

# **SB 34 Advance Mitigation Land Acquisition Grants Program**

## ***Program Guidelines***

Prepared by

**California Department of Fish and Game,**

for the

**Desert Renewable Energy Conservation Plan**

**September 2010**



California Energy  
Commission



Department of  
Fish and Game

# Table of Contents

<b>SB 34 Advance Mitigation Land Acquisition Grants Program .....</b>	<b>3</b>
<b>Introduction .....</b>	<b>3</b>
<b>Purpose and Objectives .....</b>	<b>4</b>
<b>Definitions.....</b>	<b>6</b>
<b>Eligible Grant Recipients and Partners .....</b>	<b>11</b>
<b>Eligible Costs.....</b>	<b>11</b>
<b>Eligible Compensatory Mitigation Actions.....</b>	<b>11</b>
<b>A. Habitat Acquisition. ....</b>	<b>13</b>
<b>B. Habitat Enhancement: .....</b>	<b>13</b>
<b>C. Restoration: .....</b>	<b>14</b>
<b>Administrative Process .....</b>	<b>14</b>
<b>APPENDIX 1. SB 34 Agreement Template.....</b>	<b>178</b>
<b>APPENDIX 2. Land Acquisition/CE Ranking Criteria .....</b>	<b>49</b>
<b>APPENDIX 3. Land Acquisition Checklist .....</b>	<b>52</b>
<b>APPENDIX 4. Certificate of Visual Inspection.....</b>	<b>57</b>

# SB 34 Advance Mitigation Land Acquisition Grants Program

## *Introduction*

Senate Bill X8 34 (Padilla) (SB 34, codified as Section 2069 of the Fish and Game Code), was enacted on March 22, 2010 to facilitate project mitigation actions for certain proposed renewable energy projects in the California desert that are seeking federal American Recovery and Reinvestment Act (ARRA) funding. Among other things, the bill provides for eligible project developers to pay in-lieu fees that would then be used by the Department of Fish and Game (DFG) to acquire and restore habitat as mitigation for project impacts to endangered, threatened, and candidate plant and animal species under the California Endangered Species Act (CESA) (paragraph (2) of subdivision (b) of Section 2081 of the Fish and Game Code). The bill authorizes DFG, in consultation with the California Energy Commission (CEC), U.S. Bureau of Land Management (BLM), and the U.S. Fish and Wildlife Service (USFWS) (collectively the Renewable Energy Action Team, or REAT Agencies) to design and implement advanced mitigation actions, including the purchase of land and conservation easements to protect, restore, and enhance the habitat of plants and wildlife. The SB 34 Advance Mitigation Land Acquisition Grants Program was created to provide grants to third parties (“eligible entity”) to implement these advance mitigation actions, as described in the Interim Mitigation Strategy (IMS, September 2010).

Land purchased as part of the advance mitigation option under the bill is intended to provide credit towards the compensatory mitigation requirements of projects eligible to participate in the provisions of the bill. In this sense, the advance mitigation lands purchased through the Bill’s revolving fund will act as a conservation bank designed to service the eligible projects. By pooling the land acquisition requirements for several eligible projects, the REAT can maximize the benefits of advance mitigation land purchases by targeting areas that provide intrinsic habitat values, essential connectivity, ecosystem service values, and further the goals and objectives of the DRECP.

Many of the projects eligible for participation in the beneficial elements of the bill are undergoing environmental review through the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), or may be subject to review under the CEC certification process and BLM Right of Way (ROW) process. These processes may result in mitigation, including the possibility of compensatory mitigation, separate from the CESA mitigation addressed in SB 34. The REAT agencies anticipate

that most, if not all, of the land-based mitigation or restoration requirements arising from review under separate processes could be implemented as part of the land acquisition for mitigation of impacts to listed species.

At the time of this publication, eligible projects are in various stages of review and approval creating some uncertainty regarding actual mitigation requirements. However, land acquisition, as part of a comprehensive mitigation plan that meets the CESA full mitigation requirement, is a consistent method for offsetting permanent impacts to these species and lends some predictability for purposes of implementing an advance mitigation program. Final project mitigation requirements are not known at this time but will be applied to advance-purchased mitigation actions as agreed upon by the REAT agencies.

### ***Purpose and Objectives***

The purpose and objectives of the SB 34 Advance Mitigation Land Acquisition Grants Program are:

1. To forward the advance mitigation objectives of the IMS (September 2010), pursuant to SB 34, by which the DFG, working with the REAT agencies, identifies and purchases mitigations lands that act as a land bank, available to be credited to qualified projects, to meet all or a portion of their mitigation obligations. This will be implemented through use of a \$10 million dollar revolving fund established by SB 34 (The Renewable Energy Resources Fund), with expenditures to be reimbursed from the participating projects' mitigation fees.
2. To provide grant funding to "eligible applicants", i.e., qualified third parties, to assist DFG and REAT agencies in implementing these advance mitigation actions, including land purchase and interim management.
3. To forward a regional planning perspective that provides a foundation for or that will complement, any conservation strategy to be developed for the DRECP, and will be incorporated into the DRECP.
4. To further the following goals of the DRECP Planning Agreement (May 2010) and the IMS (Sacramento 2010), including:
  - a. Provide for the long-term conservation and management of Covered Species (i.e. species listed as endangered, threatened, or candidate

under ESA and CESA) within the Planning Area. These species include, but are not limited to:

- Mojave desert tortoise (*Gopherus agassizii*), ESA: Threatened; CESA: Threatened.
- Mojave ground squirrel (*Spermophilus mohavensis*), CESA: Threatened.
- Flat-tailed horned lizard (*Phrynosoma mcallii*), ESA: Candidate; DFG: Species of Special Concern.
- California condor (*Gymnogyps californianus*), ESA: Endangered, CESA: Endangered, DFG: Fully Protected.
- Peninsular bighorn sheep (*Ovis canadensis nelsoni*), ESA: Endangered; CESA: Threatened
- Lizard, Coachella Valley fringe-toed (*Uma inornata*), ESA: Threatened; CESA: Endangered
- California condor (*Gymnogyps californianus*), ESA: Endangered; CESA: Endangered, California Fully Protected
- Bald eagle (*Haliaeetus leucocephalus*), CESA: Endangered, California Fully Protected
- Golden Eagle (*Aquila chrysaetos*), California Fully Protected
- Swainson's hawk (*Buteo swainsoni*), CESA Threatened
- Southwestern willow flycatcher (*Empidonax traillii extimus*), ESA: Endangered; CESA: Threatened
- Yuma Clapper rail (*Rallus longirostris yumanensis*), ESA: Endangered; CESA: Threatened, California Fully Protected
- Amargosa vole (*Microtus californicus scirpensis*), ESA: Endangered; CESA: Endangered
- Inyo California towhee (*Pipilo crissalis eremophilus*), ESA: Threatened; CESA: Threatened
- Mohave Tui chub (*Gila bicolor mohavensis*), ESA: Endangered; CESA: Endangered
- Desert pupfish (*Cyprinodon macularius*), ESA: Endangered; CESA: Endangered

- b. Preserve, restore, and enhance natural communities and ecosystems that support Covered Species within the Planning Area.
- c. To maximize the protection of habitat values, connectivity, ecological integrity, and ecological processes in the California desert region.

## **Definitions**

To achieve the purpose and objectives of the SB 34 Advance Mitigation Land Acquisition Grants Program, the following terms have the following meaning:

**“Acquisition”** means the purchase or donation of a fee interest or any lesser interest in real property including easements and development rights.

**“Action Area”** means all areas that will be affected directly or indirectly by the Covered Activities and not merely the immediate area involved in the action.

**“Advance mitigation”** means mitigation implemented before, and in anticipation of, future impacts to natural resources

**“American Recovery and Reinvestment Act (ARRA)”** is an economic stimulus bill passed by President Obama in February 2009. Program grants are distributed through a variety of agencies, and will contribute to projects in education, public infrastructure, public transportation, criminal justice, health care, and renewable energy. To be covered under SB 34, the developer or owner of the proposed powerplant or generation facility has applied for, and would qualify for, funding under the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5). For purposes of this subparagraph, “funding” means a loan guarantee made pursuant to Section 406 of the act (42 U.S.C. Sec. 16516) or a grant for specified energy property in lieu of a tax credit provided pursuant to Section 1603 of Division B of the act, which division is titled the American Recovery and Reinvestment Tax Act of 2009.

**“Biological Opinion”** means a document prepared by the USFWS pursuant to 50 C.F.R 402.14 at the conclusion of formal consultation under section 7(a)(2) of the FESA.

**“Certification”** means the issuance of a certificate by the California Energy Commission pursuant to its exclusive power to certify all sites and related facilities in the state under the California Public Resources Code section 25500.

**"CEQA"** means the California Environmental Quality Act, Public Resources Code, section 21000, et seq.

**"CESA"** means the California Endangered Species Act, California Fish and Game Code, section 2050, et seq.

**"Compatible Use"** is any use which does not significantly detract from the use of the property for, and may include, but not be limited to, any of the following:

- Management for watershed health and sustainability.
- Management for fish and wildlife habitat
- Management for hunting and fishing.

**"Compensatory Mitigation"** is the restoration, creation, enhancement, or in exceptional circumstances, preservation of habitat for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (adapted from Federal Register, Vol.65, No.47 with reference to wetland mitigation under the jurisdiction of the USACE)

**"Competitive Renewable Energy Zone"** or **"CREZ"** means a geographic area that can be developed in the most cost effective and environmentally benign manner to produce between 250 megawatts (MW) and 10,000 MW of renewable energy, as identified under the RETI process.

**"Conservation Easement"** means a legal agreement between a landowner and an eligible organization that restricts future activities on the land to protect its conservation values and is defined by Section 815.1 of the Civil Code.

**"Covered Activities"** means those certain activities that will be addressed in the DRECP and for which Take Authorization may be issued by the Wildlife Agencies pursuant to the California Fish and Game Code (section 2835) and/or the FESA, and/or by the CEC pursuant to the Warren-Alquist Act.

**"Covered Species under the DRECP"** means those plant and animal species, whether or not they are Listed Species, which are identified as such in the DRECP, the conservation and management of which are provided for in the DRECP, and the Take of which may be authorized in accordance with the NCCPA and/or the Warren-Alquist Act, and/or the FESA.

**“Covered Species under SB 34”** means listed plant and animal species, i.e., endangered, threatened, or candidate species, the take of which may be authorized in accordance with the NCCPA and/or the Warren-Alquist Act, and/or the FESA.

**“DRECP”** means the Desert Renewable Energy Conservation Plan. The DRECP is a Natural Community Conservation Plan which will help provide for effective protection and conservation of desert ecosystems while allowing for the appropriate development of renewable energy projects. The final DRECP will provide long-term endangered species permit assurances, facilitate the California Renewables Portfolio Standard, and provide a process for conservation funding to implement the DRECP. The DRECP will also serve as the basis for one or more HCP’s under the FESA, and provide biological information necessary for consultation under Section 7 of the FESA.

**“Ecological Integrity”** means the capability of the ecosystem to:

- Maintain its productive capacity, including the ability to fix carbon, cycle water, and retain nutrients.
- Maintain the composition, structure, and characteristics of the native desert habitat type.
- Recover from stress and disturbance within an ecologically-acceptable time frame comparable to that of natural desert habitat.

**“Eligible Entity”** means any public or private organization qualified to hold interests in real property, qualified as a tax-exempt entity under IRC Section 501 (c)(3), and which has as their primary mission the preservation and conservation of land.

**“Eligible Projects”** are projects that meet the criteria of subdivision (b) of section 2069 of the Fish and Game Code (SB 34).

**“Executive Order”** means Executive Order S-14-08 of the Governor of the State of California.

**“ESA”** means the federal Endangered Species Act, 16 United States Code section 1530, et seq.

**“Habitat Conservation Plan”** or **“HCP”** means a plan prepared pursuant to section 10(a)(2)(A) of the FESA.

**“Implementing Agreement”** or **“IA”** means the agreement required pursuant to Fish and Game Code section 2820(b) and authorized under 16 U.S.C. section 1539(a)(2)(B). The Implementing Agreement for the DRECP was published in May 2010.

**“Listed Species”** means those species designated as candidate, threatened, or endangered pursuant to the CESA and/or listed as threatened or endangered under the FESA.

**“Long-Term Agreement”** means a binding contractual agreement between a landowner, an eligible applicant (as defined), and the Department of Fish and Game, whereby the landowner agrees to manage and maintain habitat improvements or restoration efforts for a designated period of time. Restoration grants are not awarded directly to a private landowner. Restoration projects must be coordinated with an eligible applicant who will receive the grant funds necessary to coordinate and implement the restoration effort.

**“Natural Community Conservation Plan”** or **“NCCP”** means a plan prepared pursuant to the NCCPA.

**“NCCPA”** means the Natural Community Conservation Planning Act, California Fish and Game Code, section 2800, et seq.

**“NEPA”** means the National Environmental Policy Act, 42 United States Code section 4321, et seq.

**“Nonprofit Organization”** means any nonprofit corporation qualified to do business in California, and qualified under Section 501(c)(3) of the Internal Revenue Code.

**“Permanent Protection”** means the land is dedicated to the goals of the SB 34 Advance Mitigation Land Acquisition Grants Program and the DRECP in perpetuity through control of fee interests or other interest in the real property including, but not limited to, easements, development rights, water rights, and/or mineral rights.

**“Planning Area”** means the geographic area that the DRECP proposes to cover, as described in the DRECP Implementation Agreement Section 4 (Figure 1).

**“Project Proponent”** means an entity that, as part of developing Renewables Portfolio Standards projects, seeks to engage in Covered Activities.

**“Qualified Project”** is a project meeting the criteria identified in SB 34 for which mitigation actions may be conducted under the SB 34 Advance Mitigation Land Acquisition Grants Program, and which were identified in the DRECP Interim Mitigation Strategy (June 2010). These projects include solar thermal and solar photovoltaic projects that:

1. Are within the boundary of the DRECP,

2. Have self-identified as seeking ARRA funding, and
3. Have by February 1, 2010 either:
  - a. been deemed data adequate by the CEC,
  - b. published a Notice of Preparation under the California Environmental Quality Act (CEQA), or
  - c. submitted a complete permit application for local government project approval.

**“REAT”** means the Renewable Energy Action Team, which consists of the DFG, CEC, BLM and USFWS, and which was established pursuant to MOU’s between State agencies, and between State and federal agencies and recognized in Executive Order S-14-08, issued by the Governor of California in November 2008. The duties of the REAT were further addressed in the MOU signed by the Secretary of the U.S. Department of the Interior and the Governor of California in October 2009.

**“Reserve”** means an area that is set aside for the protection of certain fauna, flora, other ecosystem services or some combination thereof. Reserves are managed primarily to safeguard these features or functions while providing for other compatible uses.

**“Restoration”** is the process of assisting the recovery of habitat-appropriate species composition, stand structure, and patterns of natural disturbance and ecological processes, to more closely approximate reference conditions. The primary focus of such restoration actions is to recover ecological integrity in order to minimize the need for future intervention. Restoration projects shall include the planning, monitoring and reporting necessary to ensure successful implementation.

**“RETI”** means the Renewable Energy Transmission Initiative, a statewide initiative to identify transmission projects to accommodate renewable energy goals, facilitate transmission corridor designation, facilitate transmission and generation siting and permitting, and support future energy policy.

**“Take Authorization”** means authorization issued by the USFWS and/or DFG to Take listed species, pursuant to the FESA (through a FESA section 10 permit or section 7 exemption) and/or the California Fish and Game Code, and/or issued by the CEC for Take of State-listed species under State law in accordance with the DRECP for activities that are under its exclusive jurisdiction pursuant to the Warren-Alquist Act.

**“Take”** is defined in the CESA and the FESA. Under FESA, section 3(18), “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

attempt to engage in any such conduct. Harm and harass are further defined in federal regulation (50 CFR 17.3). Under the CESA, “Take” means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (California Fish and Game Code, section 86).

### ***Eligible Grant Recipients and Partners***

Eligible entities, i.e., eligible grant recipients, may include for-profit and nonprofit organization (501(c)(3), or state agency. Entities must have demonstrated experience in natural lands management and adequate liability insurance. The DFG strongly encourages grantees to develop partnerships that share an interest in the project necessary to leverage technical and management skills, as well as fiscal resources.

### ***Eligible Costs***

SB 34 Advance Mitigation Land Acquisition Grant funds are payable for the following program-related costs.

1. Eligible compensatory mitigation actions, including:
  - a. Purchase of mitigation lands or conservation easements
  - b. Habitat restoration
  - c. Habitat enhancement
2. Land acquisition transaction costs
3. Habitat management costs
4. Monitoring
  - a. Establishment of baseline conditions
  - b. Restoration efficacy monitoring
  - c. Site-specific Monitoring as determined in a Mitigation Monitoring Plan
5. Labor associated with complying with SB 34 Advance Mitigation Land Acquisition Grants Program documentation.

### ***Eligible Compensatory Mitigation Actions***

To be eligible for funding consideration from the SB 34 Advance Mitigation Land

Acquisition Grants Program, all proposed projects must meet the following eligibility requirements:

1. Acquisition of any interest in real property (fee title or conservation easement) must be from a willing seller supported by an appraisal that utilizes private market based assumptions consistent with State and if applicable, Federal appraisal standards. The interest must be held by an eligible entity. Special attention shall be paid to the assumptions of development value of un-entitled raw land.

The project must protect and/or restore native Sonoran, Mojave and/or Colorado Desert Habitat for CESA and/or ESA Covered Species.

2. Projects will be located within Target Mitigation Area as defined in the IMS (Figure 2).
3. Projects must meet the following objectives, consistent with the goals of the DRECP IMS:
  - a. Represent native ecosystem types or natural communities across their natural range of variation in a system of conserved areas.
  - b. Maintain or restore self-sustaining populations or metapopulations of species included in the Strategy to ensure permanent conservation.
  - c. Sustain ecological and evolutionary processes necessary to maintain the functionality of the natural communities and habitats for the species included in the strategy.
  - d. Maximize connectivity among populations and avoid habitat fragmentation within conservation areas to conserve biological diversity, ecological balance, and connected populations of covered species.
  - e. Restoration efforts must demonstrate a long-term commitment and agreement to manage and protect the ecological integrity of the desert habitat.

The SB 34 Advance Mitigation Land Acquisition Grants Program will provide funding for the following mitigation actions as compensatory mitigation for Qualified Projects, as described in more detail in the DRECP Interim Mitigation Strategy (2010).

## **A. Habitat Acquisition.**

Land acquisition in advance of project impacts is one of the primary goals of SB 34 and intended to aid the recovery of listed desert species, and preserve essential habitat connectivity between habitat and species populations. Areas using SB 34 Advance Mitigation Land Acquisition Grant funds shall be permanently protected through a conservation easement, deed restriction, or other long-term instrument in-perpetuity. Advance land acquisition using the revolving fund established through SB 34 is a key feature of creating an effective reserve design.

The DRECP Planning Agreement addresses how land acquisition for project mitigation could contribute to the goals and objectives of the DRECP. Pending a determination of consistency with these goals and objectives, the REAT may credit natural resource protection, in accordance with their biological value, toward the habitat protection, enhancement, and restoration requirements of the DRECP, as appropriate, provided these resources support Covered Species and natural communities, are appropriately conserved, restored or enhanced; and contribute to the DRECP conservation strategy.

## **B. Habitat Enhancement.**

Enhancement can occur in and between areas of suitable habitats for listed species. Enhancement proposals should be prepared by incorporating project-specific closure/decommissioning or abandonment plans, as appropriate, and should meet permitting agency approval. Proposals can focus, for example, on the following enhancement activities:

- a. Removal of invasive weeds or non-native plant species. These actions should be planned to the extent possible addressing a regionwide approach for control of invasive species.
- b. Permanent removal of non-native species including cattle, burros, horses, and sheep. This can be accomplished by permanently retiring grazing leases.
- c. Reclaiming areas of disturbed soil using certified weed free native vegetation and topsoil salvaged from excavations and construction activities.
- d. Removing barriers and obstacles that interfere with or prohibit wildlife movement. This could include constructing culverts and land bridges that

provide connectivity across roads and highways, between areas of highly suitable habitat.

- e. Construct barrier fencing along highways and other high traffic volume roads to prevent/minimize road kill related to prevent the mortality of desert tortoise.

**C. Restoration.** Examples of project specific restoration and revegetation that may meet the approval of permitting agencies and could be carried out on acquired conservation lands to support adaptation and species resiliency include the following restoration activities:

- a. Removal of unauthorized roads and access points. Creating barriers to unauthorized access and disturbance.
- b. If a site has been terraced or otherwise substantially altered from its natural contour, recontouring back to natural pre-disturbance condition.
- c. Restore soil profiles so that topsoils will establish and maintain native plant communities in a natural pre-disturbance condition.
- d. Restoring wildlife habitat and promoting the re-establishment of native plant and wildlife species in small marginal or degraded areas within otherwise pristine habitats. This measure may be especially relevant in areas acquired to provide connectivity or movement corridors between intact native habitats.
- e. Restoring vegetation cover, composition, and diversity to values commensurate with the natural ecological setting. Where possible, use local seed sources that will benefit native species and species recovery.

### ***Administrative Process***

When applying for Grant funds, the following process should be followed. It is advised to communicate with the CDFG-HQ early in the process and there may be variation on a case by case basis.

1. Complete the SB 34 Advanced Mitigation Land Acquisition Grant Application
  - a. This will require the following information:

- 1) Name of the qualified non-profit with whom the Grant Agreement will be signed.
- 2) Name of property. If property ownership is granted to the Department, the name will be in accordance with State Fish and Game Commission policy.
- 3) Draft copies of the appropriate legal agreements:
  - a) Fee title agreement. The Grant Agreement will include a final fee title agreement ready to be signed. (Appendix B. Land Acquisition Agreement Template)
  - b) Conservation easement. The Grant Agreement will include a final draft conservation easement agreement ready to be signed. (Appendix C – Conservation Easement agreement template)
- 4) Project Prospectus. Purpose and benefits of acquisition i.e. conservation of critical habitat, beneficial for connectivity or species movement, etc.
- 5) Detailed Disbursement Request. Escrow account information
- 6) Preliminary title report indicating any easements or other encumbrances on the property. This information will be supplied early in the evaluation and development process to assure that mitigation actions, including conservation easements, are compatible with other current or planned activities on the property.
- 7) Appraisals, options, agreements for purchase and sale, escrow instructions, and instruments of conveyance.
- 8) Property description, including geographical setting, adjacent land uses, location relative to regional open space plans, and geology.
- 9) Accurate current map of bank property on a minimum 7 ½ min. U.S.G.S. Quad map, or finer scale if possible. Aerial photo of property and surrounding properties should be provided if possible.
- 10) Description of the current biological resources on the property. Description of the biological attributes of the site, the quantity

and distribution of habitats, the presence of listed and sensitive species and information on the types of surveys completed to verify their presence i.e. methods, date, qualification of surveyor(s), results.

- a) A biological resource survey report – baseline conditions.
- b) Quantification of habitat types (Habitat type by acres)
- c) Maps indicating location of covered species
- d) Quantification of current value of property to covered species
- e) Completed Table “Land Acquisition/Conservation Easement Ranking Criteria” (Appendix D)
- f) State and Corps-verified map of on-site jurisdictional wetlands and waters;

- 11) Results of an Environmental Site Assessment Phase 1 Hazardous Materials Survey (Environmental Assessment) for the entire property. If the Department assumes ownership of the bank property, all hazardous wastes will be removed and the site certified clean prior to close of escrow and title transfer.
- 12) A review of mineral and water rights associated with the property. The Department may not support mitigation actions on property that does not include mineral and water rights. Habitat values must be maintained in perpetuity. Identification of any potential prescriptive rights claims on the property (e.g., road access, etc.). Because the State does not recognize prescriptive rights claims, all such claims must be settled prior to close of escrow and title transfer. If the settlement of prescriptive rights claims reduces the biological values of the property, the mitigation value of the property will be reduced correspondingly.
- 13) An agreement by the current owner of the property to accurately delineate and mark in the field all boundaries (property corners) of the property, before fee title is transferred, or conservation easement granted.
- 14) Trash, structures, or other items on-site that would reduce the long-term biological value or health/safety of the site will be

removed prior to acquisition, unless agreed to otherwise by the Department.

#### Post acquisition.

Once the acquisition has been completed the interim period begins i.e. the period between acquisition by the third party and the transfer of property to long-term fee title or CE holder for management purposes.

1. Preliminary Land Management plan. The management plan will be used to determine the endowment necessary to carry out appropriate management of the property in perpetuity. If access control measures are not initiated by the property owner prior to acquisition, the management plan will discuss the need to control public access to the property (e.g., fencing, gates, etc.). Sufficient management funds to initiate needed access control activities at the time of acquisition should be estimated. The land management plan should at a minimum discuss the following issues (as outlined in the Department's Guidelines for the Preparation of Land Management Plans):
  - a. Management needs of the property, including control of public access,
  - b. restoration or enhancement of habitats,
  - c. monitoring of resources,
  - d. maintenance of facilities,
  - e. public uses,
  - f. start-up funding necessary,
  - g. necessary endowment funds to sustain the budget i.e. through a PAR analysis, and
  - h. yearly reporting to the Department of Fish and Game.
  - i. Additional special management requirements, if required.

## **APPENDIX 1**

### **SB 34 Advance Mitigation Land Acquisition Grants Program Agreement Template**

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

**GRANT AGREEMENT  
FOR  
ACQUISITION OF FEE INTEREST**

**UNDER THE**

**SB 34 ADVANCE MITIGATION LAND ACQUISITION GRANTS PROGRAM**

**Grantee:** Name:  
Address:

Attn:

Phone:  
Fax:

Federal Employers ID No./Taxpayer ID No.: \_\_\_\_\_

**Project Name:**

**Project Location:**

**Grant Agreement Number:** DFG-34: \_\_\_\_\_

**Notices to be addressed to:**

For Grantee:

Attn:

For Grantor:

California Department of Fish and Game  
1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814  
Attn: Director

With a copy to:

California Department of Fish and Game  
1416 Ninth Street, Suite 1341-B  
Sacramento, CA 95814  
Attn: Renewable Energy Branch

1. SCOPE OF AGREEMENT

Pursuant to paragraph 1 of subdivision c of Section 2069 and paragraph 1 of subdivision b of Section 2099 of the California Fish and Game Code (SB 34), the California Department of Fish and Game ("Grantor" or CDFG) hereby grants to \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), a sum not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) ("Grant Funds"), upon and subject to the terms and conditions of this Grant Agreement for Acquisition of Fee Interest ("Agreement").

2. PURPOSES OF GRANT

Grantor is entering into this Agreement, and the Grant Funds shall be used, only for the purpose of the project (the "Project") described as:

- A. Grantee's acquisition of fee title / purchase of conservation easement and associated management costs.

to approximately \_\_\_\_\_ acres of land

for the Property/Project known as \_\_\_\_\_,

located in the County / Counties of \_\_\_\_\_, California (the "Property").

The Property contains the following present or potential habitat values:

\_\_\_\_\_ acres of habitat for (species 1)

\_\_\_\_\_ acres of habitat for (species 2)

\_\_\_\_\_ acres of habitat for (species 3)

- B. The Property is described including parcel numbers in **Exhibit A** attached to this Agreement.
- C. The Project Purpose is described in **Exhibit B, Project Summary**, attached to this Agreement.

Grantee covenants and agrees that if Grantor deposits the Grant Funds into escrow and Grantee acquires the Property, the Property shall be held and used for the purposes of *wildlife habitat preservation, restoration and management, wildlife-oriented education and research, and for compatible public or private uses, all as*

*may be consistent with wildlife habitat preservation and protection of sensitive biological resources (individually and collectively, the "Purposes of Grant").*

### 3. CONDITIONS OF GRANT

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

3.1. Grantee shall agree to acquire Property or Properties identified in Exhibit A either fee title or conservation easement as described in the Scope of Agreement and Purpose of Grant.

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

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

3.4. Grantee shall convey a conservation easement over the Property in favor of Grantor or, at the election of Grantor, another entity or organization authorized by California law to acquire and hold conservation easements. The conservation easement shall be for the purposes of **[revise italicized text to match Purposes of Grant in Section 2]** *wildlife habitat preservation, restoration and management, wildlife-oriented education and research, and for compatible public or private uses, all as may be consistent with wildlife habitat preservation and protection of sensitive biological resources.*

3.5. Grantee shall provide and the Grantor shall have reviewed and approved results of an Environmental Site Assessment Phase 1 Hazardous

Materials Survey, and review of mineral and water rights associated with the property. Mineral, Oil, and Gas rights shall convey with the property.

#### 4. DISBURSEMENT PROCEDURE

Upon satisfaction of all of the above Conditions of Grant, and subject to approval of the Project by the Grantor, disbursement of Grant Funds shall be made directly into an escrow account established for the Project according to the following procedure:

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

- a. Name and address of Grantee;
- b. Project Name and Number of Grant Agreement;
- c. Dollar amount and purpose of disbursement;
- d. Name, address and telephone number of the title company or escrow holder, name of the escrow officer, and the escrow account number to which the Grant Funds will be disbursed; and

4.2. After receipt of the Disbursement Request, Grantor will promptly and timely (estimated to be 15 working days from the date Grantor receives the Disbursement Request) disburse an amount not to exceed \_\_\_\_\_ Dollars into the designated escrow account.

#### 5. GRANTEE'S COVENANTS

In consideration of Grantor's disbursement of the Grant Funds, Grantee hereby covenants and agrees as follows:

5.1. The Grant Funds shall be used for the following purposes only, as described in detail in **Exhibit B**:

	<b>Purpose</b>	<b>Cost</b>
	Total number of acres	_____
1	Purchase cost for fee title acquisition or conservation easement	\$ _____
2	Escrow and title fees	\$ _____
3	Other fees and costs incurred to accomplish the transaction and the conveyance and acquisition of the property	\$ _____
4	Cost required to establish easement in favor of state	\$ _____
5	Cost of initial management, enhancement and restoration necessary to secure property	\$ _____
6	Administrative costs	\$ _____

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

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

5.4. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of the Grantor. Such approval shall not be unreasonably withheld as long as the Property shall continue to be held and used only in a manner consistent with this Agreement, including the Purposes of Grant set forth in Section 2, and each successor-in-interest assumes and agrees in writing to be bound by the terms, covenants and conditions of this Agreement.

5.5. The Property (including any portion of it or interest in it) may not be used as security for any debt without the written approval of the Grantor.

5.6. Grantee shall record or cause to be recorded, concurrently with close of escrow for the purchase of the Property, a Notice of Unrecorded Grant Agreement (the “Notice”), **Exhibit E**, incorporating by reference this Agreement and giving public notice that Grantee received funds under this Agreement in order to assist Grantee in acquiring the Property and that, in consideration for the receipt of the Grant Funds, Grantee has agreed to the terms of this Agreement; and a Conservation Easement Deed (the “Easement”) **Exhibit F**, incorporating conservation and management

measures that will retain the property in a natural condition and to prevent the property from being used in any way that would impair or interfere with the conservation values of the property. Easement shall identify the CDFG as the Grantee or Easement Holder, or, at the election of CDFG, another entity or organization authorized by California law to acquire and hold conservation easements.

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

5.8. At the request of Grantor, Grantee shall allow designated staff of Grantor to access the Property to assess compliance with the terms, covenants and conditions of this Agreement.

## 6. BREACH AND DEFAULT

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

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

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

## 7. REMEDIES

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

7.1. Grantor may seek specific performance of this Agreement. Grantee agrees that payment by Grantee to Grantor of an amount equal to the Grant Funds disbursed under this Agreement would be inadequate compensation to Grantor for any Default because the benefit to be derived by Grantor from full compliance by Grantee with the terms of this Agreement is [**revise italicized text to match Purposes of Grant in Section 2**] *wildlife habitat preservation, restoration and management, wildlife-oriented education and research, and compatible public or private uses, all as may be consistent with wildlife habitat preservation and protection of sensitive biological resources* and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by Grantor by way of Grant Funds under this Agreement.

7.2. Despite the contrary provisions of Article 6 of this Agreement, if Grantor determines that circumstances require immediate action to prevent or mitigate interference with the Purposes of Grant arising from a breach of this Agreement, then Grantor may pursue its remedies without waiting for the period provided for cure to expire.

#### 8. NONPROFIT ORGANIZATION GRANTEE

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

#### 9. TERM

9.1. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and received in the respective offices of Grantee and Grantor (the "Effective Date"). Grantee and Grantor shall each sign four original Agreements. Grantee shall receive one completely executed original and Grantor shall receive three completely executed originals.

9.2. The term of this Agreement will commence on the date authorized by the CDFG, as set forth in Section 17 and, unless previously terminated as provided in Section 9.3, will expire on \_\_\_\_\_, 20\_\_\_\_, if escrow has not closed by that date.

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

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

## 10. LIABILITY; MODIFICATIONS; INTERPRETATION

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

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

10.3. All references herein to "Grantee" are intended to refer to Grantee or its designee, successor or assignee as may be approved by Grantor.

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

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

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

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

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

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

## 11. CONDEMNATION

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

## 12. AUDIT

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

Grantee. The audit shall be confined to those matters connected with this Agreement, including but not limited to administration and overhead costs.

13. UNION ORGANIZING

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

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

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

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

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

14. NON-DISCRIMINATION

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

Grantee has a collective bargaining or other agreement, and shall post in conspicuous places available to employees and applicants for employment, notice setting forth the provisions of this section. Grantee shall also include the nondiscrimination and compliance provisions of this Agreement in all contracts related to the Project.

15. EXHIBITS

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

**Exhibit A** – Property Description

**Exhibit B** – Project Purpose

**Exhibit C** – Detailed Disbursement Request

**Exhibit D** – Grantor's Logo

**Exhibit E** – Form of Notice of Unrecorded Grant Agreement

**Exhibit F** – Conservation Easement Deed

16. AUTHORIZATION

The signature of the Director (or Designee) certifies that the Department of Fish and Game authorized the award of an acquisition grant to Grantee as provided in this Agreement on \_\_\_\_\_, 2010

IN WITNESS WHEREOF, this Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the State of California, by and between the Department of Fish and Game and \_\_\_\_\_, each of which hereby agrees to the terms and conditions referenced on pages 1 through \_\_\_\_, along with Exhibits A through \_\_\_\_, of this Agreement.

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND GAME

GRANTEE:

\_\_\_\_\_

By: \_\_\_\_\_  
John McCamman, Director

By: \_\_\_\_\_  
(Name, Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

(Legal Description)

**EXHIBIT B**

(Project Purpose)

**EXHIBIT C**

(Detailed Disbursement Request)

**EXHIBIT D**

(DFG Logo)



**EXHIBIT E**

(Notice of Unrecorded Grant Agreement)

**RECORDING REQUESTED BY:**

[Insert Grantee Name and Address] )  
)  
)  
)  
)

**WHEN RECORDED, RETURN TO:**

State of California )  
Department of Fish and Game )  
Attn: Director )  
1416 9<sup>th</sup> Street )  
Sacramento, CA 95811-7137 )

---

Project Name: \_\_\_\_\_ *Space above line for Recorder's use*  
County: \_\_\_\_\_

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

This Notice of Unrecorded Grant Agreement ("Notice"), dated as of \_\_\_\_\_, 20\_\_\_\_, is made by \_\_\_\_\_ ("Grantee") and recorded concurrently with the Deed described below, to provide notice of an agreement between Grantee and the California Department of Fish and Game ("Grantor" or "CDFG"), a subdivision of the State of California, affecting the real property described below.

1. Grantor and Grantee have entered into the California Department of Fish and Game Grant Agreement for Acquisition of Fee Interest Under the SB 34 Advance Mitigation Land Acquisition Grants Program, Grant Agreement No. \_\_\_\_\_ ("Grant"), pursuant to which CDFG grants to Grantee certain funds for Grantee's acquisition of fee title/conservation easement to approximately \_\_\_\_\_ acres of real property located in the County of \_\_\_\_\_, California (the "Property"), by Grant Deed (the "Deed") from \_\_\_\_\_ [*identify Grantor*]. The Property is legally described in **Exhibit A** attached to this Notice and incorporated in it by this reference. Initial-capitalized terms used in this Notice and not otherwise defined shall have the meaning set forth in the Grant.

2. Grantee agrees under the terms of the Grant to execute this Notice to give notice that Grantee received funds under the Agreement to assist Grantee in acquiring the Property and that, in consideration of the Grant Funds, Grantee has agreed to the terms of the Grant. The Grant is incorporated by reference into this Notice.

3. Grantee covenants and agrees in Section 5 of the Grant as follows:

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

The Property shall be held and used for the purposes of ***[insert purpose statement from second grammatical paragraph of Section 2 of Agreement]*** (individually and collectively, the "Purposes of Grant").

3.2. The Property (including any portion of it or any interest in it) shall not be sold, transferred, exchanged or otherwise conveyed without the written approval of DFG or its successor.

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

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

4. Pursuant to Section 7 of the Grant, in the event of a Default under the Grant, in addition to any and all remedies available at law or in equity, Grantor may seek specific performance of the Grant and to pay a sum to Grantor which equals the sum granted to Grantee pursuant to the Agreement, together with interest thereon as provided in the Agreement.

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

6. Pursuant to Section 9 of the Grant, the Grant shall remain in full force and effect from and after the close of escrow for the acquisition of the Property.

7. Pursuant to Section 10 of the Grant, the Grant shall be binding upon Grantee and all designees, successors and assigns of Grantee.

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

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

10. For additional terms and conditions of the Grant, reference should be made to the California Department of Fish and Game Grant Agreement for Acquisition of Fee Interest by and between DFG and Grantee that commenced \_\_\_\_\_, 20\_\_\_\_\_, and is on file with the Department of Fish and Game, 1416 9<sup>th</sup> Street, Sacramento, California 95811-7137; *mailing address*: Department of Fish and Game, 1416 9<sup>th</sup> Street, Suite 1341-B, Sacramento, CA 94244-2090.

**GRANTEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Notary Acknowledgment]

Exhibit F

RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
)  
)  
)  
)  
)  
)  
)  
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED  
(Including Third-Party Beneficiary)

THIS CONSERVATION EASEMENT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_ ("Grantor"), in favor of  
\_\_\_\_\_ ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately \_\_\_\_\_ acres, located in the County of \_\_\_\_\_, State of California, designated Assessor's Parcel Number(s) \_\_\_\_\_ and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. The Property possesses wildlife and habitat values (collectively, "conservation values"), of great importance to Grantee, the California Department of Fish and Game ("CDFG"), and the people of the State of California.

C. The Property provides high quality habitat for [*list plant and/or animal species*] and contains [*list habitats; native and/or non-native*]. Exhibit B

D. Grantee is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is [*choose applicable statement: a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California which has as its primary purpose the preservation of land in its natural, scenic, forested or open space condition or use OR a governmental entity identified in Civil Code Section 815.3(b) and otherwise authorized to acquire and hold title to real property*].

E. CDFG has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species, and CDFG is authorized to hold easements for

these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

F. This Conservation Easement provides mitigation for certain impacts of Eligible Projects participating in the SB 34 Advance Mitigation Land Acquisition Grants Program, pursuant to paragraph 1 of subdivision c of Section 2069 and paragraph 1 of subdivision b of Section 2099 of the California Fish and Game Code (SB 34).

### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes. The purposes of this Conservation Easement are to ensure the Property will be retained forever in its natural condition and to prevent any use of the Property that will impair or interfere with the conservation values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to such activities that are consistent with those purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee and to CDFG as a third party beneficiary of this Conservation Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees and CDFG or its designees, provided that neither Grantee nor CDFG shall unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Conservation Easement;

(d) All mineral, air and water rights necessary to protect and to sustain the biological resources of the Property; and

(e) All present and future development rights allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties, are expressly prohibited:

(a) Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

(c) Agricultural activity of any kind, except that grazing is permitted if done in accordance with a CDFG-approved grazing or management plan;

(d) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as may be specifically permitted under this Conservation Easement;

(e) Commercial or industrial uses;

(f) Any legal or de facto division, subdivision or partitioning of the Property;

(g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind;

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species;

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property;

(k) Altering the surface or general topography of the Property, including building of roads;

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease; and

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property. In addition, Grantor shall undertake all necessary actions to perfect the rights of Grantee and

CDFG under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

6. Grantee's Remedies. CDFG, as a third party beneficiary of this Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. At the time of giving any such notice, Grantee shall give a copy of the notice to CDFG. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the conservation values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, notwithstanding Civil Code Section 815.7, the California Attorney General or any entity or individual with a justiciable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. Any costs incurred by Grantee or CDFG, where it is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but

not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2. Discretion of Grantee and CDFG. Enforcement of the terms of this Conservation Easement by Grantee or CDFG shall be at the discretion of the enforcing party, and any forbearance by Grantee or CDFG to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or CDFG of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights (or any rights of CDFG as a third party beneficiary) under this Conservation Easement. No delay or omission by Grantee or CDFG in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

6.3. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee or CDFG to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees or CDFG or its employees.

6.4. Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by CDFG. These rights are in addition to, and do not limit, the rights of enforcement under [*insert title of permit/Agreement described in Recital F, above*].

7. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee and CDFG around the Conservation Easement area to protect the conservation values of the Property, including but not limited to wildlife corridors.

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor CDFG shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and CDFG with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens, including those arising

out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a “Grantee Indemnified Party” and, collectively, “Grantee's Indemnified Parties”) and CDFG and its directors, officers, employees, agents, contractors, and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a “CDFG Indemnified Party” and, collectively, “CDFG's Indemnified Parties”) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a “Claim” and, collectively, “Claims”), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that (a) this indemnification shall be inapplicable to Grantee's Indemnified Parties with respect to any Claim due solely to the negligence of Grantee or any of its employees and (b) this indemnification shall be inapplicable to CDFG's Indemnified Parties with respect to any Claim due solely to the negligence of CDFG or any of its employees; (2) the obligations specified in Sections 4, 9, and 9.1; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the CDFG Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFG, defend such action or proceeding by counsel reasonably acceptable to the CDFG Indemnified Party or reimburse CDFG for all charges incurred for services of the California Attorney General in defending the action or proceeding.

9.3. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

9.4. Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Easement. This Conservation Easement is transferable by Grantee, but Grantee may assign this Conservation Easement only to CDFG or another entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the county where the Property is located.

11. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and CDFG of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee or CDFG shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor, Grantee or CDFG to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

12. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor:

To Grantee:

To CDFG: Department of Fish and Game  
Climate and Renewable Energy Branch  
1416 Ninth Street, Suite 1341-B  
Sacramento, CA 95814

With a copy to: Department of Fish and Game  
Office of the General Counsel  
1416 Ninth Street, 13th Floor  
Sacramento, California 95814-2090  
Attn: General Counsel

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

13. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and subject to the prior written approval of CDFG. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any

such amendment shall be recorded in the official records of [ \_\_\_\_\_ ] County, State of California.

14. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor under Section 9.2, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties and the CDFG Indemnified Parties (each as defined in Section 9.2) from and against any and all Claims (as defined in Section 9.2) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Property at any time, except that (I) this indemnification shall be inapplicable to the Grantee Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee, its employees or agents and (II) this indemnification shall be inapplicable to the CDFG Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by CDFG, its employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the CDFG Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFG, defend such action or proceeding by counsel reasonably acceptable to the CDFG Indemnified Party or reimburse CDFG for all charges incurred for services of the California Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement Deed, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or CDFG any of the following:

(1) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(2) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(3) The obligations of a responsible person under any applicable Environmental Laws; or

(4) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(5) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement Deed.

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and CDFG that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement Deed, and that the Property is not subject to any other conservation easement.

(k) Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Property, without first obtaining the written consent of Grantee and CDFG. Grantee or CDFG may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the conservation values of the Property. This Section 14(k) shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement Deed and complies with Section 11.

(l) Recording. Grantee shall record this Conservation Easement Deed in the Official Records of \_\_\_\_\_ County, California, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

GRANTEE:

BY: \_\_\_\_\_  
\_\_\_\_\_

BY:

NAME: \_\_\_\_\_  
\_\_\_\_\_

NAME:

TITLE: \_\_\_\_\_  
\_\_\_\_\_

TITLE:

DATE: \_\_\_\_\_  
\_\_\_\_\_

DATE:

Approved as to form:

General Counsel  
State of California  
Department of Fish and Game

BY: \_\_\_\_\_  
Tom Gibson  
General Counsel

## **APPENDIX 2**

### **Land Acquisition/Conservation Easement Ranking Criteria**

DRECP - SB 34 Advance Mitigation Land Acquisition Grants  
Program

Land Acquisition/Conservation Easement Ranking Criteria

Project Name		Reviewer		Date	
A	Ecological Value	Possible Score	Score	Weighted Total	Comments
1	Desert Tortoise present	5			
2	Desert Tortoise habitat ranking	5			
3	Desert Tortoise disease status (0 = UR disease present, 1 = UR disease absent)	1			
3	Mojave ground squirrel present (Y/N)	5			
4	Mojave ground squirrel habitat ranking (Y/N)	5			
5	Flat-tailed horned lizard present (Y/N)	3			
6	Flat-tailed horned lizard habitat ranking (Y/N)	3			
7	California condor present (Y/N)	5			
8	California condor habitat ranking (Y/N)	5			
9	Other Listed species present? (Y/N)	3			
10	Other Sensitive species present? (Y/N)	3			
11	Habitat corridor ranking (Y/N)	3			
12	Buffer Lands Value (Y/N)	3			
13	Intact Habitats (< 15% fragmented-3, < 25%-2, < 33%-1, > 33%-0)	3			
14	Threat of permanent loss (zoning, etc.) (Y/N)	2			
15	Parcel acres(>1000-3, 500-1000-2, <500-1)	3			
16	Critical habitat value (wintering, breeding, migratory) (Y/N)	3			
17	Invasive plant species status (Y/N)	2			
18	Condition-disturbance (none-5, some -3, lots-0)	5			
	Section A Total		0		
	Weighted Score (Section Total *.40)			0	
<b>B Conservation Planning Value</b>					
1	Is the property within the Interim Mitigation Strategy - Primary Acquisition Conceptual Areas? (Y/N)	3			
2	Is the property within the Interim Mitigation Strategy - Primary Recovery Action Conceptual Areas? (Y/N)	3			

3	Would the property contribute to satisfying the Multiple Species Conservation Strategy (MSCS) milestones? (Y/N)	3		
4	Does the property support species and will this acquisition result in 1) species recovery (R), 2) contribute to recovery (r), or 3) will serve to maintain (m) current population levels? (Y/N)	3		
5	Would the property contribute to satisfying any State Wildlife Action Plan or Climate Change Adaptation goals, objectives, targets and/or programmatic actions? (Y/N)	2		
6	Existing CAPP? (Y/N)	2		
7	Other existing or planned HCP/NCCP? (Y/N)	1		
Section B Total			0	
Weighted Score (Section Total *.40)			0	

<b>C Management Factors</b>				
1	Adjacency to DFG Property (Y/N)	2		
2	O&E Funds available (Y/N)	2		
3	Public Access or Use Opportunity (Y/N)	2		
4	Partners (Y/N)	2		
5	Restoration not needed (Y/N)	2		
6	Enhancement Potential (i.e. low cost) (Y/N)	2		
Section C Total			0	
Weighted Score (Section Total *.20)			0	

Total Section A	0
Total Section B	0
Total Section C	0
Grand Total	0

## **APPENDIX 3**

### **Land Acquisition Checklist**

## SB 34 Advance Mitigation Land Acquisition Package Checklist

**To: Branch Chief**  
**Renewable Energy**

From: \_\_\_\_\_

Regional Manager or Habitat Conservation Supervisor

Region: \_\_\_\_\_

Phone: \_\_\_\_\_

Tracking #: \_\_\_\_\_

### ***Project Proponent Contact Information***

Name: \_\_\_\_\_

Company or

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email address: \_\_\_\_\_

Enclosed is the complete package for the Grant Agreement for:

\_\_\_\_\_  
Name of Project or Property

Documents in this package:

<input type="checkbox"/>	1	Grant Agreement
		Exhibit A- Acquisition Target Areas (Legal descriptions)
		Exhibit B- Project Purpose
		Exhibit C- Resolution
		Exhibit D- Disbursement Request
		Exhibit E- Logo
		Exhibit F- Notice of Recorded Deed
<input type="checkbox"/>	2	Fee Title Agreement(s)
<input type="checkbox"/>	3	Conservation Easement(s)
<input type="checkbox"/>	4	Proposed Lands for Acquisition Form (PLFAF), approved by Region *
	5	Draft Project Summary: <input type="checkbox"/> hard copy <input type="checkbox"/> electronic copy (both are required)
<input type="checkbox"/>	6	Preliminary Title Report(s) for subject properties including: <sup>1</sup>
	<input type="checkbox"/>	a. Copies of documents to support title exceptions identified in the exceptions & exclusions section (schedule B) of the Preliminary Title Report
	<input type="checkbox"/>	b. Copies of documents regarding title encumbrances and/or an analysis of those encumbrances
	<input type="checkbox"/>	c. A plat showing buildings/improvements and map showing encumbrances (easements, encroachments)
	7	A copy of all of the following that exist on the parcel(s):
		<input type="checkbox"/> a. Williamson Act contract(s) <input type="checkbox"/> b. Farmland Security Zone contract(s)
<input type="checkbox"/>	8	Copy(ies) of Notification of Public Acquisition of Williamson Act Land memo(s) (if applicable) <sup>2</sup>
<input type="checkbox"/>	9	County Assessor Parcel Map(s) for subject property (unless already attached to preliminary title report)
<input type="checkbox"/>	10	General Vicinity and Site Location Map (with property boundaries outlined)
<input type="checkbox"/>	11	Biological Resources Report <sup>3</sup>
<input type="checkbox"/>	12	Phase I Environmental Site Assessment <sup>4*</sup>
<input type="checkbox"/>	13	Archaeological Survey Report <sup>5</sup>
<input type="checkbox"/>	14	Review of Mineral and Water Rights <sup>6</sup>
<input type="checkbox"/>	15	Review of any Prescriptive Rights <sup>7</sup>
<input type="checkbox"/>	16	Land Management Plan <sup>8</sup>
<input type="checkbox"/>	17	Signed Certificate of Visual Inspection *
<input type="checkbox"/>	18	Copy of SB 34 Tracking Sheet

Comments:.

\_\_\_\_\_  
I certify the Habitat Management Land Acquisition Document Package is complete and has been reviewed in its entirety.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Regional Manager

## **SB 34 Advance Mitigation Land Acquisition Package**

### ***Definitions***

\* Template document is attached

1. The Preliminary Title Report must be no more than 6 months old.
2. Notification of Public Acquisition of Williamson Act Land memo. Additional information about public acquisition of Williams Act Land can be found at: [http://www.conservation.ca.gov/dlrp/lca/basic\\_contract\\_provisions/Pages/public\\_acquisitions.aspx](http://www.conservation.ca.gov/dlrp/lca/basic_contract_provisions/Pages/public_acquisitions.aspx)
3. The Biological Resources survey report should contain the following:
  - a) Baseline conditions, including WHR habitat types, Jepson plant communities, and animal species.
  - b) Quantification of covered species habitat
  - c) Maps indicating location of covered species habitat
  - d) Quantification of current value of property to covered species
  - e) State and Corps-verified map of on-site jurisdictional wetlands and waters.
4. Phase 1 Environmental Assessment – A preliminary environmental site assessment of a parcel of commercial real estate to identify potential or existing environmental contamination liabilities. If the Department assumes ownership of the bank property, all hazardous wastes will be removed and the site certified clean prior to close of escrow and title transfer. Assessment must be no more than 2 years old for a CE and one year for fee. A template form used by CA EPA is attached.
5. Results of an archeological records search to identify known cultural resource sites on the property. If facilities (e.g., fencing, structures, etc.) are planned for the property, on-site reconnaissance for archeological resources may be required.
6. A review of mineral and water rights associated with the property. The Department may not support mitigation actions on property that does not include mineral and water rights. Habitat values must be maintained in perpetuity.
7. Identification of any potential prescriptive rights claims on the property (e.g., road access, etc.). Because the State does not recognize prescriptive rights claims, all such claims must be settled prior to close of escrow and title transfer. If the settlement of prescriptive rights claims reduces the biological values of the bank, the mitigation value of the property will be reduced correspondingly.
8. A Land Management plan, including a funding mechanism, must accompany the Grant Agreement. The management plan will be used to determine the endowment necessary to carry out appropriate management of the property in perpetuity. If access control measures are not initiated by the property owner prior to acquisition, the management plan will discuss the need to control public access to the property (e.g., fencing, gates, etc.). Sufficient management funds to initiate needed access control activities at the time of acquisition will be included. The land management plan should at a minimum discuss the following issues (as outlined in the Department’s Guidelines for the Preparation of Land Management Plans):
  - a) Management needs of the property, including control of public access,
  - b) restoration or enhancement of habitats,
  - c) monitoring of resources,
  - d) maintenance of facilities,

- e) public uses,
- f) start-up funding necessary,
- g) budget
- h) necessary endowment funds to sustain the budget
- i) yearly reporting to the Department of Fish and Game.
- j) Additional special management requirements, if required.

## **Appendix 4**

### **Certificate of Visual Inspection**

**CERTIFICATE OF VISUAL INSPECTION**  
**Project:**

**County**

**Date:**

**Owner:**

**APN(s):** \_\_\_\_\_

An inspection has been made of the above described real property, by an employee of the State of California, Department of Fish and Game who is competent to recognize biological values. Such inspection reveals based on the inspection and the information provided and available on the date of inspection the parcel appears to have biological value including: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Regional staff qualified to recognize visible evidence of the existence of easement or rights of way thereon or claims of right to interest in said real property other than those matters disclosed by the preliminary title report or as noted herein inspected the property and determined, through such inspection and review of the preliminary title report there is / is not the likelihood of an easement or right of way based on the information provided and available on the date of inspection. .

Regional staff qualified to recognize potential environmental hazards have inspected the property and determined, through such inspection and through the review of a Phase I Environmental Site Assessment, that there is / is not the likelihood of the existence of environmental hazards within or associated with the property based on the information provided and available on the date of inspection. .

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Department of Fish and Game

By (Signature): \_\_\_\_\_

(Print Name): \_\_\_\_\_