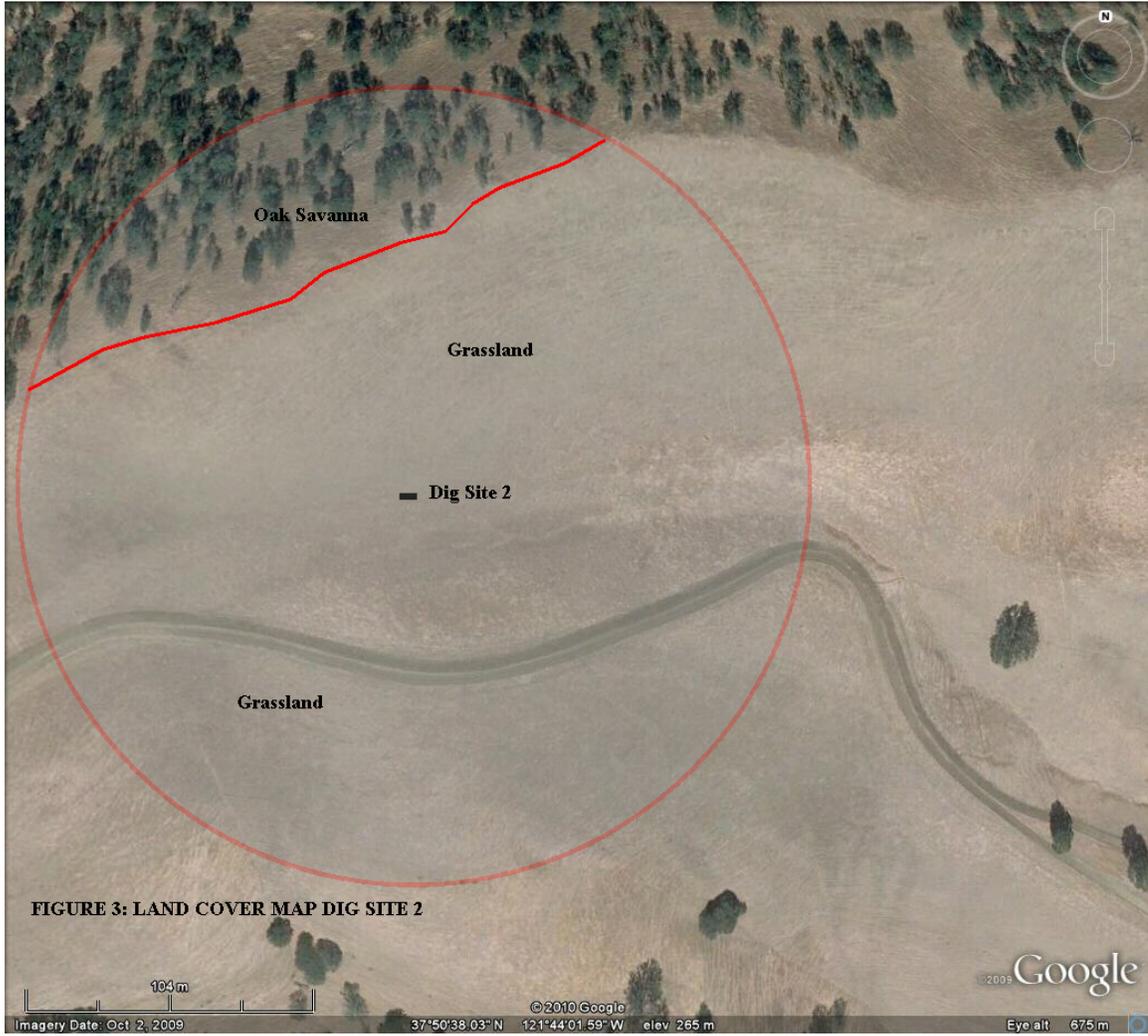
^d Specific requirements on streams are discussed in detail in the HCP/NCCP. Stream setback requirements pertaining to stream type and order can be found in Table 6-2. Impact fees and boundary determination methods pertaining to stream width can be found in Table 9-5. Restoration/creation requirements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

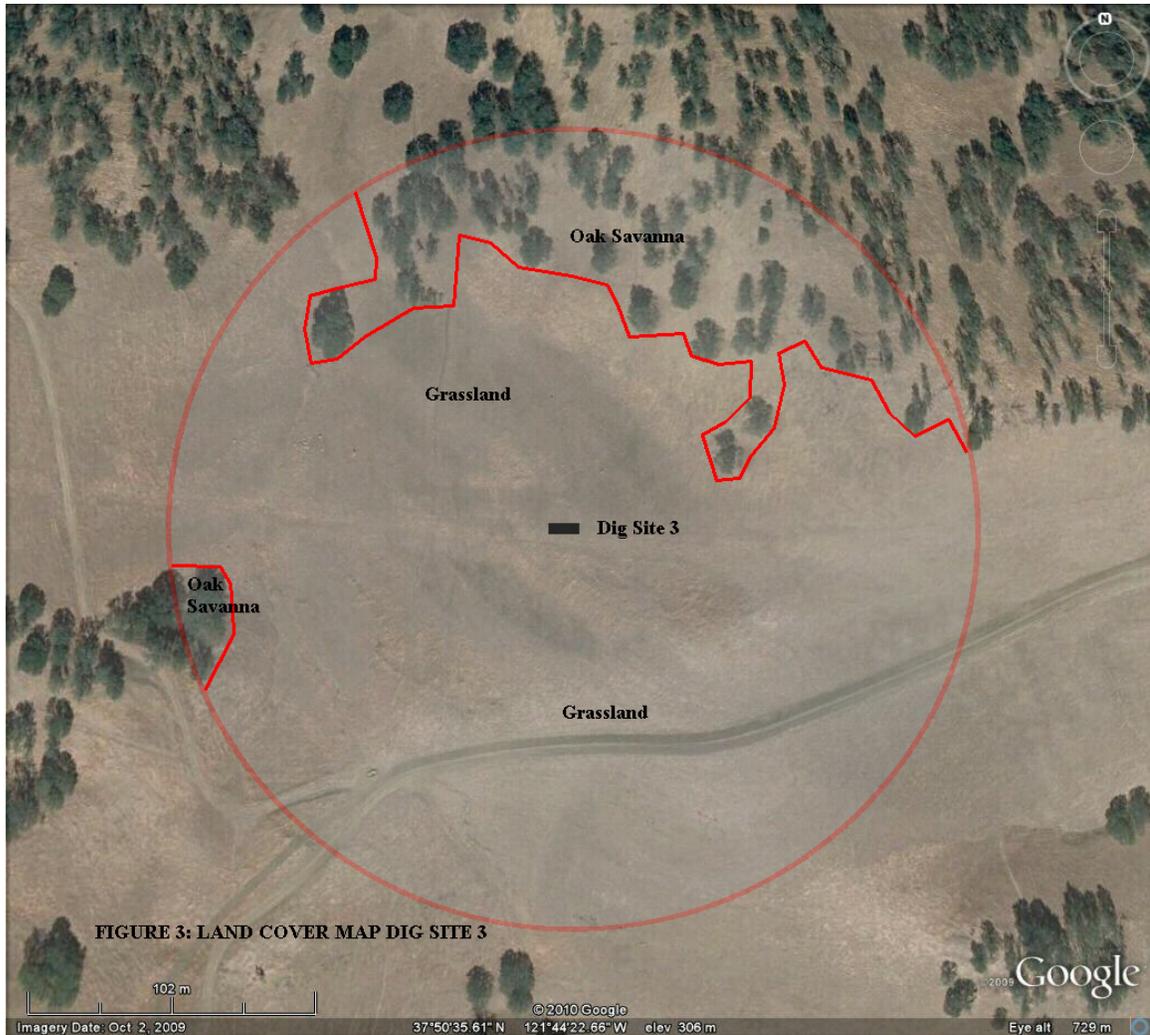
^e See glossary (Appendix A) for definition of stream type and order.

Field-Verified Land Cover Map

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









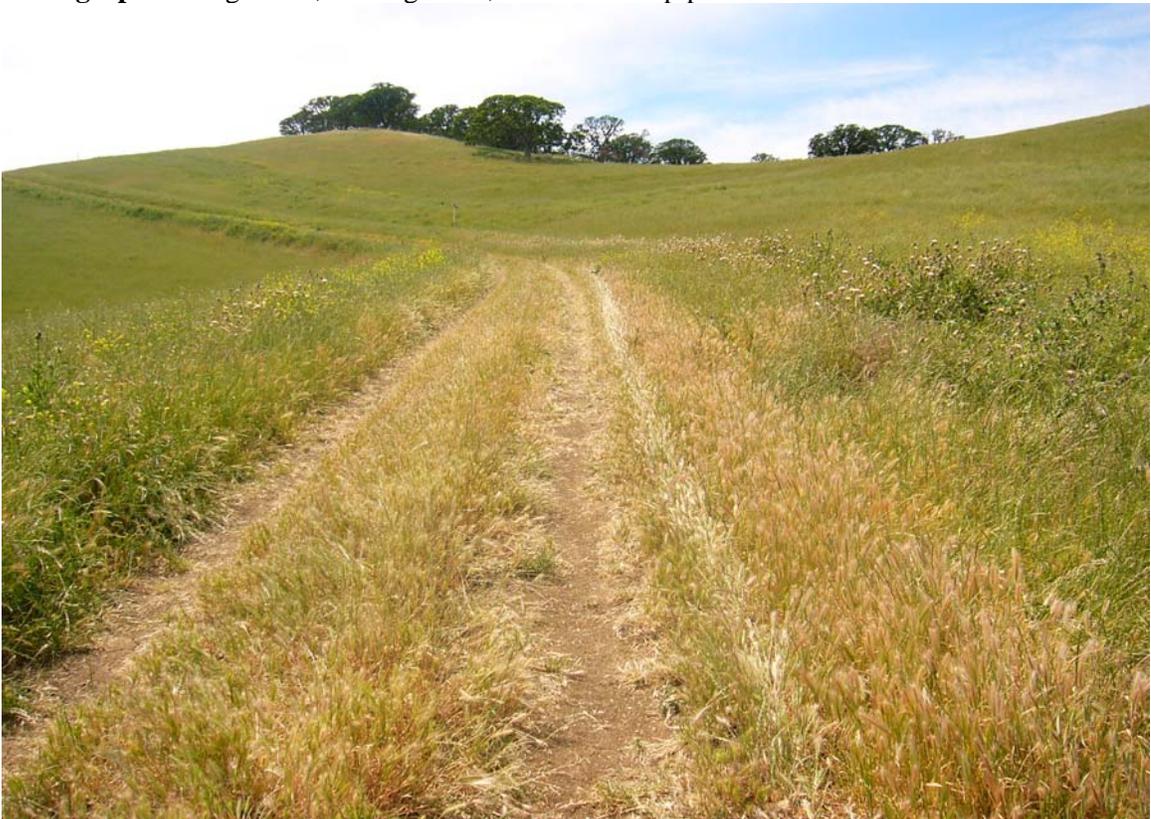
Photograph 1: Dig Site 1, looking northeast, site just in front of gate.



Photograph 2: Dig Site 1, looking south, site on the other side of gate.



Photograph 3: Dig Site 2, looking north, site to east of pipeline markers.



Photograph 4: Dig Site 2, existing access road to Dig Sites 2 and 3.



Photograph 5: Dig Site 3, looking west, site in foreground.



Photograph 6: Dig Site 3, looking north, site in foreground.

Jurisdictional Wetlands and Waters

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

Indicate agency that certified the wetland delineation:

USACE, RWQCB, or the ECCC Habitat Conservancy.

Wetland delineation is attached (Jurisdictional Determination)

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

No wetlands in project site

Species-Specific Planning Survey Requirements

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

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

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

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

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

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

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

Existing conditions

The general project area includes Kellogg Creek, which drains from the Los Vaqueros Reservoir, and its associated wetlands and stock ponds. The valley and adjacent hillsides support non-native grasslands, oak savannah and oak woodlands. A description of the three dig sites is provided below.

Dig site 1

Dig site is located in the valley floor northeast of the reservoir outlet on the far side of Kellogg Creek (Photographs 1 and 2). The Dig site is on an existing dirt road, near the gate. The area surrounding the dirt road consists of non-native grassland dominated by oats (*Avena fatua*) and foxtail barley (*Hordeum murinum* subsp. *leporinum*). Ryegrass (*Lolium* sp.), red-stemmed filaree (*Erodium cicutarium*), California burclover (*Medicago polymorpha*), fiddleneck (*Amsinckia menziesii* var. *intermedia*), popcorn flower (*Plagiobothrys* sp.), cheesweed (*Malva parviflora*), milk thistle (*Silybum marianum*) and black mustard (*Brassica nigra*) were also present.

No wildlife occurred at Dig site 1 but common species such as red-tailed hawk (*Buteo jamaicensis*), acorn woodpecker (*Melanerpes formicivorus*), Bullock's oriole (*Icterus bullockii*), red-winged blackbird (*Agelaius phoeniceus*) and California ground squirrel (*Spermophilus beecheyi*) occurred in the general vicinity.

Dig site 2

Dig site 2 is located on a hillside northwest of the reservoir outlet (Photographs 3 and 4). The Dig site consists of non-native grassland dominated by oats and ryegrass. Foxtail barley, red-stemmed filaree, California burclover, cheesweed were also present.

Wildlife at Dig site 2 consisted of common species such as mourning dove (*Zenaidura macroura*), cliff swallow (*Petrochelidon pyrrhonota*), western meadowlark (*Sturnella neglecta*), red-winged blackbird and house finch (*Carpodacus mexicanus*).

Dig site 3

Dig site 3 is located further up the hillside northwest of the reservoir outlet (Photographs 5 and 6). The Dig site consists of non-native grassland dominated by oats, ryegrass and Foxtail barley. Black mustard, soft-chess brome (*Bromus madritensis*), milk thistle, wally baskets (*Triteleia* sp.), lupines (*Lupinus* sp.) and blow wives (*Achyrachaena* sp.) were also present.

Wildlife at Dig site 3 consisted of common species such as western meadowlark (*Sturnella neglecta*) and red-winged blackbird.

San Joaquin kit fox (*Vulpes macrotis mutica*) has the potential to occur in the project area. Kit foxes occur in grassland, oak savannah and other open areas and suitable habitat occurs within the project vicinity for kit fox. No kit foxes, tracks or other kit fox sign was detected during the field surveys. No kit fox dens occur at the dig sites. In addition, there are no records for kit fox from the project site (CNDDDB 2010).

Western burrowing owl (*Athene cunicularia*)

Burrowing owls occur in shortgrass prairies, grasslands, lowland scrub, agricultural lands (particularly rangelands), prairies, coastal dunes, desert floors, and some artificial, open areas as a yearlong resident. They require large open expanses of sparsely vegetated areas on gently rolling or level terrain with an abundance of active small mammal burrows. As a critical habitat feature, they require the use of rodent or other burrows for roosting and nesting cover. They can also use pipes, culverts, and nest boxes (USFWS 2003, Haug *et al.* 1993, Zeiner *et al.* 1990).

Although the project vicinity does support grassland, the grass is too tall for burrowing owl. Burrowing owls prefer short grass or sparsely vegetated areas where they can get a good view. No burrowing owls or their sign were detected during the surveys and none are likely to occur onsite. In addition, there are no records for burrowing owl from the project site (CNDDDB 2010).

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



Covered and No-Take Plants

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

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

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

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

Land Cover Type in the project area?	Plant Species	Covered (C) or No-Take (N)?	Typical Habitat or Physical Conditions, if Known	Typical Blooming Period ^a
	Large-flowered fiddleneck (<i>Amsinckia grandiflora</i>)	N		Apr–May
	Mount Diablo buckwheat (<i>Eriogonum truncatum</i>)	N		Apr–Sep; uncommonly Nov–Dec
	Mount Diablo fairy-lantern (<i>Calochortus pulchellus</i>)	C	Elevation between 650 and 2,600 ^b	Apr–Jun
	Round-leaved filaree (<i>California macrophylla</i>) ¹	C		Mar–May
	Showy madia (<i>Madia radiata</i>)	C		Mar–May
<input type="checkbox"/> Seasonal wetland	Adobe navarretia (<i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i>)	C	Generally found in vernal pools ^b	Apr–Jun
	Alkali milkvetch (<i>Astragalus tener</i> sp. <i>tener</i>)	N		Mar–Jun
	Contra Costa goldfields (<i>Lasthenia conjugens</i>)	N	Generally found in vernal pools	Mar–Jun

^a From California Native Plant Society. 2007. *Inventory of Rare and Endangered Plants* (online edition, v7-07d). Sacramento, CA. Species may be identifiable outside of the typical blooming period; a professional botanist shall determine if a covered or no take plant occurs on the project site.

^b See Species Profiles in Appendix D of the Final HCP/NCCP.

Results of Covered and No-Take Plant Species Planning Surveys Required in Table 2b

Describe the results of the planning survey conducted as required in Table 2b. Describe the methods used to survey the site for all covered and no-take plants, including the dates and times of all survey's conducted (see Tables 3-8 and 6-5 of the HCP/NCCP for covered and no-take plants). In order to complete all the necessary covered and no-take plant surveys, both spring and fall surveys are required, check species survey requirements below.

If any covered or no-take plants were found, include the following information in the results summary:

- Description and number of occurrences and their rough population size.
- Description of the “health” of each occurrence, as defined on pages 5-49 and 5-50 of the HCP/NCCP.

- A map of all the occurrences.
- Justification of surveying time window, if outside of the plant's blooming period.
- The CNDDDB form(s) submitted to CDFG (if this is a new occurrence).
- A description of the anticipated impacts that the covered activity will have on the occurrence and/or how the project will avoid impacts to all covered and no-take plant species. All projects must demonstrate avoidance of all six no-take plants (see table 6-5 of the HCP/NCCP).

No special status plant species were detected during the field surveys conducted in May 2010.

Several special status plant species have potential to occur onsite. Surveys were conducted for Alkali milkvetch (*Astragalus tener* ssp. *tener*), Brewer's dwarf flax (*Hesperolinon breweri*), Contra Costa goldfields (*Lasthenia conjugens*), diamond-petaled poppy (*Eschscholzia rhombipetala*), large-flowered fiddleneck (*Amsinckia grandiflora*), Mount Diablo buckwheat (*Eriogonum truncatum*), Mount Diablo fairy-lantern (*Eriogonum truncatum*), round-leaved filaree (*California macrophylla*) and showy madia (*Madia radiata*). None of these species were detected during the May 2010 site visit. In addition, there are no records for any special status plant species from the project site (CNDDDB 2010).

The surveys were conducted outside the ideal survey window for big tarplant (*Blepharizonia plumose*). Big tarplant has low probability of occurring at the project dig sites or access roads. All these areas were disturbed in the past when the pipeline was installed and big tarplant is unlikely to have invaded these disturbed areas. There are no historic records for big tarplant along the pipeline route. Big tarplant occurs in annual grassland on clay to clay-loam soils, usually on slopes and often in burned areas, below 1,500 feet (California Natural Diversity Database 2005). In Contra Costa County, the occurrences are primarily on soils of the Altamont series. The modeled big tarplant habitat within the ECCC HCP/NCCP inventory area is consistent with the distribution of known occurrences of the species in the plan area. The modeled habitat at the project area is either outside the Suitable Habitat mapped areas or is mapped as Suitable Low Potential Habitat.

The required rare plant surveys for Big tarplant will not be feasible prior to application submission because the project is scheduled for construction from June 30, 2010- July 30, 2010. In order to avoid all potential impacts to Big tarplant, the project proponent will implement the following avoidance measures to ensure that this species is protected.

Avoidance Measures for Big tarplant

- Although the probability of occurrence onsite is low, a Pre-Construction survey will be conducted for Big tarplant. Big tarplant is an herbaceous annual that grows to between 1 and 3 feet tall. The plants do not begin to bloom until August but they start growing in early spring and can be identified through non-flowering features in June and July. A June Pre-Construction survey can determine if Big tarplant is present at the project dig sites and/or on any access road. Pre-Construction survey results will be submitted to the Conservancy before the start of construction activities.
- If Big tarplant is documented during Pre-Construction surveys the project proponent will meet and confer with Conservancy staff to develop and implement a suitable plan to address Conservation Measure 3.10 “Plant Salvage when Impacts are Unavoidable,” Section 6.31. “Covered and No-Take Plants,” and Table 5-20 “Protection Requirements for Covered Plants” in the HCP/NCCP. Measures may include but are not be limited to the following:
 - A biological monitor will be onsite at all times during construction activities to ensure compliance with these avoidance measures.
 - The project proponent, in consultation with the Conservancy, will restore all work areas that were disturbed by project activities to near their original state.
 - The plants and its associated seed and soil will be salvaged prior to construction by a qualified botanist. Any topsoil removed will be stored separately from the subsoil and placed on matting to ensure that it remains separated from adjacent topsoil. The salvaged topsoil will be replaced after the ground-disturbing activities are completed and the area will be re-seeded with the collected seed.
 - Mats will be utilized within the work areas where rare plants are located. Mats will help to distribute the weight of trucks and heavy machinery evenly across its surface, thus limiting disturbance to the seed bank below.
 - Monitoring of the health of the population will be performed before and after impact.
 - Other populations of the plant species on HCP/NCCP Preserve Lands will be searched for and monitored.

III. Species-Specific Monitoring and Avoidance Requirements

This section discusses subsequent actions that are necessary to ensure project compliance with Plan requirements. Survey requirements and Best Management Practices pertaining to selected covered wildlife species are detailed in Section 6.4.3, *Species-Level Measures*, beginning on page 6-36 of the Final HCP/NCCP.

Preconstruction Surveys for Selected Covered Wildlife

If habitat for selected covered wildlife species identified in Table 2a was found to be present in the project area. In Table 3, identify the species for which preconstruction surveys or notifications are required based on the results of the planning surveys. Identify whether a condition of approval has been inserted into the development contract to address this requirement.

Table 3. Applicable Preconstruction Survey and Notification Requirements based on Land Cover Types and Habitat Elements Identified in Table 2a.

Species	Preconstruction Survey and Notification Requirements
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Map all dens (>5 in. diameter) and determine status. Determine if breeding or denning foxes are in the project area. Provide written preconstruction survey results to FWS within 5 working days after surveying.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Map all burrows and determine status. Document use of habitat (e.g. breeding, foraging) in/near disturbance area (within 500 ft.)
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate aquatic habitat up to 200 ft. from water's edge. Document any sightings of garter snake.
<input type="checkbox"/> California tiger salamander (p. 6-46) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> California red-legged frog (p. 6-47) (notification only)	Provide written notification to USFWS and CDFG regarding timing of construction and likelihood of occurrence in the project area.
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Document and evaluate use of all habitat features (e.g., vernal pools, rock outcrops). Document occurrences of covered shrimp.
<input type="checkbox"/> Townsend's big-eared	Determine if site is occupied or shows signs of recent

bat (p. 6-37)	occupation (guano).
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Determine whether nests are occupied.
<input type="checkbox"/> Golden eagle (p. 6-39)	Determine whether nests are occupied.
Note: Page numbers refer to the HCP/NCCP.	

Preconstruction Surveys as Required for Selected Covered Wildlife in Table 3

Describe the preconstruction survey's or notification conditions applicable to any species checked in Table 3. All preconstruction surveys shall be conducted in accordance with the requirements set forth in Section 6.4.3, *Species-Level Measures*, and Table 6-1 of the HCP/NCCP.

San Joaquin Kit Fox

Prior to any ground disturbance, a USFWS/CDFG – approved biologist will conduct a preconstruction survey at Dig Sites 1-3. The surveys will establish the presence or absence of San Joaquin kit foxes and/or suitable dens and evaluate use by kit foxes in accordance with USFWS survey guidelines (U.S. Fish and Wildlife Service 1999). Preconstruction surveys will be conducted within 30 days of ground disturbance. The biologist will survey the proposed disturbance footprint and a 250-foot radius from the perimeter of the proposed footprint to identify San Joaquin kit foxes and/or suitable dens. The status of all dens will be determined and mapped. Written results of preconstruction surveys will be submitted to USFWS within 5 working days after survey completion and before the start of ground disturbance. Concurrence is not required prior to initiation of covered activities.

Burrowing owl

Prior to any ground disturbance, a USFWS/CDFG - approved biologist will conduct a preconstruction survey at Dig Sites 1-3. The surveys will establish the presence or absence of western burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFG survey guidelines (California Department of Fish and Game 1993). On the parcel where the activity is proposed, the biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Adjacent parcels under different land ownership will not be surveyed. Surveys should take place near sunrise or sunset in accordance with CDFG guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1– August 31), surveys will document whether burrowing owls are nesting in or directly adjacent to disturbance areas. During the non-breeding season (September 1– January 31), surveys will document whether burrowing owls are using habitat in or

directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or non-breeding) during which the survey is conducted.

Construction Monitoring & Avoidance and Minimization Measures for Selected Covered Species

If preconstruction surveys for key covered wildlife species establish the presence of any such species, construction monitoring will be necessary. In Table 4, check the boxes for the species that will be assessed during the preconstruction surveys (see Table 3). A summary of the construction monitoring requirements for each species is provided in Table 4 and these measures must be implemented in the event that preconstruction surveys described in Table 3 detect the covered species. A summary of avoidance measures is also provided in Table 4 and these measures must be implemented if construction monitoring detects the species or its sign. These construction monitoring and avoidance requirements are described in detail in Section 6.4.3, Species-Level Measures, of the Final HCP/NCCP.

Construction Monitoring Plan Requirements in Section 6.3.3, Construction Monitoring, of the Final HCP/NCCP:

- Before implementing a covered activity, the applicant will develop and submit a construction-monitoring plan to the Implementing Entity² for approval.**

Table 4. Applicable Construction Monitoring Requirements

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> None	N/A
<input checked="" type="checkbox"/> San Joaquin kit fox (p. 6-38)	Establish exclusion zones (>50 ft) for potential dens. Establish exclusion zones (>100 ft) for known dens. Notify USFWS of occupied natal dens.
<input checked="" type="checkbox"/> Western burrowing owl (p. 6-40)	Establish buffer zones (250 ft) around nests. Establish buffer zones (160 ft) around burrows.
<input type="checkbox"/> Giant garter snake (p. 6-44)	Delineate 200-ft buffer around potential habitat. Provide field report on monitoring efforts. Stop construction activities if snake is encountered; allow snake to passively relocate. Remove temporary fill or debris from construction site. Mandatory training for construction personnel.

² The East Contra Costa County Habitat Conservancy and the local land use Jurisdiction must review and approve the plan **prior** to the commencement of all covered activities (i.e. construction).

Species Assessed by Preconstruction Surveys	Monitoring Action Required if Species Detected
<input type="checkbox"/> Covered shrimp species (p. 6-47)	Establish buffer around outer edge of all hydric vegetation associated with habitat (50 feet of limit of immediate watershed supporting the wetland, whichever is larger). Mandatory training for construction personnel.
<input type="checkbox"/> Swainson's hawk (p. 6-42)	Establish 1,000-ft buffer around active nest and monitor compliance.
<input type="checkbox"/> Golden eagle (p. 6-39)	Establish 0.5-mile buffer around active nest and monitor compliance.

Construction Monitoring & Avoidance and Minimization Measures as Required for Selected Covered Wildlife in Table 4

Describe the construction monitoring and avoidance and minimization measures applicable to any species checked in Table 4. A summary of avoidance measures is provided in Table 4, these measures must be implemented if construction monitoring detects the presence of the species. The construction monitoring & avoidance and minimization measures requirements are described in detail in Section 6.4.3, Species-Level Measures, of the HCP/NCCP.

Avoidance and minimization measures - San Joaquin kit fox

If a San Joaquin kit fox den is discovered in the proposed development footprint, the den will be monitored for 3 days by a USFWS/CDFG– approved biologist using a tracking medium or an infrared beam camera to determine if the den is currently being used.

Unoccupied dens should be destroyed immediately to prevent subsequent use.

If a natal or pupping den is found, USFWS and CDFG will be notified immediately. The den will not be destroyed until the pups and adults have vacated and then only after further consultation with USFWS and CDFG.

If kit fox activity is observed at the den during the initial monitoring period, the den will be monitored for an additional 5 consecutive days from the time of the first observation to allow any resident animals to move to another den while den use is actively discouraged. For dens other than natal or pupping dens, use of the den can be discouraged by partially plugging the entrance with soil such that any resident animal can easily escape. Once the den is determined to be unoccupied it may be excavated under the direction of the biologist. Alternatively, if the animal is still present after 5 or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant (i.e., during the animal's normal foraging activities).

Construction Monitoring - San Joaquin kit fox

If dens are identified in the survey area outside the proposed disturbance footprint, exclusion zones around each den entrance or cluster of entrances will be demarcated. The

configuration of exclusion zones should be circular, with a radius measured outward from the den entrance(s). No covered activities will occur within the exclusion zones. Exclusion zone radii for potential dens will be at least 50 feet and will be demarcated with four to five flagged stakes. Exclusion zone radii for known dens will be at least 100 feet and will be demarcated with staking and flagging that encircles each den or cluster of dens but does not prevent access to the den by kit fox.

Avoidance and Minimization and Construction Monitoring – Burrowing owl

If burrowing owls are found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a non-disturbance buffer zone (described below). Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the non-breeding season (September 1– January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a buffer zone (described below).

If occupied burrows for burrowing owls are not avoided, passive relocation will be implemented. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing one-way doors in burrow entrances. These doors should be in place for 48 hours prior to excavation. The project area should be monitored daily for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (California Department of Fish and Game 1995). Plastic tubing or a similar structure should be inserted in the tunnels during excavation to maintain an escape route for any owls inside the burrow.

IV. Landscape and Natural Community-Level Avoidance and Minimization Measures

Describe relevant avoidance and minimization measures required to address the conservation measures listed below. If a conservation measure is not relevant to the project, explain why.

For All Projects

HCP/NCCP Conservation Measure 1.10. Maintain Hydrologic Conditions and Minimize Erosion

Briefly describe how the project complies with this measure. See page 6-21 of the Final HCP/NCCP for details.

Construction will be conducted during the dry season, no erosion or run-off is anticipated. Adjacent wetlands and streambeds will be avoided.

HCP/NCCP Conservation Measure 1.11. Avoid Direct Impacts on Extremely Rare Plants, Fully Protected Wildlife Species, or Covered Migratory Birds

Briefly describe how the project complies with this measure. See page 6-23 of the Final HCP/NCCP for details.

No extremely rare plants or fully protected wildlife are known to occur onsite.

- Compliance with the MBTA shall be accomplished by the following:
 - If possible, all vegetation removal activities shall be scheduled from September 15 to February 15, which is outside the nesting season. This would ensure that no active nests would be disturbed and that removal could proceed rapidly,
 - If vegetation is to be cleared during the nesting season (February 15 – September 15), all suitable habitat will be thoroughly surveyed for the presence of nesting birds by a qualified biologist 72 hours prior to clearing. If any active nests are detected, the area shall be flagged and mapped on the construction plans along with a minimum 50-foot buffer and up to 300 feet for raptors, with the final buffer distance to be determined by the qualified biologist. The buffer area shall be avoided until the nesting cycle is complete or it is determined that the nest has failed. In addition, the biologist will be present on the site to monitor the vegetation removal to ensure that any nests, which were not detected during the initial survey, are not disturbed.

For Projects on or adjacent to Streams or Wetlands

HCP/NCCP Conservation Measure 1.7. Establish Stream Setbacks

Briefly describe how the project complies with this measure. See page 6-15 and Table 6-2 of the Final HCP/NCCP for details. For questions on the stream setback requirements, please contact the Conservancy.

Dig Site 1 is approximately 80 feet from the closest water body and no work will occur within the wetland.

Dig Sites 2 and 3 are several thousand feet from the closest water body.

HCP/NCCP Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization

Briefly describe how the project complies with this measure. See page 6-33 of the Final HCP/NCCP for details.

All wetlands, ponds, streams adjacent the Dig Site 1 will be avoided.

For Projects adjacent to Protected Natural Lands (existing and projected)

Covered activities adjacent to permanently protected natural lands will require a variety of special considerations to address issues associated with characteristics of the urban-wildland interface. These considerations are intended to minimize the impacts of development on the integrity of habitat preserved and protected under the terms of the Plan. Permanently protected natural lands are defined as any of the following (see the latest Preserve System map on the Conservancy web site, www.cocohcp.org).

- Publicly owned open space with substantial natural land cover types including but not limited to state and regional parks and preserves and public watershed lands (local and urban neighborhood parks are excluded).
- Deed-restricted private conservation easements.
- HCP/NCCP Preserve System lands.
- Potential HCP/NCCP Preserve System lands (see Figure 5-3 in the HCP/NCCP).

HCP/NCCP Conservation Measure 1.6. Minimize Development Footprint Adjacent to Open Space

Briefly describe how the project complies with this measure. See page 6-14 of the Final HCP/NCCP for details.

Project is O&M activity for existing facility. Project works minimized to the extent possible, access via existing access roads to the extent possible. All impacts temporary.

HCP/NCCP Conservation Measure 1.8. Establish Fuel Management Buffer to Protect Preserves and Property

Briefly describe how the project complies with this measure. See page 6-18 of the Final HCP/NCCP for details.

Project is O&M activity for existing facility.

HCP/NCCP Conservation Measure 1.9. Incorporate Urban-Wildland Interface Design Elements

Briefly describe how the project complies with this measure. See page 6-20 of the Final HCP/NCCP for details.

The project is a repair of existing facility and not new development. All impacts will be temporary.

For Rural Infrastructure Projects

Rural infrastructure projects provide infrastructure that supports urban development within the urban development area. Such projects are divided into three categories: transportation projects, flood protection projects, and utility projects. Most rural road projects covered by the Plan will be led by Contra Costa County. All flood protection projects covered by the Plan will be led by the County Flood Control District. Utility projects will likely be led by the private companies that own the utility lines. A complete discussion of rural infrastructure projects is presented in Section 2.3.2 of the Final HCP/NCCP beginning on page 2-18.

HCP/NCCP Conservation Measure 1.12. Implement Best Management Practices for Rural Road Maintenance

Briefly describe how the project complies with this measure. See page 6-25 of the Final HCP/NCCP for details.

N/A

HCP/NCCP Conservation Measure 1.13. Implement Best Management Practices for Flood Control Facility Maintenance

Briefly describe how the project complies with this measure. See page 6-26 of the Final HCP/NCCP for details.

N/A

HCP/NCCP Conservation Measure 1.14. Design Requirements for Covered Roads outside the Urban Development Area

Briefly describe how the project complies with this measure. See page 6-27 of the Final HCP/NCCP for details.

N/A

V. Mitigation Measures

Complete and Attach Exhibit 1 Fee Calculator for Permanent and Temporary Impacts.

- Briefly describe the amount of fees to be paid and when.
- See Section 9.3.1 of the HCP/NCCP for details. If land is to be dedicated in lieu of fees or if restoration or creation of jurisdictional wetlands or waters is to be performed in lieu of fees, summarize these actions here and attach written evidence that the Conservancy has approved these actions in lieu of fees.

Although all project impacts are temporary, Shell is planning to mitigate for these temporary impacts by paying the full development fee, which is provided as an option in the HCP/NCCP in-lieu of calculating the area of indirect effects in order to determine a project impact area subject to the temporary fee.

Exhibit 1: HCP/NCCP FEE CALCULATOR WORKSHEET

PROJECT APPLICANT INFO:

Project Applicant: Equilon Enterprises LLC dba Shell Oil Products

Coalinga-Avon Pipeline Repair Project at Los Vaqueros

Project Name: Reservoir

APN (s): 005-020-003; 005-100-002

Date: 8-Jun-10

Jurisdiction: Participating Special Entity

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

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

	Full Development Fee		Fee per Acre (subject to change on 3/15/11)	=	
Fee Zone 1		x	\$10,558	=	\$0.00
Fee Zone 2	<u>0.27</u>	x	\$21,116	=	<u>\$5,701.32</u>
Fee Zone 3		x	\$5,279	=	\$0.00
Development Fee Total				=	\$5,701.32

WETLAND MITIGATION FEE

	Acreage of wetland		Fee per Acre (subject to change on 3/15/11)	=	
Riparian woodland / scrub		x	\$63,601	=	\$0.00
Perennial Wetland		x	\$87,032	=	\$0.00
Seasonal Wetland		x	\$188,570	=	\$0.00
Alkali Wetland		x	\$178,528	=	\$0.00
Ponds		x	\$94,843	=	\$0.00
Aquatic (open water)		x	\$47,979	=	\$0.00
Slough / Channel		x	\$108,233	=	\$0.00

Linear Feet

Streams				=	
Streams 25 Feet wide or less (Fee is per Linear Foot)		x	\$519	=	\$0.00
Streams greater than 25 feet wide (Fee is per Linear Foot)		x	\$781	=	\$0.00

Wetland Mitigation Fee Total \$0.00

FEE REDUCTION

Development Fee reduction (authorized by Implementing Entity) for land in lieu of fee _____

Development Fee reduction (up to 33%, but must be approved by Conservancy) for permanent assessments _____

Wetland Mitigation Fee reduction (authorized by Implementing Entity) for wetland restoration/creation performed by applicant _____

Reduction Total \$0.00

CALCULATE FINAL FEE

Development Fee Total		\$5,701.32
Wetland Mitigation Fee Total	+	\$0.00
Fee Subtotal		\$5,701.32
Contribution to Recovery	+	\$5,701.32
TOTAL FEE TO BE PAID		\$11,402.64

* City/County Planning Staff will consult the land cover map in the Final HCP/NCCP and will reduce the acreage subject to the Development Fee by the acreage of the subject property that was identified in the Final HCP/NCCP as urban, turf, landfill or aqueduct land cover.

Template date: March 15, 2010

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**EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY**

DATE: June 16, 2010
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Mid-year 2010 Budget Update and Finances

RECOMMENDATION

Consider the following items related to Conservancy finances:

- a) ACCEPT update on the 2010 Conservancy Budget.
- b) AUTHORIZE staff to amend existing contracts for on-going biological and conservation planning services with:
 - ICF International (formally ICF Jones and Stokes): increase the payment limit by \$150,000 from \$367,000 to \$517,000 and extend the term through December 31, 2010; and
 - H.T. Harvey and Associates: increase the payment limit by \$22,000 from \$68,000 to \$90,000 and extend the term through December 31, 2010.
- c) AUTHORIZE staff to amend an existing a contract for legal services with Resources Law Group to increase the payment limit by \$45,000, from \$120,000 to \$165,000, and extend the term to December 31, 2010.

DISCUSSION

Item (a): Attached please find Table I which provides a status report on Conservancy expenditures so far in 2010. Information on revenue to date is also provided. By June 30, the Conservancy is projected to have received \$419,590 more than it spent in the first 6 months of 2010.

As shown in Table 1, expenditures to date are within the approved budget levels and are occurring at a pace to remain under budget limits through the end of the year. The Program Administration budget is being spent at the fastest pace relative to the other categories (on a

CONTINUED ON ATTACHMENT: YES
ACTION OF BOARD ON: December 16, 2009 APPROVED AS RECOMMENDED: _____
OTHER: _____

VOTE OF BOARD MEMBERS

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

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

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

BY: _____, DEPUTY

percentage basis). Administrative costs are reasonably predictable, but nonetheless staff will need to be very conscious of expenditures in this category to ensure we stay within Budget. Staff is confident that expenditures in this and other categories are on a pace to come in under Budget, if not well under Budget. The pace of land acquisition expenditures is not particularly illustrative as substantial expenditures are expected soon. Also given that land acquisition expenditures this year will be mostly covered by grants (grants, it should be noted, with strict time limits) and given the Conservancy's aggressive work plan with respect to land acquisition, larger expenditures from this category would be preferable.

Item (b): Staff recommends the actions set forth below with respect to two firms providing ongoing biological services to the Conservancy. All contracts are consistent with the recommended 2010 Budget. In December 2009 the Conservancy Board amended these contracts in 6-month increments to enable the Conservancy to re-evaluate expenditure levels mid-year.

ICF International Contract Amendment: The recommendation is to increase the payment limit by \$150,000 from \$367,000 to \$517,000 and extend the term through December 31, 2010. ICF International (ICF) has an existing contract with the Conservancy that was initiated mid year in 2009 and was originally set to expire on December 31, 2009. In December 2009, the Board approved amending the contract for six months (until June 30, 2010) and raising the contract limit by \$147,000 to \$367,000. Now that the mid year budget evaluation is available and shows that the Conservancy is on track to stay under budget, staff is recommending a \$150,000 increase to continue ICF services. This increase is consistent with the approved 2010 Budget.

For reference, at the start of 2009 the Conservancy approved a 6-month, \$220,000 contract with Jones and Stokes (now ICF), and the budget envisioned \$440,000 being spent for the full year. With the slow down in the economy and fees, the Conservancy and ICF have substantially reduced the pace of expenditure. This has been helpful from a budget perspective, but from a work load perspective the slow down has been a challenge. Much of the work the Conservancy is required to do does not depend on the rate of development. Land acquisition and restoration have proceeded at a very fast pace, thanks in large part to grant funding. Substantial staff and consultant work is necessary to keep up with this activity and with other aspects of a growing habitat conservation program. The Conservancy has managed to keep the program moving and growing with fewer resources, but some key tasks have had to be deferred or performed in a simplified manner that will require subsequent update. Staff hopes to catch up with deferred work in the second half of 2010 and in 2011.

ICF Jones and Stokes has provided a range of services to the Conservancy this year and a continuation of that support is vital in 2010. Key tasks for ICF Jones and Stokes in 2010 include (see also attached Scope of Work):

- Preparation of preserve management plans, system-wide management plans and monitoring plans required by the HCP;
- Provision of a consulting planner to assist the Conservancy 5 days a week for 6 months with review of permit applications, development and upkeep of comprehensive tracking databases, and general program support (in lieu of the Conservancy hiring a full-time planner for considerably more expense);

- Assistance with completing the regional wetlands permitting programs initiated during development of the HCP;
- Assistance with planning restoration projects for 2011;
- Provision of biological expertise to assist with answering questions and assist with day to day operation of the Plan.

The proposed contract is consistent with the Proposed 2010 Conservancy Budget.

H.T. Harvey & Associates: The recommendation is to increase the payment limit of this time and materials contract by \$22,000 from \$68,000 to \$90,000 and extend the term through December 31, 2010. The existing contract will expire June 30, 2010. There has not been activity the first part of 2010, but significant work will be requested in the second half of 2010.

H.T. Harvey & Associates (H.T. Harvey) has been preparing a comprehensive report analyzing all special status species with a potential to occur in the area (a list many times larger than the 28 covered species) with respect to the conservation measures of the HCP. The report is intended as a document the Conservancy and other customers of the Plan can use to streamline their CEQA measures. With this report and the HCP EIR, project proponents would have effective base upon which biological impact sections could tiered. H.T. Harvey has provided staff with a high-quality and comprehensive preliminary work product, but additional support is needed in the second half of 2010 to compile a public draft report and integrate changes that result from wider review

Likewise, additional support with the wetlands restoration program is needed. H.T. Harvey helped design the riparian restoration on Irish Canyon. This year, H.T. Harvey's services are needed to help design a restoration project on the Ang property. The Conservancy has a \$150,000 grant for the California Department of Fish and Game to pay for implementation of the restoration project.

The contract amendment is recommended for these reasons. The recommended contract amount is consistent with the recommended 2010 Conservancy Budget.

Item (c): The recommendation is to authorize staff to amend an existing contract for legal services with Resources Law Group to increase the payment limit by \$45,000, from \$120,000 to \$165,000, and extend the term to December 31, 2010. Resources Law Group assisted with developing all of the agreements related to the HCP/NCCP and have also assisted with a large number of initial implementation tasks since approval of the HCP. Many tasks are complete, such as development of a template deed restriction, development of a template Participating Special Entity Agreement and development of model agreements with EBRPD for land acquisition and restoration. However, substantial future and on-going work remains, such as development of an agreement with the wetlands regulatory agencies, development of master agreements with EBRPD for land acquisition, restoration and management, due diligence on land acquisition prospects, assistance with interacting with granting agencies and general legal support services to implementation of the Plan and operation of the Conservancy. The recommended contract amount is consistent with the recommended 2010 Conservancy Budget.

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Mid Year Budget Status: Conservancy's 2010 Budget

(expenditures and revenues include Conservancy's own funds as well as grant funds disbursed on behalf of the Conservancy)

	Expenditures					
	A	B	C	D= B + C	E= A minus D	F= E/A*100
	Approved 2010 Conservancy Budget¹	Actual Expenditures as of 6/11/10²	Projected Additional Expenditures by 6/30/10	All Expenditures thru 6/30/10 (Actual plus Projected)	Budget Amount Remaining	Percent Remaining
Program Administration	\$514,189	\$204,033	\$60,000	\$264,033	\$250,156	49%
Land Acquisition	\$14,046,303	\$43,123	\$4,393,054	\$4,436,177	\$9,610,126	68%
Management, Restoration and Recreation Planning and Design	\$232,139	\$3,553	\$4,000	\$7,553	\$224,587	97%
Habitat Restoration/Creation	\$331,920	\$39,329	\$2,000	\$41,329	\$290,591	88%
Environmental Compliance	\$151,303	\$16,210	\$20,000	\$36,210	\$115,093	76%
HCP/NCCP Preserve Management and Maintenance	\$298,151	\$0	\$0	\$0	\$298,151	100%
Monitoring, Research, and Adaptive Management	\$169,565	\$53,146	\$25,900	\$79,046	\$90,519	53%
Remedial Measures	\$6,000	\$0	\$0	\$0	\$6,000	100%
Contingency Fund (5% of non-land acquisition costs)	\$84,863	\$0	\$0	\$0	\$84,863	100%
TOTAL EXPENDITURES	\$15,834,433	\$359,393	\$4,504,954	\$4,864,347	\$10,970,085	69%
FEE REVENUES YEAR TO DATE (YTD) (through 6/11/10)³				\$251,884		
GRANT REVENUE YTD (through 6/11/10)				\$675,000		
PROJECTED GRANT REVENUES (6/12/10 through 6/30/10)				\$4,357,054		
TOTAL PROJECTED REVENUES YTD (projected through 6/30/10)				\$5,283,938		
DIFFERENCE BETWEEN YTD REVENUES & EXPENDITURES (projected)				\$419,590	(surplus)	
ESTIMATED FUNDS IN CONSERVANCY ACCOUNTS, JUNE 30, 2010⁴				\$1,340,000		

Notes:

(1) Budget amounts do not reflect augmentation formulas. The approved Budget allowed the expenditure limits for certain categories to increase in proportion to revenues. These augmentations are not included here in order to keep the comparison of expenditures to budget simple and conservative.

(2) Cost for work performed but not yet billed is not included. Staff costs through the end of April are included. Projections in Column C include these amounts.

(3) Total amount of fees collected in 2010 is \$352,471. \$251,884 figure above reflects \$100,588 refund due State Route 4 Bypass Authority for overpayment of 2009 fees.

(4) Does not include more than \$20M in grant revenue that has been approved but will be granted after 6-30-2010. Nor does the fund balance include the California Wildlife Foundation account which is held in trust for the Conservancy but is controlled by the wildlife agencies. That account has a current balance of more than \$1M. Upon anticipated closing of Vaquero Farms North on June 30, 2010, available funds in the CWF account will increase by \$2,770,000.

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ICF Scope of Work East Contra Costa County Habitat Conservancy On-call Services

In January 2007, ICF initiated work with the East Contra Costa County Habitat Conservancy (Conservancy) to provide general support to the Conservancy in the administration and implementation of the East Contra Costa County (ECCC) Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). Since that time, ICF has continued to support the Conservancy in this capacity and the Conservancy has requested that ICF continue in this role through 2010.

This scope of work provides the description of the ICF work effort under the professional services agreement to continue supporting administration and implementation of the ECCC HCP/NCCP through the second six months of 2010. The Conservancy has identified 15 task categories under which work may be conducted. These tasks include the following.

1. Program Administration--General
2. Program Administration--Wetlands and Waters
3. Land Acquisition
4. Planning and Design--Preserve Mgmt., Rec., and Oak Savanna Restoration
5. Planning and Design--Wetlands and Waters
6. Restoration/Creation--Wetlands and Waters
7. Restoration/Creation--Oak Savanna
8. Environmental Compliance--Wetlands and Waters
9. Environmental Compliance--General
10. Preserve Management and Maintenance
11. Monitoring, Research, and Adaptive Management--General
12. Monitoring, Research, and Adaptive Management--Wetlands and Waters
13. Special Projects--track individually by number code
14. Remedial Measures--General
15. Remedial Measures--Wetlands and Waters

It is anticipated that ICF will conduct work under some of these tasks as described below. This work will be conducted on an as-needed basis and as directed by the Conservancy to the extent that available budget allows.

The scope and budget assume that most GIS work will be conducted by the Conservancy and that ICF GIS staff will only support our biologists with developing field maps and conducting follow up work. Our GIS staff may perform additional work at the request of the Conservancy as budget allows.

Task 1. Program Administration—General

ICF will provide general administrative support at the direction of the Conservancy including organizing and participating coordination meetings, participating in monthly Wildlife Agency coordination meetings, providing review of planning survey reports and application forms, assisting in grant application development, and other administrative tasks as needed. This task may also include assistance with annual training of local planning staff and local developers, completion of a brochure for developers (started in 2008), assistance in the development and maintenance of a project tracking database, and support in developing policy updates for the HCP/NCCP (e.g., fairy shrimp policies). This task includes preparation of monthly invoices, and tracking the schedule and project budget.

ICF will also provide an entry-level staff person to work at the Conservancy's office in Martinez up to five days per week.

Task 4. Planning and Design—Preserve Mgmt., Rec., and Oak Savanna Restoration

ICF Jones & Stokes will support the Conservancy in completing planning and design tasks in support of preserve management. For the purposes of the cost estimate, work in 2010 is assumed to include finalizing the Byron Hills Preserve Management Plan and developing the Schwartz/Black Diamond Preserve Management Plan. Work may also include development of a Preserve Management Plan for exotic plant control, and one for recreation. Each management document is assumed to be approximately 25 to 50 pages.

Task 5. Planning and Design—Wetlands and Waters

ICF will support the Conservancy in developing designs for a planting-focused restoration project for wetlands and waters. It is assumed that this project will not require permits or grading. ICF may also support the Conservancy in identifying a new site for a large wetlands and waters restoration project in 2011.

Task 9. Environmental Compliance—General

This task includes support of developing a regional general permit and in-lieu fee instrument with the U.S. Army Corps of Engineers (USACE) for covered activities that impact waters of the U.S., and a programmatic waste discharge permit from the Regional Water Quality Control Board (RWQCB) or State Water Board. Work under this task may include preparing materials for and attending meetings with USACE, review of new policies and/or guidance released by USACE, RWQCB, and State Water Board. This task may also include development of a cultural resources management plan as required by Mitigation Measure CR-1 in the EIR/EIS for the HCP/NCCP.

Task 011. Monitoring, Research, and Adaptive Management—General

ICF will also support the Conservancy in developing the Monitoring Program document. This document will define the required components of the monitoring plan as defined by Chapter 7 of the HCP/NCCP, including monitoring protocols for each of the covered species and natural communities. This task may also include conducting monitoring in Conservancy preserves in compliance with Chapter 7 of the HCP/NCCP.

Task 012. Monitoring, Research, and Adaptive Management—Wetlands and Waters

ICF will support the Conservancy in developing restoration monitoring reports for existing wetland restoration projects at Lentzner and in Byron Hills. These restoration monitoring reports will reiterate the success criteria defined in each project's restoration management plan and progress toward meeting the success criteria. This task also includes conducting field monitoring for the Souza II and Lentzner restoration projects.

Other Tasks

No activities are currently identified for the remainder of the listed tasks at this time. However, ICF will support the Conservancy in conducting activities under other tasks to the extent that budget is available to support such work.

Direct Expenses

Direct expenses are assumed to be incurred for lodging; meals associated with overnight travel; reproductions; equipment rental including vehicle rental for site visits where a 4-wheel vehicle is required and gas; postage; travel including personal vehicle mileage; GPS equipment rental; purchase of surveys, reports, or other data as directed by the Conservancy; payment of permit application fees; projects supplies; and other administrative expenses such as conference call services. Direct expenses for payments to sub-contractors to ICF are not currently included in the cost estimate.

Contract Name

While Jones & Stokes is now a wholly owned subsidiary of ICF International, contracting remains under the name Jones & Stokes Associates, Inc.