GOVERNING BOARD
REGULAR MEETING

Monday, October 22, 2018
2:00 p.m.
City of Oakley, Council Chambers
3231 Main Street, Oakley, CA 94561

AGENDA

2:00 p.m. Convene meeting.

Adjourn to Closed Session

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

Reconvene Open Session.

1) Report on any actions taken in Closed Session. Open Session will not start before 2:30 p.m.

2) Introductions.

3) Public Comment on items that are not on the agenda (public comment on items on the agenda will be taken with each agenda item).

4) Consider APPROVING the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of August 27, 2018.
   (Abigail Fateman)

5) Consider the following actions related to extending take coverage to San Pablo Bay Pipeline Company LLC for the Shell Pipeline North 20 Repair 2018 Project:
   a) DIRECT staff to file a CEQA Notice of Exemption for this Board action with the County Clerk;
   b) AUTHORIZE staff to execute a Participating Special Entity Agreement with San Pablo Bay Pipeline Company LLC for take coverage for the Shell Pipeline North 20 Repair 2018 Project.
   (Allison Cloney)
6) Consider the following actions related to extending take coverage to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project:
   a) DIRECT staff to file a CEQA Notice of Exemption for this Board action with the County Clerk for the Project;
   b) AUTHORIZE staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline, LLC for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project as further described in Addendum 1.0 to the Planning Survey Report, provided the Wildlife Agencies concur with the First Amendment.

   (Allison Cloney)

7) Consider the following actions related to extending take coverage to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project:
   a) FIND that on the basis of the whole record before the Conservancy that there is no substantial evidence that the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project and First Amendment as mitigated will have a significant effect on the environment and that the October 2018 Addendum to Initial Study/Mitigated Negative Declaration is adequate for the purpose of compliance with the California Environmental Quality Act (CEQA) and reflects the Conservancy’s independent judgement and analysis. ADOPT the October 2018 Addendum to Initial Study/Mitigated Negative Declaration prepared for the project;
   b) AUTHORIZE staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline, LLC for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project as further described in Addendum 1.0 to the Planning Survey Report, provided the Wildlife Agencies concur with the First Amendment; and
   c) DIRECT staff to file a CEQA Notice of Determination with the County Clerk.

   (Allison Cloney)

8) Consider the following actions related to the Viera North Peak property:
   a) AUTHORIZE staff to execute a Property Acquisition Agreement with the State of California regarding the donation and grant of the Viera North Peak property.
   b) AUTHORIZE staff to record a conservation easement on the Viera North Peak property with Save Mount Diablo as the conservation easement holder.

   (Joanne Chiu)

Adjourn. The next regular Governing Board meeting is December 3, 2018.

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

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

DATE: October 22, 2018
TO: Governing Board
FROM: Conservancy Staff
SUBJECT: Governing Board Meeting Record for August 27, 2018.

RECOMMENDATION

APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of August 27, 2018.

DISCUSSION

Please find the draft meeting record attached.

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: October 22, 2018
APPROVED AS RECOMMENDED: 

VOTE OF BOARD MEMBERS

UNANIMOUS

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

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

ATTESTED

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

BY: ___________________________________________ DEPUTY
Draft Meeting Record

East Contra Costa County Habitat Conservancy
Monday, August 27, 2018
City of Clayton

The Governing Board convened the meeting at 2:05 p.m.

The Governing Board reconvened in Open Session at 2:35 p.m.

1) **Report on any actions taken in Closed Session. Open Session will not start before 2:30 p.m.**

2) **Introductions.**

*Governing Board members in attendance were:*
Joel Bryant    City Council, City of Brentwood
Salvatore Evola City Council, City of Pittsburg
Keith Haydon (Chair) City Council, City of Clayton
Randy Pope    City Council, City of Oakley

*Conservancy staff and consultants in attendance were:*
Joanne Chiu    Conservancy Staff
Abigail Fateman Conservancy Executive Director
John Kopchik    Conservancy Secretary

*Other attendees (who signed the sign-in sheet or spoke on an item):*
Mary Helen Nicolini
John Case

3) **Public Comment on items that are not on the agenda** (public comment on items on the agenda will be taken with each agenda item). John Case, realtor at Intero Real Estate services and horticulturalist, spoke about development activity in the Sand Creek area of the City of Brentwood, and his concern over developments’ impact on Sand Creek. Mr. Case wants the City to consider turning the Sand Creek area into an asset for the community. He cited the San Antonio River Walk and the Reno Truckee River Walk as examples. Mr. Case inquired about resources and ideas for partner agencies to look into the Sand Creek area.

4) **Consider the following CONSENT items:**

   a) **APPROVE the Meeting Record from the East Contra Costa County Habitat Conservancy (“Conservancy”) Governing Board meeting of June 25, 2018.**
   b) **ACCEPT update on the development of an Antioch HCP/NCCP**
   c) **APPROVE the following actions related to Conservancy grant applications to the California Department of Fish and Wildlife and the Wildlife Conservation Board through the Natural Community Conservation Plan Local Assistance Grant Program:**
i. APPROVE Resolution No. 2018-03 which authorizes Conservancy staff to submit grant applications to the California Department of Fish and Wildlife (CDFW) for the Natural Community Conservation Plan (NCCP) Local Assistance Grant (LAG) program (up to $120,000); and ENTER into grant agreements to accept funds if approved by CDFW.

ii. APPROVE Resolution No 2018-04 which authorizes Conservancy staff to submit grant applications to the California Wildlife Conservation Board (WCB) through the Natural Community Conservation Planning (NCCP) Local Assistance Grant (LAG) program (up to $700,000); and ENTER into grant agreements to accept funds if approved by WCB.

d) ACCEPT update on media coverage of Conservancy activities.

e) Consider the following actions associated with the Conservancy’s small research grants program:

i. APPROVE the draft Request for Proposals (RFP) for directed science in the Preserve System; and

ii. DIRECT staff to finalize the RFP for distribution.

(Abigail Fateman)

The Consent items were approved as recommended by staff. (4-0: Bryant, Evola, Haydon, Pope; Burgis absent)

5) Consider the following actions related to the Public Advisory Committee composition:

a) APPOINT one person to fill the vacant “Rural/Suburban Resident” seat on the East Contra Costa County Habitat Conservancy Public Advisory Committee effective August 27, 2018 and expiring in December 2019;

b) DETERMINE process for filling the four Public Advisory Committee seats that are set to expire in December 2018; and

c) ACCEPT update on current Public Advisory Committee attendance.

(Abigail Fateman)

Ms. Fateman presented items 5a, 5b and 5c. The Board discussed the two applicants for the vacant “Rural/Suburban Resident” seat, forwent a formal interview, and appointed Mary Helen Nicolini. Upon review of the current attendance record of PAC members, Board member Evola stressed the importance of the Building Industry Association (BIA) to remain on the PAC and encouraged staff to stress to BIA their expected participation in meetings. Board member Pope stressed the Conservancy’s need to adhere to the attendance policy that was set forth and adopted. The Board directed staff to reach out to the PAC members holding expiring seats and to invite them to continue to serve on the PAC for another term. Items 5a, 5b, and 5c were approved as recommended by staff. (4-0: Bryant, Evola, Haydon, Pope; Burgis absent)

6) Consider the following actions related to extending take coverage to Pacific Gas and Electric Company for their RMSCC15-303 Project:

a) AUTHORIZE staff to execute a Participating Special Entity Agreement with Pacific Gas and Electric Company for take coverage of the RMSCC15-303 Project; and
b) AUTHORIZE staff to file a Notice of Exemption with the County Clerk for the project.

(Joanne Chiu)

Ms. Chiu provided an overview of the proposed PG&E project and outlined details of project impacts and take authorization conditions. Items 6a and 6b were approved as recommended by staff. (4-0: Bryant, Evola, Haydon, Pope; Burgis absent)

7) Consider SCHEDULING the regular meeting of the Conservancy Governing Board for December 2018.

(Abigail Fateman)

Ms. Fateman provided the Board with date options for the December Board meeting. The Board decided on Monday, December 3rd, 2-4 pm, for the December Board meeting. (4-0: Bryant, Evola, Haydon, Pope; Burgis absent)

Adjourn. The next regular Governing Board meeting is October 22, 2018.

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

The Conservancy will provide reasonable accommodation for persons with disabilities planning to participate in this meeting who contact staff at least 24 hours before the meeting.
Agenda Item 5

DATE: October 22, 2018
TO: Governing Board
FROM: Conservancy Staff (Allison Cloney)
SUBJECT: PSE Agreement with San Pablo Bay Pipeline Company LLC to Extend Take Coverage

RECOMMENDATION

Consider the following actions related to extending take coverage to San Pablo Bay Pipeline Company LLC for the Shell Pipeline North 20 Repair 2018 Project:

a) DIRECT staff to file a CEQA Notice of Exemption for this Board action with the County Clerk;
b) AUTHORIZE staff to execute a Participating Special Entity Agreement with San Pablo Bay Pipeline Company LLC for take coverage for the Shell Pipeline North 20 Repair 2018 Project.

DISCUSSION

ITEM (a). California Environmental Quality Act (CEQA): The Board’s decision to authorize the Executive Director to execute a PSE Agreement and to extend take authorization to San Pablo Bay Pipeline Company LLC for the Project is exempt from CEQA pursuant to a statutory exemption for the "inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing hazardous or volatile liquid pipeline" (Pub. Resources Code section 21080.23; Cal. Code Regs., tit. 14, §15284).

ITEM (b). To comply with pipeline safety requirements established by the State Fire Marshall, Shell Pipeline/San Pablo Bay Pipe Line Company (“Shell”) is proposing to conduct repair digs

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: October 22, 2018
APPROVED AS RECOMMENDED: 
OTHER: 

VOTE OF BOARD MEMBERS

___ UNANIMOUS

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

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

ATTESTED

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

BY: __________________________ DEPUTY
on their existing 20-inch crude oil pipeline at three locations, two sites on East Bay Regional Park District’s property and one site on private property. Shell has an existing easement across these properties for the pipeline. None of the proposed dig sites are located on ECCC HCP/NCCP Preserve system lands.

Pipeline repair work will be conducted by locating and exposing the pipe at each dig site. Repair activities at each dig site would result in an area of disturbance of approximately $50 \times 50$ feet (0.06 acre). This disturbance would be temporary. Temporary construction barrier fencing (to exclude people and livestock) will be placed around the work site during non-working hours. The size of the excavation pit would vary based on the depth of the pipe and benching necessary to create a stable pit. The pit is estimated to be 20 feet in length and 10 feet in width, with an average depth of approximately 6 to 8 feet. The excavation pit would be contained within the designated work area/area of disturbance. During excavation of the pit, the top 6 inches of soil will be stockpiled separately from the rest of the excavated soil. Soil would be temporarily stockpiled within the designated area of disturbance. Once construction is complete and the pit is backfilled, the topsoil will be evenly spread across the exposed soil and seeded. Each dig is expected to take 3 days to complete.

Existing dirt access roads will be used to access each dig site. Overland access is required to get to Repair Digs #1 and #2. Overland access would be accomplished by scraping off the top layer of grasses (for fire prevention) along a 10-footwide corridor with a backhoe and stockpiling the soil and grasses to one side so that it can be spread back over the top of the access route when construction is completed.

The Shell Pipeline 20 North 2018 Project (“Project”) will take place in habitat suitable for several species covered by the HCP/NCCP. Shell is requesting take authorization for the Project through the Conservancy as a Participating Special Entity (“PSE”). Chapter 8.4 of the HCP/NCCP provides that organizations, including public agencies and private organizations, may apply directly to the Conservancy for take coverage as a PSE for projects not subject to the land use authority of one of the land use agencies participating in the HCP/NCCP. The PSE does not require any city or county land use permits for this project. To receive permit coverage under the HCP/NCCP, the Conservancy and the PSE must enter into an agreement (“PSE Agreement”) obligating compliance with the applicable terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits. The PSE Agreement describes and binds the PSE to perform all avoidance, minimization, and mitigation measures applicable to the Project.

A PSE’s project must also be an eligible covered activity under the HCP/NCCP. As set forth in Section 2.3.3 and 2.3.4 of the HCP/NCCP, Utility Line or Facility Operation and Maintenance is an eligible covered activity within the HCP/NCCP inventory area, including within HCP/NCCP Preserves. The Project is therefore an eligible covered activity. It should be noted that two of the proposed access and work area are located on land owned by East Bay Regional Park District (“EBRPD”). The PSE is responsible for securing all landowner permissions from EBRPD and private property owners. The PSE has confirmed that they are aware of this requirement and will obtain any permits necessary from EBRPD.

Conservancy staff has prepared a PSE Agreement for this Project (attached). Exhibit 1 to the PSE Agreement is the completed Planning Survey Report Application (“PSR Application”) for the Project, prepared by ICF International, the biological firm hired by the PSE. The PSR
Application documents the results of the planning-level surveys conducted at the mitigation site and associated access areas where 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 PSR Application contains project vicinity maps, detailed maps showing the impacts associated with the Project site, land cover and species habitat maps, and the Fee Calculator Worksheets.

**Key provisions of the PSE Agreement:**

- The Project includes the following impacts in the table below:

<table>
<thead>
<tr>
<th>Land Cover Type</th>
<th>Temporary Impacts (acres)</th>
<th>Work Area</th>
<th>Access Roads (Overland)</th>
<th>Access Roads (Ruderal/dirt)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Grassland</td>
<td></td>
<td>0.18</td>
<td>0.40</td>
<td></td>
<td>0.58</td>
</tr>
<tr>
<td>Ruderal</td>
<td></td>
<td></td>
<td></td>
<td>12.29</td>
<td>12.29</td>
</tr>
</tbody>
</table>

- As set forth in the PSE Agreement (Section 5.4), the Project’s temporary impacts will result in a mitigation fee payment of $28,511.95.
- As set forth in the HCP/NCCP, the Conservancy may charge a PSE a Contribution to Recovery ("CTR") 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 borne by the Conservancy of exceeding mitigation requirements and contributing to the recovery of covered species [as is required because the plan is an NCCP and by state law NCCP’s must contribute to recovery, etc.]). Per the Conservancy’s CTR policy, which established a standardized method of determining the CTR charge, the PSE will pay a CTR fee of $19,255.98.
- The PSE Agreement provides that the PSE will reimburse Conservancy for staff/administrative costs associated with processing the request for take coverage, up to a maximum reimbursement of $2,500.
- The Conservancy will require the PSE to submit a fee payment totaling $47,767.93 before issuing a Certificate of Inclusion. This includes both temporary impact fees and CTR charges.
- The Agreement provides a number of detailed measures to avoid impacts to special status plant species covered by the HCP/NCCP. The required rare plant surveys during the appropriate blooming season were infeasible prior to submission of the application. Given the urgent nature of the project as well as the short duration of the proposed impacts, Conservancy staff has worked with the applicant to develop a number of detailed measures beyond those required by the HCP/NCCP which seek to limit and avoid potential impacts to special status plant species. These additional measures include:
  - Rare plant surveys will be conducted between March-June 2019 during the appropriate blooming seasons for the remaining covered rare plants that require a rare plant survey to be conducted. The rare plant surveys will assess the repair site plus a 200-foot buffer around the repair site. The results of the surveys will be documented in a rare plant survey report to be submitted to the Conservancy.
after final survey completion. If special-status plant species are identified on or within 200 feet of the project area, 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 Governing Board authorizes staff to execute a PSE Agreement, key next steps in granting take coverage would be as follows:

- San Pablo Bay Pipeline Company LLC signs the PSE Agreement.
- Staff asks the USFWS and CDFW (collectively, “Wildlife Agencies”) to review the PSE Agreement and PSR Application, and to concur that the PSE Agreement and PSR Application includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on San Pablo Bay Pipeline Company LLC to implement them. Once the Conservancy receives concurrence from the Wildlife Agencies, the Executive Director of the Conservancy will sign the PSE Agreement. **Note:** PSE agreements and any amendments thereof, unlike the granting of take authorization by a participating City or County, require concurrence from the Wildlife Agencies.
- The PSE pays all required mitigation, contribution to recovery, and administrative costs, as outlined in the PSE Agreement.
- The Conservancy issues the PSE a Certificate of Inclusion consistent with the PSE Agreement. Take authorization would then be in effect, subject to the terms of the PSE Agreement and the Certificate of Inclusion.
- The PSE conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- The PSE develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- The PSE implements the Project subject to the terms of the PSE Agreement.
- Rare plant survey report will be submitted to the Conservancy after final survey completion in accordance with the PSE Agreement and Exhibit 1.

**Attachments:**

- **PSE Agreement, including:**
  - Main body of PSE Agreement
  - Exhibit 1: PSR Application
DATE: October 22, 2018
TO: Governing Board
FROM: Conservancy Staff (Allison Cloney)
SUBJECT: PSE Agreement Amendment with the Phillips 66 Pipeline, LLC for Line 200 Anomaly Investigation and Repair, Summer 2017 Project

RECOMMENDATION

Consider the following actions related to extending take coverage to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project:

a) DIRECT staff to file a CEQA Notice of Exemption for this Board action with the County Clerk for the Project;
b) AUTHORIZE staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline, LLC for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project as further described in Addendum 1.0 to the Planning Survey Report, provided the Wildlife Agencies concur with the First Amendment.

DISCUSSION

ITEM (a). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a PSE Agreement and to extend take authorization under the PSE Agreement to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project (“Project”) is a discretionary action requiring analysis with respect to compliance with CEQA. The Project consists of the maintenance and repair of an existing pipeline with no expansion of its existing use. The Conservancy has determined the Project is categorically exempt from the requirements of CEQA under Class 1, "Existing Facilities," of the State CEQA Guidelines Section 15301 (Pub. Resources Code section 21084; Cal. Code Regs., tit. 14, §15301).
ITEM (b). At the June 26, 2017 meeting, the Board authorized staff to execute a Participating Special Entity (“PSE”) Agreement with the Phillips 66 Pipeline, LLC (“Applicant” or “Phillips 66”) for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project. The Project covered twelve anomaly investigation and maintenance repair sites and one location to rebury an exposed section of the pipeline. On July 31, 2017 the PSE Agreement was fully executed. The Applicant paid all mitigation fees, Contribution to Recovery, and administrative fees as required by the PSE Agreement, and was issued a Certificate of Inclusion.

The work at one of those project sites, the Exposed Pipeline, was initially scheduled to be completed during the spring of 2018. Because this repair did not have a Department of Transportation (“DOT”) and State Fire Marshal mandated repair date, the work was postponed as the Applicant prioritized mandated anomaly investigation and repair work. The one year of coverage for their use of an existing dirt road expired on July 31, 2018 before the work could be completed. Phillips 66 is submitting this application for an Amendment to the Summer 2017 Project to extend HCP/NCCP coverage for an additional year of coverage for use of an existing dirt road. Use of 2,852 feet of an existing dirt road will result in temporary disturbance of 1.309 acres, which includes a 10-foot road use buffer. Work at the Exposed Pipeline will either be conducted during the fall of 2018 if weather permits, or will be completed in the spring or summer of 2019 prior to July 31 when the second year of use expires. The second year of road use will result in additional mitigation fees due to the ECC Habitat Conservancy in the amount of $1,257.06 and an additional Contribution to Recovery (“CTR”) fee in the amount of $628.54. Additionally, the PSE Agreement provides that Phillips 66 will reimburse the Conservancy for costs associated with processing the request for take coverage, up to a maximum reimbursement of $7,500.

Addendum 1.0 has been prepared and reflects the modifications to the original Planning Survey Report Application. This Addendum 1.0 will be incorporated into the First Amendment to the PSE Agreement.

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

- Phillips 66 Pipeline, LLC signs the First Amendment.
- Staff will ask the Wildlife Agencies to review the First Amendment and Addendum 1.0 and to concur that the First Amendment and Addendum 1.0 includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on Phillips 66 Pipeline, LLC to implement them. If, and only if, the Wildlife Agencies concur, the Executive Director of the Conservancy will sign the First Amendment. Note: PSE agreements and any amendments thereof, unlike the granting of take authorization by a participating City or County, require concurrence from the Wildlife Agencies.
- Phillips 66 Pipeline, LLC pays all required mitigation, CTR, and administrative costs (to-date, as set forth in an invoice to be provided to Phillips 66 Pipeline, LLC by Conservancy staff), as outlined in the PSE Agreement and First Amendment.
- The Conservancy issues Phillips 66 Pipeline, LLC an updated Certificate of Inclusion, consistent with the First Amendment. Take authorization would then be in effect, subject to the terms of the First Amendment to the PSE Agreement.
• Phillips 66 Pipeline, LLC conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
• Phillips 66 Pipeline, LLC develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
• Phillips 66 Pipeline, LLC implements the Project subject to the terms of the First Amendment.

Attachments:
• **First Amendment to the PSE Agreement, including:**
  • Main body of the amendment
  • Addendum 1.0
FIRST AMENDMENT

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

Between

the EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, the Implementing
Entity, and PHILLIPS 66 PIPELINE, LLC,
a Participating Special Entity

RECITALS

The Participating Special Entity Agreement between the East Contra Costa County Habitat Conservancy (“Conservancy”) and Phillips 66 Pipeline, LLC (“Participating Special Entity” or “PSE”) was entered into July 31, 2017 (the “PSE Agreement”).

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

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

AMENDMENT

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

1. The attached Addendum 1.0 is added to and incorporated within Exhibit 1.

2. Section 2.7 of the Agreement is amended as follows:

PSE proposes to implement the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 and seeks extension of the Conservancy’s permit coverage to conduct operational and safety repairs at twelve repair sites that are located along the existing Line 200 Mainline trunk pipeline within East Contra Costa County, as further described in Exhibit 1 and Addendum 1.0.

3. Section 2.8 of the PSE Agreement is amended as follows:
The Conservancy has concluded, based on the terms of this Agreement and the application submitted by PSE (the “Application”), that PSE has provided adequate assurances that it will comply with all applicable terms and conditions of the IA, the HCP/NCCP, and the Permits. The Application is attached hereto as Exhibit 1 and Addendum 1.0 and is hereby incorporated into this Agreement by reference.

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

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

5. Section 5.2 of the Agreement is amended as follows:

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 an Application 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 Application 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.

6. Section 5.4 is amended as follows:

As set forth in the Application, PSE agrees to pay the Conservancy a one-time payment of $67,583.68 $65,698.08 which amount includes all HCP/NCCP mitigation fees necessary for the Project. The payment also includes an amount sufficient to implement additional actions that will contribute to the recovery of endangered and threatened species (“Contribution to Recovery”). The overall payment amount is the sum of the following:

**Temporary Impact Development Fee:** $40,522.46 $39,265.40  
**Temporary Impact Wetland Mitigation Fees:** $1,199.99  
**Contribution to Recovery:** $25,861.23 $25,232.69

To date the Participating Special Entity has submitted payment for $65,698.08 in accordance with the PSE Agreement. The additional payment for the First Amendment totals $1,885.60. The additional payment for the First Amendment must be paid in full prior to issuance of a Certificate of Inclusion. The payment must be paid in full before
any ground disturbance associated with the Project occurs. Notwithstanding the above, the Parties acknowledge that the Conservancy adjusts its fee schedule annually on March 15 of each year in accordance with the fee adjustment provisions of Chapter 9.3.1 of the HCP/NCCP. If the PSE pays before March 15, 2019, and construction of the Project commences before March 15, 2019, the amount due will be as stated above. If PSE pays on or after March 15, 2019, or construction of the Project does not commence before March 15, 2019, the amount due will be subject to annual fee adjustments for all fees, and subject to annual adjustments of the Contribution to Recovery based on the formula set forth in Chapter 9.3.1 for the HCP/NCCP wetland mitigation fee. Based on these adjustments, if PSE pays before March 15 of any year, but construction does not commence before March 15 of that year, PSE will either be required to submit an additional payment for any increases or be entitled to a refund without interest for any decreases.

B. This First Amendment may be executed in counterparts.

C. All other terms and conditions of the PSE Agreement shall remain as originally agreed.

D. The Conservancy shall issue a Certificate of Inclusion pursuant to Section 6.1 of the PSE Agreement that is revised to incorporate reference to this First Amendment.

E. This First Amendment shall take effect on the date after both of the following have occurred:

1. The Conservancy and PSE have executed the First Amendment; and

2. The Conservancy has delivered written notice to PSE that the Conservancy has received written concurrence from the Wildlife Agencies regarding the First Amendment in accordance with Section 6.1 of the PSE Agreement.
IN WITNESS WHEREOF, the Conservancy and PSE hereto execute this First Amendment.

THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By: ________________________________ Date: __________________
    ABIGAIL FATEMAN, Executive Director

PHILLIPS 66 PIPELINE, LLC

By: ________________________________ Date: __________________
    GABE MUNOZ, Western Operations Division Manager
Phillips 66 Pipeline

EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN/NATURAL
COMMUNITY CONSERVATION PLAN
PARTICIPATING SPECIAL ENTITY-PLANNING
SURVEY REPORT
AMENDMENT 1
Summer 2017 Project

October 15, 2018
ECCC HCP/NCCP, P66
SUMMER 2017
PROJECT –
AMENDMENT 1

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Our Ref.:
P66200AN.0005

Date:
10/15/2018

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Figure 2u (rev): Site Plan, Dig 91 and Exposed Pipeline

ATTACHMENTS

## ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arcadis</td>
<td>Arcadis U.S., Inc.</td>
</tr>
<tr>
<td>CEQA</td>
<td>California Environmental Quality Act</td>
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<tr>
<td>DOT</td>
<td>Department of Transportation</td>
</tr>
<tr>
<td>ECCC</td>
<td>East Contra Costa County</td>
</tr>
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<td>ECCCHC</td>
<td>Eastern Contra Costa County Habitat Conservancy</td>
</tr>
<tr>
<td>HCP</td>
<td>Habitat Conservation Plan</td>
</tr>
<tr>
<td>NCCP</td>
<td>Natural Community Conservation Plan</td>
</tr>
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<td>P66</td>
<td>Phillips 66 Pipeline LLC</td>
</tr>
<tr>
<td>PSR</td>
<td>Planning Survey Report</td>
</tr>
<tr>
<td>PSE</td>
<td>Participating Special Entity</td>
</tr>
<tr>
<td>ROW</td>
<td>right-of-way</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

Phillips 66 Pipeline (P66) obtained coverage under the East Contra Costa County HCP/NCCP via a Participating Special Entity (PSE) Agreement for a group of thirteen anomaly investigation and repair projects contained in the Phillips 66 Line 200 Anomaly Investigation and Repair, Summer 2017 Project (Summer 2017 Project). One of those projects, Exposed Pipe was initially scheduled to be completed during the spring of 2018. Because this repair did not have a DOT and State Fire Marshal mandated repair date, the work on this project was postponed in order to facilitate mandated anomaly investigation and repair work. Subsequently the one year of approved temporary impacts to existing dirt road use expired on July 31, 2018 before the work could be completed. P66 is submitting this Amendment to the Summer 2017 Project to gain HCP/NCCP coverage for an additional year of approved existing dirt road usage. Use of 2,852 feet of existing dirt road will result in temporary disturbance of 1.309 acres with the 10 foot road use buffer added in. Work at the Exposed Pipeline will either be conducted during the fall of 2018 if weather permits, or will be completed in the spring or summer of 2019 prior to July 31 when the second year of use expires. The second year of approved road use will result in additional fees due to the ECCC Habitat Conservancy in the amount of $ 1,885.60.
PROPOSED PSR MODIFICATIONS

The applicable portions of the original Winter 2018 PSR and Application text are presented below with changes in strike-out and red font text.

1 SECTION I - PROJECT OVERVIEW

Project Name: Phillips 66 Line 200 Anomaly Investigation and Repair – Dig 77, 78, 80, 82, 86, 87, 89, 90, 91, 94, and exposed pipe covering.

Project Description (Brief): There is no changes to the Project Description (Brief) presented in the PSR.

2 SECTION II - PROJECT DETAILS

2.1.1 Project Description

The following is the section of the Project Description that has been modified as part of this addendum.

Project 12 – Exposed Pipeline Covering (EPC)

During the winter 2017, ROW maintenance inspections identified an approximately 30 foot long section of pipeline exposed in an erosional feature. The erosion occurred as a result of surface water spilling from an impoundment to the north of the site onto a dirt road, and then off the road along the ROW resulting in the loss of soil covering the pipeline (Figure 4gg). The discharge of water from the impoundment onto the road appears to be the result of a plugged highwater discharge pipe at the impoundment. P66 will be contacting the property owner to discuss the discharge issue so that it is corrected prior to the next rainy season.

The EPC project (repair location) is located approximately 5.5 miles southeast of the City of Clayton in an area of oak woodland in a mosaic of oak woodland and oak savanna / non-native annual grassland [Figure 1, 2p (rev) & 2u (rev)]. Access to the repair site will follow the same route for Dig 89 [See Project 7 above and Figure 2p (rev)]. To support the EPC project, a temporary workspace will be needed to allow dump trucks delivering clean fill to the repair location to turn around, and as a stockpile location for the fill material. (Figure 2u). Equipment accessing the site will comply with the permitted access dirt road width of 10 feet with 5 foot buffers; note, dump trucks are a maximum of 8-feet wide.

The project will include these basis steps:

- An excavator will be used to remove large rocks from around the exposed pipeline and prepare the area for backfilling. Any rocks not used as backfill will be removed from the site.
- The protective covering on the pipeline will be replaced if it is found to be damaged. The protective covering replacement will follow the practices outlined above for anomaly investigation and repairs.
- A front loader will transport the fill material from the temporary workspace to the EPC area where an excavator will place the fill and compact it in place. The area will be graded to match the surrounding topography.
• The restored slope will be stabilized with jute geotechnical fabric (containing no monofilament or other plastic components) and straw wattles, and reseeded with a Contra Costa County approved seed mix. Any disturbed soil in the temporary workspace will also be reseeded.

The staging point for vehicles other than those conducting the work will be on existing dirt roads or in the approved temporary workspace.

• Temporary disturbance associated with the use of the established ruderal/dirt roads to access the exposed pipeline covering project site is part of the access route identified for Dig 89. However, the project will be undertaken following the completion of mandated anomaly investigation and repair actions. As such the start of work on this project will extend out past the one-year temporary road use permitting, so a two year road use term is being sought for this project. The second year of road use permitting will have temporary disturbance of 1.309 acres associated with the use of the established ruderal/dirt road.

• Temporary workspace – The project will require a temporary work space to allow dump trucks accessing the repair location to turn around, and to stockpile the backfill material. Temporary disturbance associated with the temporary workspace will be approximately 2003 ft² (0.046 acres).

• The EPC project will require an approximately 2047 ft² (0.047 acres) area of disturbance that encompasses the workspace and equipment operating and staging area.

• Total temporary disturbance associated with the EPC project, including the temporary workspace, the repair area and a second year of existing dirt road use, will be approximately 0.093 1.402 acres
### Disturbance Summary

Table 1. Anomaly Investigation and Repair Temporary Disturbance Summary

<table>
<thead>
<tr>
<th>Project</th>
<th>Temporary Disturbance</th>
<th></th>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Use of Established Roads and Stream Crossings</td>
<td>Overland Travel Related Impacts</td>
<td>Temporary Soil Disturbance</td>
<td>Total Area (acres)</td>
</tr>
<tr>
<td></td>
<td>Established Transportation Corridor (acres)</td>
<td>Temporary Stream Impacts (Linear feet)</td>
<td>Overland Travel (acres)</td>
<td>Riparian Woodland / Scrub</td>
<td>Anomaly Repair Workspace (acres)</td>
</tr>
<tr>
<td>Project 1 – Dig 77</td>
<td>0.309</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0.046</td>
</tr>
<tr>
<td>Project 2 – Dig 78</td>
<td>1.103</td>
<td>0</td>
<td>0.050</td>
<td>0</td>
<td>0.046</td>
</tr>
<tr>
<td>Project 3 – Dig 139</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.041</td>
</tr>
<tr>
<td>Project 4 – Dig 140</td>
<td>0</td>
<td>0</td>
<td>0.057</td>
<td>0</td>
<td>0.041</td>
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<tr>
<td>Project 5 – Dig 80</td>
<td>1.307</td>
<td>10</td>
<td>0.107</td>
<td>0</td>
<td>0.041</td>
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<tr>
<td>Project 6 – Dig 82</td>
<td>0</td>
<td>10</td>
<td>0.117</td>
<td>0</td>
<td>0.046</td>
</tr>
<tr>
<td>Project 7 – Dig 86</td>
<td>0</td>
<td>0</td>
<td>0.188</td>
<td>0.002</td>
<td>0.046</td>
</tr>
<tr>
<td>Project 8 – Dig 87</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.05</td>
</tr>
<tr>
<td>Project 9 – Dig 89</td>
<td>2.466</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0.040</td>
</tr>
<tr>
<td>Project 10 – Dig 90</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.034</td>
</tr>
<tr>
<td>Project 11 – Dig 91</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.034</td>
</tr>
<tr>
<td>Project 12 – Exposed Pipeline</td>
<td>0.1309</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.093</td>
</tr>
<tr>
<td>Project 13 – Dig 94</td>
<td>3.941</td>
<td>0</td>
<td>0.031</td>
<td>0</td>
<td>0.041</td>
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</table>
Table 2. Unimproved Road Use Summary, Permitted Use and Authorized Periods

<table>
<thead>
<tr>
<th>Road Segment</th>
<th>Road Segment Length (Feet)</th>
<th>Utilized for Projects in this Application Package?</th>
<th>Previously Permitted</th>
<th>Permit Coverage Dates</th>
</tr>
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<tbody>
<tr>
<td>Wind Farm Access Road to Dig 77</td>
<td>672</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
</tr>
<tr>
<td>Wind Farm Access Road to Dig 78</td>
<td>2403</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
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<tr>
<td>VCRP(^1) access road to SID 195,120.07.37</td>
<td>617</td>
<td>No</td>
<td>Y</td>
<td>April 11, 2017 – April 11, 2018(^2)</td>
</tr>
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<td>Access road to Dig 80</td>
<td>2,846</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
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<td>SID 205,690.25.17 to SID 203,860.08.00</td>
<td>8,541</td>
<td>Yes</td>
<td>Yes</td>
<td>April 11, 2017 – April 11, 2018(^2)</td>
</tr>
<tr>
<td>SID 206,370.23.52 to SID 205,690.25.17</td>
<td>3,787</td>
<td>Yes</td>
<td>Yes</td>
<td>April 11, 2017 – April 11, 2018(^2)</td>
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<td>Marsh Creek Road to SID 206,370.23.52</td>
<td>5,277</td>
<td>Yes</td>
<td>Yes</td>
<td>Jan 13, 2017 – Jan 13, 2018(^3)</td>
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<td>Marsh Creek Road to SID 208,840.14.69</td>
<td>1,300</td>
<td>No</td>
<td>Yes</td>
<td>Jan 13, 2017 – Jan 13, 2018(^3)</td>
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<td>SID 211,570.05.69 to Dig 89</td>
<td>5,370</td>
<td>Yes</td>
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<tr>
<td>Bragdon Way to SID 211,570.05.69</td>
<td>756</td>
<td>Yes</td>
<td>Yes</td>
<td>April 11, 2017 – April 11, 2018(^2)</td>
</tr>
<tr>
<td><strong>Bragdon Way to Exposed Pipeline (2(^{nd}) year)</strong></td>
<td><strong>2,852</strong></td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
<td><strong>na</strong></td>
</tr>
<tr>
<td>Marsh Creek Road to Dig 94</td>
<td>8,584</td>
<td>Yes</td>
<td>No</td>
<td>na</td>
</tr>
</tbody>
</table>

\(^1\) VCRP – Vasco Caves Regional Preserve

\(^2\) Participating Special Entity (PSE) Agreement finalized April 11, 2017

\(^3\) Participating Special Entity (PSE) Agreement finalized January 13, 2017
2.1.2 Project Vicinity Map
There are no changes to Figure 1 in Attachment B.

2.1.3 Project Site Plans
Revised Site Plan Figures are attached in Figures 2p (rev) and 2u (rev).

2.1.4 CEQA Document
There are no changes to the CEQA exemption that covers this project.

3 SECTION III - EXISTING CONDITIONS AND IMPACTS

3.1.1 Field-Verified Land Cover Map
There are no changes to the Land Cover Map, Figure 3l, in Attachment B.

3.1.2 Photographs of the Project Site
There are no changes to the photographs in Attachment B.

3.1.3 Land Cover Types and Impacts and Supplemental Tables
A revised Table 1 is provided below.
## Table 1: Land Cover Types and Impacts

<table>
<thead>
<tr>
<th>Land Cover Type</th>
<th>Temporary Impacts</th>
<th>Temporary Impacts Access Road &amp; Buffer</th>
<th>Stream Setback</th>
<th>Preserve System Dedication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Grassland</strong></td>
<td></td>
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<tr>
<td>- Annual Grassland</td>
<td>0.443</td>
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<td></td>
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<tr>
<td>- Alkali Grassland</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>- Ruderal</td>
<td></td>
<td>9.126 9.473</td>
<td></td>
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<tr>
<td><strong>Shrubland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Chaparral and Scrub</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Woodland</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Oak Savannah</td>
<td>0.562</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Oak Woodland</td>
<td>0.144</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Riparian</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>- Riparian Woodland/Scrub</td>
<td>0.002</td>
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<tr>
<td><strong>Wetland</strong></td>
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<tr>
<td>- Permanent Wetland</td>
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<td></td>
<td></td>
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<tr>
<td>- Seasonal Wetland</td>
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<tr>
<td>- Alkali Wetland</td>
<td></td>
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<tr>
<td><strong>Aquatic</strong></td>
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<tr>
<td>- Aquatic (Reservoir/Open Water)</td>
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<td></td>
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<tr>
<td>- Slough/Channel</td>
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<tr>
<td>- Pond</td>
<td></td>
<td></td>
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<tr>
<td>- Stream (in linear feet)</td>
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<td><strong>Irrigated Agriculture</strong></td>
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<tr>
<td>- Pasture</td>
<td></td>
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</tr>
<tr>
<td>- Cropland</td>
<td></td>
<td></td>
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<tr>
<td>- Orchard</td>
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<tr>
<td>- Vineyard</td>
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<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
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<tr>
<td>- Nonnative woodland</td>
<td></td>
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</tr>
<tr>
<td>- Wind turbines</td>
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<td><strong>Developed (not counted toward Fees)</strong></td>
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<td>- Urban</td>
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<tr>
<td>- Aqueduct</td>
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<tr>
<td>- Turf</td>
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<tr>
<td>- Landfill</td>
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<tr>
<td><strong>TOTAL IMPACTS</strong></td>
<td>1.151</td>
<td></td>
<td>9.126 9.473</td>
<td></td>
</tr>
</tbody>
</table>
Please provide details of impacts to stream features:
There are no changes to the impacts to stream features, or supplement to Table 1.

3.2 Summary Land Cover Types
There is no change to the summary of land cover types presented in the PSR.

3.3 Jurisdictional Wetlands and Waters
There are no changes to the Jurisdictional Wetlands and Waters section presented in the PSR.

3.4 Species-Specific Planning Survey Requirements
There is no change to the information provided in Section 6 of the PSR.

3.5 Planning Survey Species Habitat Map
Provide Planning Survey Species Habitat Maps as required in Table 2a, attach as Figure 5 in Attachment B: Figures.
There are no changes to the Species Habitat Maps presented in the PSR

3.6 Results of Species Specific Surveys
There is no change to the information provided in Section 8 of the PSR

3.7 Covered and No-Take Plants
There is no change to the information provided in Section 9 of the PSR.

4 SECTION IV - SPECIES-SPECIFIC AVOIDANCE AND MINIZATION REQUIREMENTS
There is no change to the information provided in Section IV of the PSR.

5 SECTION V – SPECIFIC CONDITIONS AND COVERED ACTIVITIES
There is no change to the information provided in Section V of the PSR.
6 SECTION VI – MITIGATION MEASURES

1) Mitigation Fee Calculator(s)

Updated Fee Calculators are provided in Attachment 1 and 2.

2) Briefly describe the amount of fees to be paid and when applicant plans to submit payment.

Phillips 66 will submit payment of $65,698.08 $67,583.68 to the East Contra Costa County Habitat Conservancy (Conservancy) upon approval of the application by the Governing Board and as directed by the Conservancy. This fee is based on: 1) permanent impact fees in the amount of $31,057.23 for the temporary impacts associated with the construction sites, and overland travel; 2) temporary disturbance fees for a duration of 1 year for all the project sites and a 2nd year of disturbance fees for the Exposed Pipe project location in the amount of $8,208.17 $9,465.23 associated with travel on the existing dirt and ruderal roads that is calculated based on 5-foot buffers on each side of the 10-foot wide road for a 20-foot wide 'transportation corridor'; 3) $1,002.03 for temporary impacts to 40 linear feet of stream; 4) $197.96 for temporary impacts calculated at the Permanent Rate Wetland Fee for 0.002 acres of riparian habitat; and 5) a contribution to recovery in the amount of $25,232.69 $25,861.23, calculated according to the Implementation Policy Regarding Contribution to Recovery for Participating Special Entity Projects (Dated December 8, 2014). The 10-foot wide road width and 5-foot buffers were provided by Conservancy Staff after consultation with the wildlife agencies on February 14, 2017.

Access to Dig 82 and 86 will require use of 11,999 linear feet of an existing dirt access road that was permitted under two separate projects: 1) Phillips 66 Line 200 Anomaly and Investigation Repair, Winter 2016 Project and 2) Phillips 66 Line 200 Anomaly and Investigation Repair Spring 2017 Project, for 1 year temporary disturbance durations. The first 5,277 feet was permitted under the Winter 2016 Project with a 1-year disturbance duration that expires on January 13, 2018. The remaining 5,722 feet was permitted under the Spring 2017 Project with a 1-year disturbance duration that expires on April 11, 2018. The 11,999-foot section of dirt access road will not be charged temporary fees for this application if work and access associated with Dig 82 and 86 is completed prior to the expiration of the permitted disturbance duration for the respective segments, i.e., January 13, or April 11, 2018 respectively. If work is not completed prior to January 13, 2018, the applicant will be required to submit temporary fees to the Conservancy for 2.42 acres of impact for use of the 5,277-foot section of dirt access road and a 10-foot travel corridor buffer. If work at Dig 82 is further delayed past April 11, 2018 the applicant will be required to submit temporary fees to the Conservancy for 2.62 acres of impact for use of the 5,722-foot section of dirt access road and a 10-foot travel corridor buffer. The Certificate of Inclusion will not be issued for the Project until coverage of these sections of the dirt access road are verified.

Access to Dig 89, 90 91, and the Exposed Pipeline Covering (first year of coverage) will require use of 756 linear feet of an existing dirt access road that was permitted under the Phillips 66 Line 200 Anomaly and Investigation Repair, Spring 2017 Project for a 1 year temporary disturbance duration. The 756-foot section of dirt access road will not be charged temporary fees for this application if work and access associated with Dig 89, 90 91, and the Exposed Pipeline Covering is completed prior to April 11, 2018 (i.e. the expiration of the 1 year temporary disturbance duration). If work is not completed prior to April 11, 2018, the applicant will be required to submit temporary fees to the
Conservancy for 0.347 acres of impact for use of the 756-foot section of dirt access road and a 10-foot travel corridor buffer. The Certificate of Inclusion will not be issued for the Project until coverage of this section of the dirt access road is verified. The second year of existing dirt road access for the Exposed Pipe project will encompass a 2,852 foot section of road that combined with the 10-foot travel corridor buffer will result in a total of 1.309 acres of temporary use. The 1.309 acres of temporary use includes the 0.347 acres of temporary use that lapsed in April 2018.
Exposed Pipe Work Area
Equipment and Materials Staging Location

Slope Failure
Low water crossing

Anomalies
P66 Line 200
Dig 89, Work Area - (0.040 acres)
Dig 90, Work Area - (0.034 acres)
Dig 91, Work Area - (0.034 acres)
Exposed Dirt Access Length - 6,124 ft, (2.812 acres)
New Access Length - 2,852 ft, (1.309 acres)
Materials Staging Location (0.046 acres)
Exposed Pipe Work Area (0.047 acres)

Low water crossing - (10 lineal ft)
Silt Fence
Slope Failure
Ephemeral Stream
Long Canyon Creek (Intermittent Stream)
Pond

Note: New Access (Summer 2017 PSR- Addendum 1)
EPC = Exposed Pipe Work Area

Phillips 66 - East Contra Costa County
ECCC HCP/NCCP Planning Survey
Report Application - Addendum 1

Agenda Item 6b
Attachment
Exposed Pipe Work Area
Equipment and Materials Staging Location

Legend
- Anomalies
- Phillips 66 Line 200
- Dig 91, Work Area - (0.034 acres)
- Expired Dirt Access Length - 6,124 ft, (2.812 acres)
- New Access Length - 2,852 ft, (1.309 acres)
- Materials Staging Location (0.046 acres)
- Exposed Pipe Work Area (0.047 acres)
- Long Canyon Creek (Intermittent Stream)
- Pond

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
# ECCC HCP/NCCP 2018 Fee Calculator Worksheet

## Temporary Impacts

**PROJECT APPLICANT:** Phillips 66 Pipeline, LLC  
**PROJECT NAME:** Phillips 66 Line 200 Anomaly Investigation and Repair - Summer 2017 Project. Amendment 1  
**APN(s):** 005-180-007, 005-190-001, 007-050-001, 007-050-003, 080-050-003  
**JURISDICTION:** Participating Special Entity  
**DATE:** October 10, 2018

### Temporary Development Fee

<table>
<thead>
<tr>
<th>ACREAGE TEMPORARILY IMPACTED (TABLE 1)</th>
<th>YEARS OF DISTURBANCE (MIN. SHOWN)</th>
<th>2018 FEE PER ACRE (SUBJECT TO CHANGE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee Zone 1</td>
<td>x 2 / 30 x</td>
<td>$14,404.82 = $0.00</td>
</tr>
<tr>
<td>Fee Zone 2</td>
<td>x 1 / 30 x</td>
<td>$28,809.65 = $1,257.06</td>
</tr>
<tr>
<td>Fee Zone 3</td>
<td>x 2 / 30 x</td>
<td>$7,202.41 = $0.00</td>
</tr>
<tr>
<td>Fee Zone 4</td>
<td>x 2 / 30 x</td>
<td>$21,607.24 = $0.00</td>
</tr>
</tbody>
</table>

*Development Fee Total = $1,257.06*

### Temporary Wetland Mitigation Fee

<table>
<thead>
<tr>
<th>ACREAGE TEMPORARILY IMPACTED (TABLE 1)</th>
<th>YEARS OF DISTURBANCE (MIN. SHOWN)</th>
<th>2018 FEE PER ACRE (SUBJECT TO CHANGE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riparian woodland / scrub</td>
<td>x 5 / 30 x</td>
<td>$101,891.30 = $0.00</td>
</tr>
<tr>
<td>Perennial Wetland</td>
<td>x 2 / 30 x</td>
<td>$149,703.01 = $0.00</td>
</tr>
<tr>
<td>Seasonal Wetland</td>
<td>x 2 / 30 x</td>
<td>$347,022.00 = $0.00</td>
</tr>
<tr>
<td>Alkali Wetland</td>
<td>x 2 / 30 x</td>
<td>$350,533.50 = $0.00</td>
</tr>
<tr>
<td>Ponds</td>
<td>x 2 / 30 x</td>
<td>$189,903.39 = $0.00</td>
</tr>
<tr>
<td>Aquatic (open water)</td>
<td>x 2 / 30 x</td>
<td>$94,951.69 = $0.00</td>
</tr>
<tr>
<td>Slough / Channel</td>
<td>x 2 / 30 x</td>
<td>$138,384.46 = $0.00</td>
</tr>
</tbody>
</table>

*Wetland Mitigation Fee Total = $0.00*

### Fee Reduction

- Development Fee reduction for land in lieu of fee = 
- Development Fee reduction (up to 33%) for permanent assessments = 
- Wetland Mitigation Fee reduction for wetland restoration/creation performed by applicant = 
- **Reduction Total = $0.00**

### Final Fee Calculation

| Development Fee Total | $1,257.06 |
| Wetland Mitigation Fee Total | $0.00 |
| **Fee Subtotal** | **$1,257.06** |
| Contribution to Recovery | $628.54 |
| **TOTAL AMOUNT TO BE PAID** | **$1,885.60** |

---

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

2. Years of disturbance is the number of calendar years in which the activity occurs. For activities that disturb soil, 1 year must be added to each activity interval to account for the longer delay in habitat recovery (e.g. X = 3 if the activity disturbs soil, lasts 2 years, and only occurs once in 30 years).

3. The Conservancy Governing Board adopted a periodic fee audit, as required by the HCP/NCCP, on June 27, 2013. The fee schedule above is based on the periodic fee audit, as adopted on June 27, 2013 and subject to the annual automatic fee adjustment. Development fees are adjusted annually according to a formula that includes both a Home Price Index (HPI) and a Consumer Price Index (CPI). The Wetland Mitigation Fees are adjusted according to a CPI.

4. "Fee Zone 4" is not shown on Figure 9-1 of the HCP/NCCP but refers to the fee applicable to those few covered activities located in northeastern Antioch (p. 9-21).

5. Fee reductions must be reviewed and approved by the Conservancy.

6. Conservancy requires PSEs to pay fees over and above permanent and temporary impact mitigation fees to cover indirect costs of extending permit coverage, including a portion of the costs of the initial preparation of the Plan, and a portion of the costs of conservation actions designed to contribute to species recovery. This amount will be determined by the Conservancy, in accordance with the implementation policy adopted by the Conservancy Governing Board.
Impact and Fee Calculation Breakdown

### Ruderal/Dirt Access Road Calculations

<table>
<thead>
<tr>
<th>Rd Length (ft)</th>
<th>Rd Width (ft)</th>
<th>10 ft Buffer (5 ft per each side of Rd)</th>
<th>Acreage Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>672</td>
<td>10</td>
<td></td>
<td>0.309</td>
</tr>
<tr>
<td>2403</td>
<td>10</td>
<td></td>
<td>1.101</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td></td>
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<tr>
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</tr>
<tr>
<td>2846</td>
<td>10</td>
<td></td>
<td>1.307</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td></td>
<td>0.000</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td></td>
<td>0.000</td>
</tr>
<tr>
<td>5370</td>
<td>10</td>
<td></td>
<td>2.468</td>
</tr>
<tr>
<td>0</td>
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<td></td>
<td>0.000</td>
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<tr>
<td>0</td>
<td>0</td>
<td></td>
<td>0.000</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td></td>
<td>0.000</td>
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<tr>
<td>2852</td>
<td>10</td>
<td></td>
<td>1.309</td>
</tr>
<tr>
<td>8584</td>
<td>10</td>
<td></td>
<td>3.941</td>
</tr>
</tbody>
</table>

**Total Access Road Impact**: 10.43

### Overland Travel Calculations

<table>
<thead>
<tr>
<th>Rd Length (ft)</th>
<th>Rd Width (ft)</th>
<th>Acreage Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>218</td>
<td>10</td>
<td>0.0500</td>
</tr>
<tr>
<td>250</td>
<td>10</td>
<td>0.0574</td>
</tr>
<tr>
<td>467</td>
<td>10</td>
<td>0.1072</td>
</tr>
<tr>
<td>508</td>
<td>10</td>
<td>0.1166</td>
</tr>
<tr>
<td>521</td>
<td>10</td>
<td>0.1885</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>0.0000</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0.0000</td>
</tr>
<tr>
<td>137</td>
<td>10</td>
<td>0.0315</td>
</tr>
</tbody>
</table>

**Total Overland Travel Impact**: 0.55

### Calculations by Project Site

<table>
<thead>
<tr>
<th></th>
<th>Work Space</th>
<th>Overland Travel</th>
<th>Access Road</th>
<th>Riparian</th>
<th>Stream Xing</th>
<th>Totals</th>
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</thead>
<tbody>
<tr>
<td>Dig 77</td>
<td>0.046</td>
<td>0.309</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>0.915</td>
</tr>
<tr>
<td>Dig 78</td>
<td>0.046</td>
<td>0.064</td>
<td>1.103</td>
<td>0</td>
<td>0</td>
<td>1.169</td>
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<tr>
<td>Dig 139</td>
<td>0.041</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.041</td>
</tr>
<tr>
<td>Dig 140</td>
<td>0.041</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.041</td>
</tr>
<tr>
<td>Dig 80</td>
<td>0.041</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.041</td>
</tr>
<tr>
<td>Dig 82</td>
<td>0.046</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.046</td>
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<tr>
<td>Dig 86</td>
<td>0.046</td>
<td>0.188</td>
<td>0</td>
<td>0</td>
<td>0.002</td>
<td>0.234</td>
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<tr>
<td>Dig 87</td>
<td>0.050</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0.000</td>
<td>0.050</td>
</tr>
<tr>
<td>Dig 89</td>
<td>0.040</td>
<td>2.456</td>
<td>0</td>
<td>10</td>
<td>2.506</td>
<td>0.044</td>
</tr>
<tr>
<td>Dig 90</td>
<td>0.034</td>
<td>0.000</td>
<td>0</td>
<td>0</td>
<td>0.000</td>
<td>0.034</td>
</tr>
<tr>
<td>Exposed Pipeline</td>
<td>0.093</td>
<td>1.129</td>
<td>0</td>
<td>0</td>
<td>1.462</td>
<td>0.093</td>
</tr>
<tr>
<td>Dig 94</td>
<td>0.041</td>
<td>0.032</td>
<td>3.941</td>
<td>0</td>
<td>0</td>
<td>4.015</td>
</tr>
</tbody>
</table>

**Total Overland Travel Impact**: 0.55

### Fee Calculations: Temporary Impacts at Permanent Fee Rate

<table>
<thead>
<tr>
<th>Work spaces, overland travel and stream Xing</th>
<th>Fee Per Acre</th>
<th>Permanent Impact Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.150</td>
<td>$26,982.82</td>
<td>$31,057.23</td>
</tr>
</tbody>
</table>

### Fee Calculations: Temporary Impacts at Temporary Fee Rate

<table>
<thead>
<tr>
<th>Ruderal/Dirt Access Road</th>
<th>Fee Per Acre</th>
<th>Temporary Impact Fee (1 yr disturbance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.126</td>
<td>$26,982.82</td>
<td>$6,208.17</td>
</tr>
</tbody>
</table>

### Fee Calculations: Temporary Impacts at 2018 Temporary Fee Rate

<table>
<thead>
<tr>
<th>Ruderal/Dirt Access Road</th>
<th>Fee Per Acre</th>
<th>Temporary Impact Fee (1 yr disturbance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.309</td>
<td>$28,809.65</td>
<td>$1,257.06</td>
</tr>
</tbody>
</table>

### Fee Calculations: Temporary Impacts at Permanent Fee Rate

<table>
<thead>
<tr>
<th>Riparian woodland / scrub</th>
<th>Fee Per Acre</th>
<th>Permanent Impact Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.002</td>
<td>$98,978.33</td>
<td>$197.96</td>
</tr>
</tbody>
</table>

### Fee Calculations: Temporary Impacts for Use of Established Stream Crossings

<table>
<thead>
<tr>
<th>Linear feet</th>
<th>Fee per foot</th>
<th>Temporary Impact Fee (2 yr disturbance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>$375.76</td>
<td>$1,002.03</td>
</tr>
</tbody>
</table>

### Contribution To Recovery

<table>
<thead>
<tr>
<th>Total Mitigation Fee</th>
<th>Perm/Temp Fees Above</th>
<th>CTR</th>
</tr>
</thead>
<tbody>
<tr>
<td>$44,654.60</td>
<td>$10,000 + [(Total - $10,000)/2]</td>
<td>$25,861.13</td>
</tr>
<tr>
<td>$41,712.45</td>
<td>$25,861.13</td>
<td>$25,861.13</td>
</tr>
</tbody>
</table>

**Total Estimated Fee**: $67,583.68
EAST CONTRA COSTA COUNTY
HABITAT CONSERVANCY

DATE: October 22, 2018
TO: Governing Board
FROM: Conservancy Staff (Allison Cloney)
SUBJECT: Agreement Amendment with the Phillips 66 Pipeline, LLC for Line 200 Anomaly Investigation and Repair, Winter 2018 Project

RECOMMENDATION

Consider the following actions related to extending take coverage to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project:

a) FIND that on the basis of the whole record before the Conservancy that there is no substantial evidence that the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project and First Amendment as mitigated will have a significant effect on the environment and that the October 2018 Addendum to Initial Study/Mitigated Negative Declaration is adequate for the purpose of compliance with the California Environmental Quality Act (CEQA) and reflects the Conservancy’s independent judgement and analysis. ADOPT the October 2018 Addendum to Initial Study/Mitigated Negative Declaration prepared for the project;

b) AUTHORIZE staff to execute a First Amendment to the Participating Special Entity Agreement with Phillips 66 Pipeline, LLC for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project as further described in Addendum 1.0 to the Planning Survey Report, provided the Wildlife Agencies concur with the First Amendment; and

c) DIRECt staff to file a CEQA Notice of Determination with the County Clerk.

DISCUSSION

ITEM (a & c). California Environmental Quality Act (CEQA): The Board’s decision to authorize staff to execute a PSE Agreement and to extend take authorization under the First Amendment to the PSE Agreement to Phillips 66 Pipeline, LLC for the Phillips 66 Line 200

CONTINUED ON ATTACHMENT: Yes
ACTION OF BOARD ON: October 22, 2018
APPROVED AS RECOMMENDED: 

VOTE OF BOARD MEMBERS

AYES: 
NOES: 
ABSENT: 
ABSTAIN: 

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

ATTESTED

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

BY: ________________________________, DEPUTY
Anomaly Investigation and Repair, Winter 2018 Project is a discretionary action requiring analysis with respect to compliance with CEQA. As the Conservancy is the only agency required to take a discretionary action, the Conservancy is the lead agency pursuant to CEQA. The Conservancy adopted an Initial Study and Mitigated Negative Declaration (IS/MND) for the Project on June 4, 2018. Since the adoption of the IS/MND, Phillips 66 changed the location of a singular dig site from the previously approved project. The Conservancy prepared a CEQA Addendum in October 2018 which evaluated and addressed project modifications. This Addendum was prepared per Sections 15162 and 15164 of the CEQA Guidelines to analyze whether the changes to the approved project would result in any new or more significant environmental impacts, or new mitigation measures, as compared to what was analyzed and proposed in the IS/MND. The individual analysis of each CEQA impact is discussed in Section 3.0, Environmental Analysis, of the attached Addendum to the IS/MND. This analysis concludes that the revised project would not alter the conclusions reached in the impact analyses in the IS/MND. In sum, the project, with the proposed change, would result in the following impacts, which are the same as those that would occur under the previously approved project analyzed in the IS/MND.

- No impacts on agriculture and forestry resources, land use and planning, mineral resources, population and housing, public services, recreation, and utilities and service systems.

- Less-than-significant impacts on aesthetics, air quality, biological resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, noise, and transportation.

- Less-than-significant impacts with mitigation incorporated on cultural resources.

The revised project would not result in any significant and unavoidable impacts under CEQA.

**ITEM (b).** At the June 4, 2018 meeting, the Board authorized staff to execute a Participating Special Entity (“PSE”) Agreement with Phillips 66 Pipeline, LLC (“Applicant” or “Phillips 66”) for take coverage for the Phillips 66 Line 200 Anomaly Investigation and Repair, Winter 2018 Project. The project covered thirteen anomaly investigation and maintenance repair sites at seven dig sites along existing Line 200 Mainline trunk pipeline within eastern Contra Costa County. On June 14, 2018 the PSE Agreement was fully executed. The Applicant paid all mitigation fees and Contribution to Recovery (“CTR”) as required in the PSE Agreement, and was issued a Certificate of Inclusion.

One of repair sites, Dig J206,900 (Dig 500) was initially located adjacent to Sycamore Creek. Based on the projected anomaly location and pipeline depth Phillips 66 estimated that the work could be completed without impacting areas below the top-of-bank of Sycamore Creek. During recent work at a nearby anomaly (J206,880) the pipeline was exposed, and a reference weld was used to obtain a more accurate location of the Dig 500 anomaly. The new information placed the anomaly approximately six feet to the north and at the top-of-bank of the Creek. The workspace needed to access the anomaly and conduct the work now falls within the federal and state jurisdictional area of Sycamore Creek. Phillips 66 has begun the process to obtain coverage from the California Department of Fish and Wildlife and the Regional Water Quality Control Board for impacts to jurisdictional waters. As part of that process Phillips 66 is submitting this application for an amendment to the Winter 2018 Project to receive HCP/NCCP coverage for the
modified dig location. Dig 500 will result in temporary impacts to approximately 16 linear feet of stream channel, mainly along the eastern bank. Work will be conducted when surface flow in the stream is absent to limit the potential for water quality impacts, as well as reduce the potential for incidental take of listed species that might make use of the stream when wetted. The change in scope of the Dig 500 project will result in additional mitigation fees fee due to the Conservancy in the amount of $6,189.12 and an additional Contribution to Recovery (“CTR”) fee in the amount of $3,094.56. The PSE Agreement also provides that the applicant will reimburse the Conservancy for costs associated with processing the request for take coverage, up to a maximum reimbursement of $35,000.

Addendum 1.0 has been prepared and reflects the modifications to the original Planning Survey Report application. This Addendum 1.0 will be incorporated into the First Amendment to the PSE Agreement.

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

- Phillips 66 signs the First Amendment.
- Staff will ask the Wildlife Agencies to review the First Amendment and Addendum 1.0 and to concur that the First Amendment and Addendum 1.0 includes all applicable requirements of the HCP/NCCP with regard to the Project and imposes a duty on Phillips 66 to implement them. If, and only if, the Wildlife agencies concur, the Executive Director of the Conservancy will sign the First Amendment. Note: PSE agreements and any amendments thereof, unlike the granting of take authorization by a participating City or County, require concurrence from the Wildlife Agencies.
- Phillips 66 pays all required mitigation, CTR, and administrative costs (to-date, as set forth in an invoice to be provided to Phillips 66 by Conservancy staff), as outlined in the First Amendment.
- The Conservancy issues Phillips 66 an updated Certificate of Inclusion, consistent with the First Amendment. Take authorization would then be in effect, subject to the terms of the First Amendment to the PSE Agreement.
- Phillips 66 conducts pre-construction surveys to determine which species-specific avoidance and minimization measures are required during construction.
- Phillips 66 develops and submits a construction monitoring plan to the Conservancy in accordance to Section 6.3.3 of the HCP/NCCP.
- Phillips 66 implements the Project subject to the terms of the First Amendment.

Attachments:

- Addendum to Initial Study/Mitigated Negative Declaration
- First Amendment to the PSE Agreement, including:
  - Main body of the amendment
  - Addendum 1.0
DATE: October 22, 2018
TO: Governing Board
FROM: Conservancy Staff (Joanne Chiu)
SUBJECT: Viera North Peak Property Transfer

RECOMMENDATION

Consider the following items related to the Viera North Peak property:

a) AUTHORIZE staff to execute a Property Acquisition Agreement with the State of California regarding the donation and grant of the Viera North Peak property.

b) AUTHORIZE staff to record a conservation easement on the Viera North Peak property with Save Mount Diablo as the conservation easement holder.

DISCUSSION

Background and Overview
On April 25, 2016, the Governing Board authorized the Executive Director to begin negotiations with Save Mount Diablo for the acquisition of the Viera North Peak property. On September 8, 2016, Conservancy staff made a written offer to Save Mount Diablo based upon an appraisal of the fair market value of the Property and Save Mount Diablo accepted the offer. Save Mount Diablo and the Conservancy reached an agreement on terms for the purchase of the Property and the Governing Board authorized entering into an Option Agreement on December 9, 2016. Subsequently, the Conservancy exercised the Option Agreement and acquired the Property on July 24, 2017.

At the time of negotiations and the purchase of the Property, the Conservancy anticipated transferring the Property to State Parks to be incorporated into Mount Diablo State Park. The Conservancy received a letter of intent from State Parks stating their intent to accept the
Property, which was included as an attachment to the December 9, 2017 staff report for the Viera North Peak acquisition.

The HCP/NCCP requires that permanent protection of Preserve System lands owned by other entities (other than East Bay Regional Park District) must be ensured by a conservation easement ("CE"). Prior to transferring the Property to State Parks, the Conservancy must record a CE on title that permanently protects the biological functions and values for the HCP/NCCP. Throughout the land acquisition process the Conservancy has intended to have Save Mount Diablo as the CE holder. Save Mount Diablo has been approved by the USFWS and CDFW to hold mitigation land. The Conservancy also received a letter from Save Mount Diablo indicating their commitment to working with the Conservancy to hold the CE. This letter was also included as an attachment to the December 9, 2017 staff report for the Viera North Peak acquisition. Save Mount Diablo is a CDFW-approved holder and manager of mitigation lands within the Bay Delta Region, and is also approved by USFWS though the land trust alliance accreditation program. The CE agreement will be an exhibit to the Property Acquisition Agreement and the final form of the CE agreement for recording will be consistent with the Conservancy’s template CE as approved by USFWS and CDFW.

Save Mount Diablo has been the interim manager for the Property. As part of the terms of the Option Agreement, the Conservancy and Save Mount Diablo entered into an Agreement Regarding the Management, Monitoring, and Management Funding, for the Viera North Peak Property ("MMMFA"). Per the MMMFA, Save Mount Diablo agreed to manage and monitor the Viera North Peak property for the Conservancy for five years. Save Mount Diablo set up a restricted fund to pay for the long-term management, maintenance, and monitoring of the property. The MMMFA also states that if a CE over the property is granted to Save Mount Diablo, and if directed by the Conservancy, some or all of the remaining funds in the restricted fund will be dedicated to fund the monitoring, oversight, enforcement, and protection of rights established by the CE.

Cost/Funding
The Property’s purchase price was $1,080,000, funded 100% through state Proposition 84 funds (The Safe Drinking Water, Water Quality and Supply, Flood Control, and Coastal Protection Bond Act of 2006) and federal Section 6 grant (Cooperative Endangered Species Conservation Fund).

The proposed transfer of the Property to State Parks is at no cost to State Parks. State Parks will be paying for all escrow fees, recording fees, if any, title insurance charges, and any other escrow and recording charges incurred for the transaction.

Timeline
The parties expect the transaction to be completed in early 2019. The principal timing constraints will be the timing of the State’s process. Should the Conservancy Board approve entering into the Property Acquisition Agreement, then the Viera North Peak transfer will be placed on the December 14, 2018 State Public Works Board meeting agenda for consideration.
Conservancy Costs and Funding Sources
The Conservancy’s direct expenses related to the transfer are estimated to be $15,000. This calculation includes staff time and legal assistance. This transfer was contemplated and included in the Conservancy’s 2018 Budget.

Agreement
The Conservancy and State Parks will need to enter into a Property Acquisition Agreement, attached to this staff report as Attachment C.

Future Conservancy Actions
The Governing Board will need to approve a management plan that will replace the existing one for the Property.

Reasons for Recommendation
Staff recommends the transfer of the Property for the following reasons:

- Viera North Peak is a logical addition to the State Parks system for incorporation into Mount Diablo State Park.
- State Parks has demonstrated their willingness to accept the Property and Save Mount Diablo has demonstrated their willingness to be the CE holder.
- Save Mount Diablo has been approved by both USFWS and CDFW to hold conservation easements for Conservancy Preserve System properties.

Attachments:
- Attachment A – Location Map
- Attachment B – Land Cover Map
- Attachment C – Property Acquisition Agreement
Table 1. Land Cover Acreage of Viera North Peak

<table>
<thead>
<tr>
<th>Land Cover Type</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Grassland</td>
<td>2.52</td>
</tr>
<tr>
<td>Native Grassland</td>
<td>2.59</td>
</tr>
<tr>
<td>Chaparral/Scrub</td>
<td>103.89</td>
</tr>
<tr>
<td>Oak Savannah</td>
<td>9.71</td>
</tr>
<tr>
<td>Oak Woodland</td>
<td>50.01</td>
</tr>
<tr>
<td>Riparian Woodland</td>
<td>8.51</td>
</tr>
<tr>
<td>Rock Outcrops</td>
<td>0.59</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>177.82</strong></td>
</tr>
</tbody>
</table>

Legend:
- Study Area Boundary
- Annual Grassland
- Native Grassland
- Chaparral/Scrub
- Oak Savannah
- Oak Woodland
- Riparian Woodland
- Rock Outcrops

December 2017

Land Cover Types of Viera North Peak
East Contra Costa County
Habitat Conservancy

Sources: NAIP 2009; Contra Costa County Projection: NAD 83 UTM Zone 10 North.
PROPERTY ACQUISITION AGREEMENT

The parties to this agreement (Agreement) are EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY, hereinafter referred to as GRANTOR, and the State of California, acting by and through the STATE PUBLIC WORKS BOARD and the DEPARTMENT OF PARKS AND RECREATION, collectively hereinafter referred to as STATE or individually as SPWB and PARKS, respectively. The GRANTOR and STATE are hereafter collectively referred to as the PARTIES. The PARTIES agree as follows:

RECITALS

A. STATE owns that certain real property located in Contra Costa County, identified as Mt. Diablo State Park, California.

B. GRANTOR desires to grant to STATE, and STATE desires to acquire from GRANTOR certain real property located adjacent to Mt. Diablo State Park, County of Contra Costa, State of California (the “Property”), as Property consisting of 165.30 acres and is more particularly described in Exhibit A, attached and made a part hereto. Prior to Grantor conveying the property to the State it will convey a Conservation Easement to the previous owner, SAVE MOUNT DIABLO, a California nonprofit public benefit corporation (SMD), as described in Exhibit “C”.

C. GRANTOR acquired the property from SMD, which in turn acquired the property by Grant Deed from David F. Viera, Barbara J. Perley and Mary Delamater, as Trustees of the Lucy E. Viera Trust, recorded September 9, 2009, as Document No. 2009-0214593-00, in Contra Costa County.

D. In accordance with Government Code 15853 and pursuant to Chapter 10, Budget Act of 2015, Item 3790-301-6029, the State is authorized to acquire the Property.

AGREEMENT

In consideration of the foregoing Recitals and for other good and valuable consideration, the PARTIES agree as follows:

1. **Transaction Summary.** GRANTOR agrees to donate and grant to STATE fee title to the Property described in Exhibit A, and conveyed by a grant deed substantially in the form of Exhibit B, attached, subject to terms and conditions hereof.

2. **Payment.** This is a no-cost acquisition to the STATE, and escrow will be handled through Old Republic Title Company, as further described in Paragraph 5 below, subject to the conditions outlined in this Agreement.
3. **Other Liens.** Said title company may expend any or all monies payable under this Agreement to discharge any obligations which are liens upon the Property, including but not limited to those arising from judgments, assessments, taxes, or debts secured by deeds of trust or mortgages and/or to defray any other incidental costs other than those specified in Paragraph 4 hereof to be borne by the STATE. Property taxes for the fiscal year in which this escrow closes, if due, shall be paid by GRANTOR in escrow to and including the date of close of escrow. The payment shall be based on the most recent information applicable to the fiscal year and obtainable through the taxing agencies. GRANTOR may seek a Welfare Tax Exemption to exempt itself from property taxes on the Property. STATE shall not be responsible for any tax refund, except as to any refund of funds paid to the STATE and subject to refund to GRANTOR per GRANTOR’s Welfare Tax Exemption for the period of GRANTOR’S ownership of said Property.

4. **Escrow and Recording Fees.** STATE shall pay all escrow fees, recording fees, if any, title insurance charges, prepayment penalties not to exceed one percent (1%) of the unpaid balance, reconveyance fees, trustees’ or forwarding fees for any reconveyance of deed of trust or release or mortgage incurred in this transaction.

5. **Title and Escrow.** Title to said Property shall pass immediately upon close of escrow. The issuance of any escrow instructions shall be the sole responsibility of the STATE and shall govern the escrow. STATE has opened an escrow account with Old Republic Title Company (Escrow Holder), 1000 Burnett Ave., Concord, CA 94520, (925) 687-7880; Order Number 0111015749-MR.

6. **Close of Escrow.** Escrow shall be scheduled to close on or before sixty (60) days after the authorization of the acquisition by SPWB at a duly noticed public meeting and approval by the Director of the Department of General Services (DGS), subject to reasonable extension upon mutual agreement by the PARTIES.

7. **Grantor’s Conditions Precedent.** GRANTOR’s obligation to perform under this Agreement and the Close of the Escrow shall be subject to and contingent upon satisfaction of each of the following conditions precedent prior to the close of escrow:
   
a. The timely deposit by STATE with Escrow Holder of all documents and funds required to be deposited by STATE under this Agreement.

b. Performance by STATE of all obligations, covenants and agreements on STATE’s part to be performed under this Agreement within the time provided in this Agreement for such performance.

c. GRANTOR’S grant of a Conservation Easement on the Property to SMD, which Conservation Easement shall be in a form approved in advance by STATE.

8. **State’s Conditions Precedent.** STATE’s obligation to perform under this Agreement and the Close of Escrow shall be subject to and contingent upon satisfaction of each of the following conditions precedent prior to the Close of Escrow:

a. The timely deposit by GRANTOR with Escrow Holder of all documents required to be deposited by GRANTOR under this Agreement.
b. Performance by GRANTOR of all obligations, covenants and agreements on
GRANTOR’s part to be performed under this Agreement within the time provided
in this Agreement for such performance.

c. Authorization of the acquisition by the SPWB at a duly noticed public meeting and
approval of this Agreement by the Director of the California Department of
General Services.

9. Grantor’s Representations and Warranties. In addition to any express agreements of
GRANTOR contained herein, the following constitute representations and warranties of
GRANTOR to STATE:

a. Representations Regarding Grantor’s Authority.

(1) GRANTOR has full right, power and legal authority to enter into this
Agreement, donate, transfer and convey the Property to STATE under this
Agreement and to carry out GRANTOR’s obligations under this
Agreement. Upon the Close of Escrow, STATE will have good,
marketable and insurable title to the Property.

(2) The individuals executing this Agreement and the instruments referenced
herein on behalf of GRANTOR have the legal power, right and actual
authority to bind GRANTOR to the terms hereof and thereof.

(3) This Agreement is, and all other instruments, documents and agreements
required to be executed and delivered by GRANTOR in connection with
this Agreement are and shall be, duly authorized, executed and delivered
by GRANTOR and shall be valid, legally binding obligations of and
enforceable against GRANTOR in accordance with their terms, subject
only to enforcement that may be limited by applicable bankruptcy,
insolvency or similar laws, and do not, and as of the Close of Escrow will
not, violate any provisions of any agreement, law, rule, regulation or
judicial order to which GRANTOR or the Property is subject.

(4) All requisite action (corporate, trust, partnership or otherwise) has been
taken by GRANTOR in connection with the entering into this Agreement,
the instruments referenced herein, and the consummation of the
transactions contemplated hereby. No consent of any partner,
shareholder, creditor, investor, judicial or administrative body, or other
party is required.

(5) Neither the execution and delivery of this Agreement and documents
referred to herein, nor the incurrence of the obligations set forth herein,
or the consummation of the transactions herein contemplated, nor
compliance with the terms of this Agreement and the documents
referred to herein conflict with or result in the material breach of any
terms, conditions or provisions of, or constitute a default under, any bond,
note, or other evidence of indebtedness or any contract, indenture,
mortgage, deed of trust, loan, partnership agreement, lease or other
agreements or instruments to which GRANTOR is a party or affecting the
Property.
b. Warranties and Representations Pertaining to Real Estate and Legal Matters.

To the best of GRANTOR’s actual knowledge as to the matters set forth in Paragraphs (1) through (5):

(1) There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending against the Property or pending against GRANTOR which could affect GRANTOR’s title to the Property, affect the value of the Property, or subject an owner of the Property to liability.

(2) There are no attachments, execution proceedings, or assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending against GRANTOR.

(3) GRANTOR has not entered into any other contracts for the sale of the Property, nor does there exist any rights of first refusal, reversions, or options to purchase the Property or any portion of the Property.

(4) As of the Close of Escrow, there are no unrecorded leases, licenses or other agreements, other than the Conservation Easement described in paragraph 7(C) above, and the existing lease which provides access rights to Robert LaRue Properties LLC, for the operation and maintenance of his telecom site on an adjoining but separate parcel of land. Said lease will be assigned to STATE in escrow and provides an annual rental rate of approximately $692.50.

(5) There are no and have been no:

   (i) actual or pending public improvements which will result in the creation of any liens upon the Property, including public assessments or mechanics liens and GRANTOR agrees to indemnify, defend and hold STATE free and harmless from and against any claims, liabilities, losses, costs, damages, expenses and attorneys’ fees arising from any liens, encumbrances or assessments that have been, or may be, imposed upon the Property as a consequence of actual or impending public improvements as of the Close of Escrow, including any obligations to pay a fee or assessment for infrastructure to the extent such liability survives or continues after the Close of Escrow, and STATE agrees to cooperate with GRANTOR, at GRANTOR’s costs and to the extent permitted by law, with respect to GRANTOR’s efforts to remove any such liens, fees, assessments, or encumbrances.

   (ii) Uncured notices from any governmental agency notifying GRANTOR of any violations of law, ordinance, rule, or regulation, including Environmental Laws, occurring on the Property.

c. Warranties, Representations and Covenants Regarding Operation of the Property through Close of Escrow.

(1) GRANTOR hereby agrees that GRANTOR will not hereafter enter into new leases or any other obligations or agreements affecting the Property
without the prior written consent of STATE, which consent the STATE may withhold or grant in its absolute discretion.

(2) GRANTOR will not subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters after the date of this Agreement that will not be eliminated prior to the Close of Escrow.

(3) GRANTOR shall promptly notify STATE of any event or circumstance that makes any representation or warranty of GRANTOR under this Agreement untrue or misleading or of any covenant of GRANTOR under this Agreement incapable or less likely of being performed. It is understood that the GRANTOR’s obligation to provide notice to STATE shall in no way relieve GRANTOR of any liability for a breach by GRANTOR of any of its representations, warranties or covenants under this Agreement.

d. Representsations Pertaining to Additional Documents. To the best of GRANTOR’s actual knowledge, as of the Close of Escrow there are no leases, subleases or tenancies in effect pertaining to the Property other than the Conservation Easement described in paragraph 7(C) above, and the existing lease which provides access rights to Robert LaRue Properties LLC, for the operation and maintenance of his telecom site on an adjoining but separate parcel of land. Said lease will be assigned to STATE in escrow and provides an annual rental rate of approximately $692.50.

e. General Representation. No representation, warranty or statement of GRANTOR in this Agreement or in any document, certificate or schedule furnished or to be furnished to STATE pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

GRANTOR’s representations and warranties made in this Agreement shall be continuing and shall be true and correct on the date of the Close of Escrow with the same force and effect as if remade by GRANTOR in a separate certificate at that time. The truth and accuracy of GRANTOR’s representations and warranties made herein shall constitute a condition for the benefit of STATE to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

10. State’s Representations and Warranties. In addition to any express agreements of STATE contained herein, the following constitute representations and warranties of STATE to GRANTOR, subject to Paragraph 25 of this Agreement:

a. Representations Regarding STATE’s Authority.

(1) STATE has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.
(2) The individuals executing this Agreement and the instruments referenced herein on behalf of STATE have the legal power, right, and actual authority to bind STATE to the terms and conditions hereof and thereof, subject to the conditions in Paragraph 25 below.

(3) This Agreement is, and all other instruments, documents and agreements required to be executed and delivered by STATE in connection with this Agreement are and shall be, duly authorized, executed and delivered by STATE and shall be valid, legally binding obligations of and enforceable against STATE in accordance with their terms.

b. **General Representation.** No representation, warranty or statement of STATE in this Agreement or in any document, certificate or schedule furnished or to be furnished to GRANTOR pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements or facts contained therein not misleading.

STATE’s representations and warranties made in this Agreement shall be continuing and shall be true and correct on the date of the Close of Escrow with the same force and effect as if remade by STATE in a separate certificate at that time. The truth and accuracy of STATE’s representations and warranties made herein shall constitute a condition for the benefit of GRANTOR to the Close of Escrow (as elsewhere provided herein) and shall not merge into the Close of Escrow or the recordation of the Grant Deed in the Official Records, and shall survive the Close of Escrow.

12. **Additional Terms of Sale.**

a. **Loss, Destruction and Condemnation.** The PARTIES agree that the following provision shall govern the risk of loss, destruction and condemnation:

   If, before GRANTOR transfers legal title or possession of the Property, all or a material part of the Property is destroyed without fault of STATE, or is taken by eminent domain by any governmental entity, STATE shall be entitled to terminate its obligations under this Agreement by written notice to GRANTOR and GRANTOR shall not have the right to enforce against STATE this Agreement. If STATE does not elect to terminate this Agreement, then STATE shall, as applicable, either: (a) proceed to close as provided herein, or (b) proceed to close as provided herein with an assignment, as applicable, by GRANTOR of all of the GRANTOR’s rights, title and interest in and to all such eminent domain awards and proceeds. GRANTOR will promptly notify STATE in writing of any eminent domain proceedings affecting the Property.

b. Any title evidence, which may be desired by the STATE, will be procured by STATE. The GRANTOR will cooperate with the STATE or its authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises and the Property involved, as it may have available. It is understood that the GRANTOR will not be obligated to pay for any expense incurred in connection with title matters or survey of the Property.
c. If this Agreement is accepted, the GRANTOR shall convey to the STATE by a Grant Deed, title to the real property identified as APN 078-110-005, consisting of approximately 165.30 acres in Contra Costa County. Subject to the provisions of the escrow instructions, yet to be prepared, the conveyance is subject to the Property vesting in STATE, free and clear of all liens, unknown leases, reservations, encumbrances, assessments, easements, of record or otherwise, and of taxes, except:

2. A Conservation Easement as described in paragraph 7(C) above.
3. Assignment of Robert LaRue Properties, LLC, access Lease (identified as item number 6, in the schedule B of the above described Preliminary Title Report.

13. Relocation Assistance. GRANTOR hereby warrants that said Property is not owner or tenant occupied. GRANTOR warrants that there have been no tenants on the Property nor any agreements or leases entered into for use of the Property since the initiation of negotiations.

14. Access to Property. STATE shall be provided with access to the Property and be entitled to undertake, at STATE’s sole expense, an inspection of the Property; a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, hazardous substances, biological resources, archaeological information, and water resources, if any, relating to the Property; and a review and investigation of the effect of zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property, if any.

15. Indemnification. GRANTOR agrees, at its sole cost and expense, to indemnify, protect, defend and hold harmless STATE and its officers, employees and agents, from and against any and all claims (including, without limitation, personal injury and consequential damages claims), demands, damages, losses, liabilities, obligations, penalties, fines, actions, cause of action, judgments, suits, proceedings, costs and expenses (including, without limitation, attorneys’ fees, court costs, administrative procedural costs and experts’ fees) of any kind or nature whatsoever which may at any time be imposed upon, incurred or suffered by, or asserted or awarded against, STATE relating to or arising from (i) the presence, use, handling, generation, storage, release or disposal of Hazardous Materials by GRANTOR or GRANTOR’s lessee’s, on under or about the Property; (ii) the cost of any required or necessary remediation, repair, cleanup or detoxification and the preparation of required plans as a result of the presence, use, generation, storage, release, threatened release or disposal of Hazardous Materials by any person on the Property prior to transfer of title thereto to STATE, whether or not such remedial action is required or necessary prior to or following transfer of title to Property to STATE; and (iii) the use on or before the Close of Escrow of the Property by any third party, including, without limitation, any invitee or licensee of GRANTOR, and (iv) the violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property prior to the transfer of title to the Property to STATE. For the purpose of this Paragraph, Hazardous Materials shall include, without limitation, substances defined as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic substances”, “extremely hazardous waste” or “restricted hazardous waste” or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive
Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; and any substances regulated pursuant to any Environmental Law(s). The term “Environmental Law(s)” means each and every applicable federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority pertaining to the protection of human health and safety or the environment.

Notwithstanding anything to the contrary, GRANTOR’S obligations to indemnify STATE shall apply only to the extent that the actions or activities described in Section 15(i) through (iv), inclusive, occurred either during GRANTOR’S ownership of the Property, or because GRANTOR had actual knowledge of the action or activity prior to Close of Escrow and failed to disclose such action or activity to STATE.

This indemnity by GRANTOR herein contained shall survive the transfer of title to STATE in perpetuity.

16. Notices. Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed or sent by wire or other telegraphic communication in the manner provided in this Agreement, to the following persons:

To GRANTOR:  Abigail Fateman (925) 674-7820
              East Contra Costa County Habitat                         Abigail.Fateman@dcd@cccocode.us
              Conservancy
              30 Muir Road
              Martinez, CA  94553

To STATE: Department of Parks and Recreation (916) 327-7300
           Acquisition and Real Property Services Div.
           One Capitol Mall, Suite 410 (916) 327-7307 fax
           Sacramento, CA  95814

17. Calculation of Time. Under this Agreement, when the day upon which performance would otherwise be required or permitted is a Saturday, Sunday or holiday, then the time for performance shall be extended to the next day which is not a Saturday, Sunday or holiday. The term “holiday” shall mean all and only those State holidays specified in Sections 6700 and 7701 of the California Government Code.

18. Time of Essence. Time is of the essence of this Agreement and each and every provision hereof.
19. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any provision of this Agreement.

20. Entire Agreement. This Agreement shall constitute the entire understanding and agreement of the Parties hereto regarding the purchase and sale of the Property and all prior agreements, understandings, representations or negotiations are hereby superseded, terminated and canceled in their entirety, and are of no further force or effect.

21. Amendments. This Agreement may not be modified or amended except in writing by the PARTIES.

22. Applicable Law. The PARTIES hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The PARTIES hereto expressly agree that this Agreement shall in all respects be governed by the laws of the State of California.

23. Severability. Nothing contained herein shall be construed as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the PARTIES have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

24. Legislative Approval. Any obligation of the STATE created by or arising from this Agreement shall not impose a debt upon the STATE, but shall be payable solely out of funds duly authorized and appropriated by the California State Legislature.

25. Authorization, Approvals, Binding Nature. This Agreement has no force and effect and is not binding on the State of California until and unless it is approved by the California Department of General Services [Government Code section 11005] and authorized by the SPWB [Government Code section 15853].

26. Separate Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

27. Captions, Number and Gender. The captions appearing at the commencement of the paragraphs, subparagraphs and sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the article, paragraph or subparagraph at the head of which it appears the article, paragraph or subparagraph and not the caption shall control and govern the construction of this Agreement. In this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others whenever the context so requires.

28. Survival. All terms and conditions in this Agreement, which represent continuing obligations and duties of the PARTIES, that have not been satisfied prior to Close of Escrow shall survive Close of Escrow and transfer of title to STATE and shall continue to be binding on the respective obligated party in accordance with their terms. All representations and warranties and statements made by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Close of Escrow, shall be deemed
to be material, and, together with all conditions, covenants and indemnities made by
the respective parties contained herein or made in writing pursuant to this Agreement
(except as otherwise expressly limited or expanded by the terms of this Agreement),
shall survive the execution and delivery of this Agreement and the Close of Escrow,
or, to the extent the context requires, beyond any termination of this Agreement.

29. **Further Action.** Each party hereto shall, before the Close of Escrow, duly execute
and deliver such papers, documents and instruments and perform all acts reasonably
necessary or proper to carry out and effectuate the terms of this Agreement.

30. **Facsimile Signatures.** Facsimile signatures shall not be accepted unless prior
agreement is obtained in writing by both PARTIES. If agreed that facsimile
signatures are acceptable, they will be treated as original signatures; however, in no
instance shall facsimile signatures be accepted on any document to be recorded.
Such documents must bear original signatures.

31. **Exhibits.** The following Exhibits are attached to this Agreement and incorporated by
reference herein.

   - Exhibit A: Property Description
   - Exhibit B: Deed with attached Certificate of Acceptance
   - Exhibit C: Conservation Easement
IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

GRANTOR:

EAST CONTRA COSTA COUNTY HABITAT
CONSERVANCY

By: ________________________________ Date: ____________
Abigail Fateman
Executive Director

STATE:

STATE OF CALIFORNIA
State Public Works Board

By: ________________________________ Date: ____________
Andrea Scharffer, Deputy Director

APPROVED:

STATE OF CALIFORNIA
Director, Department of General Services

By: ________________________________ Date: ____________
Michael P. Butler, Chief
Real Property Services Section

CONSENT:

Department of Parks and Recreation

By: ________________________________ Date: ____________
Brian Dewey, Assistant Deputy Director
Acquisition and Development

APPROVAL RECOMMENDED:

Department of Parks and Recreation

By: ________________________________ Date: ____________
Kelley Di Pinto, Chief
Acquisition and Real Property
Services Division
EXHIBIT A
LEGAL DESCRIPTION

PARCEL ONE:
Lots 1, 2 and 3, and the Northwest ¼ of the Southeast ¼ of Section 32, Township 1 North Range 1 East, Mount Diablo Base and Meridian.

EXCEPTING THEREFROM: "All oil, gas, casinghead gas, asphaltum and other hydrocarbons and all chemical gas now or hereafter found, situated or located in all or any part of said lands lying more than five hundred feet (500') below the surface thereof, together with the right to slant drill for and remove all or any of said oil, gas, casinghead gas, asphaltum and other hydrocarbons and chemical gas, lying below a depth of more than five hundred (500') feet of the surface of the land described herein, including the right to grant leases for any or all of said purposes, but without any right whatsoever to enter upon the surface of said land, or upon any part of said land, within five hundred (500') feet of the surface thereof.", as reserved in the deed from David F. Viera, Barbara J. Perley and Mary Delamater, trustees of the Lucy E. Viera Trust U/A 10/5/84, recorded September 9, 2009, Series No. 2009-214593 of Official Records.

APN: 078-110-005

PARCEL TWO:

PARCEL THREE: