



Santa Paula Creek Mitigation Bank Enabling Instrument

SANTA PAULA CREEK MITIGATION BANK ENABLING INSTRUMENT

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BANK ENABLING INSTRUMENT SANTA PAULA CREEK MITIGATION BANK

This Bank Enabling Instrument (“BEI”), dated this _____ day of _____, 2011, is made by and among Richard E. Lyons and Laurie Prange Lyons (“Bank Sponsors”), Richard E. Lyons and Laurie Prange Lyons (“Property Owners”), , the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Department of Fish and Game (“CDFG”), South Coast Region. These agencies comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Bank Sponsors, Property Owners, and the IRT are hereinafter referred to jointly as the “Parties”. This BEI sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Santa Paula Creek Mitigation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsors are responsible for establishing and operating the Bank.
- B. The Property Owners are the owners of real property containing approximately 200 acres (the “Property”), located near Santa Paula, Ventura County, State of California, designated Assessor’s Parcel No. APN 040-0-020-085. The Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit D**) attached hereto.
- C. Richard E. Lyons and Laurie Prange Lyons, as Bank Sponsors and Property Owners, desire to create the Bank over the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit D-1**) attached hereto. The Bank Property is to be conserved in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V.
- D. CDFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code § 1802.
- E. USEPA and USACE have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- F. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.
- G. The goals and objectives for the Bank are set forth in the Bank Management and Operation Documents (**Exhibit C**).
- H. Initially-capitalized terms used and not defined elsewhere in this BEI are defined in Section II.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this BEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and conserve and protect, Waters of the U.S. and Covered Habitat. The Bank Sponsors shall preserve and then manage and maintain Waters of the U.S. and Covered Habitat in accordance with this BEI, Interim Management Plan and Long-term Management Plan.

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

- a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);
- b. Rivers and Harbors Act (33 U.S.C. § 403);
- c. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
- d. National Historic Preservation Act (16 U.S.C. § 470);
- e. Executive Order 11990 - Protection of Wetlands;
- f. Executive Order 11988 - Floodplain Management;
- g. Regulatory Programs of the U.S. Army Corps of Engineers (33 C.F.R. Parts 320-332);
- h. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230); and
- i. Memorandum of Agreement between the U.S. Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) (Feb 6, 1990).

2. State

- a. California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3);

- b. California Endangered Species Act (“CESA”) (Fish and Game Code § 2050 *et seq.*);
- c. California Natural Community Conservation Planning (“NCCP”) Act (Fish and Game Code § 2800 *et seq.*);
- d. California State Office of Historical Preservation (“SHPO”) (Public Resources Code § 5020 *et seq.*) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097 *et seq.*) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1);
- e. Conservation of Wildlife Resources (Fish and Game Code § 1800 *et seq.*);
- f. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600 *et seq.*);
- g. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly; and
- h. Supplemental Policy Regarding Conservation Banks within the NCCP Area of Southern California, January 24, 1996, by U.S. Fish and Wildlife Service and California Department of Fish and Game.

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this BEI are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Bank Sponsors and/or the Property Owners, as appropriate, based upon Bank annual report results and IRT review of overall Bank performance and compliance.
2. “Bank Establishment Date” is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.
3. “Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsors nor the Property Owners have control.
4. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit D-4** attached hereto to be held by an entity qualified under California Civil Code § 815.3 and Government Code 65965.
5. “Covered Habitat” means habitat of concern or habitat upon which sensitive resources depend for their continued viability that the IRT determines will be adequately conserved as a result of implementation of this BEI. Covered Habitat Credits are identified in

Exhibit E-1. The Covered Habitats are: coastal sage scrub, floodplain scrub, chaparral, riparian woodland, and upland woodland.

6. “Credits” are units of measure representing the accrual, attainment, or protection of aquatic functions and/or Covered Habitat on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit E-1**.
7. “Credit Release” means an action by the IRT to make specified Credits available for Transfer pursuant to this BEI.
8. “Endowment Deposit” is the deposit or series of deposits made or required to be made by the Bank Sponsors to the Endowment Holder to fully fund the initial Endowment Principal. Endowment Deposits received by the Endowment Holder are to be held in trust and paid into a fund designated in the Master Mitigation Account Memorandum of Agreement (“MOA”) entered into between the Endowment Holder and CDFG, effective November 23, 2010 (see **Exhibit C-8**).
9. “Endowment Fund” is a sum of money, held in trust in a fund designated by the Endowment Holder. The purpose of the Endowment Fund is to provide income to fund perpetual management, maintenance, monitoring, and other activities on the Bank Property consistent with the Long-term Management Plan. The term “Endowment Fund” as used in this BEI shall refer to the Endowment Principal and all interest, dividends, other earnings, additions and appreciation thereon, including any additions to the principal necessary to compensate for inflation and to ensure the real value of the principal does not decline over time.
10. “Endowment Holder” means the National Fish and Wildlife Foundation, a charitable non-profit corporation authorized to hold the Endowment Fund, in trust, in accordance with the MOA entered into between the National Fish and Wildlife Foundation and CDFG, effective November 23, 2010 (see **Exhibit C-8**).
11. “Endowment Principal” means that portion of the Endowment Fund that is non-wasting and that is to be maintained and managed in perpetuity to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. Endowment Principal shall consist of the Endowment Deposit and any additions to the principal that are made from earnings, appreciation in value or subsequent deposits for the purpose of compensating for inflation and ensuring the real value of the principal does not decline over time.
12. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which neither the Bank Sponsors nor the

Property Owners have control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where “flood” refers to a runoff event; (iii) an earthquake shall constitute an event of Force Majeure only if the ground motion it generates at the Bank Property is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.

13. “Interim Management Period” means the period from the Bank Establishment Date until the third anniversary of the full funding of the Endowment Fund has occurred.
14. “Interim Management Plan” means the document attached as **Exhibit C-5** that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsors during the Interim Management Period.
15. “Interim Management Security” is the financial assurance specified in Section VI.B. and **Exhibit C-2**, to be provided by the Bank Sponsors to guarantee the implementation of the Interim Management Plan.
16. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored and maintained pursuant to the Long-term Management Plan.
17. “Long-term Management Plan” means the document attached as **Exhibit C-6** that is intended to ensure the Bank Property is managed, monitored and maintained in perpetuity to conserve and protect its Waters of the U.S. and Covered Habitat.
18. “NCCP” is a Natural Community Conservation Plan created pursuant to Fish and Game Code § 2800, *et seq.*
19. “Performance Security” means the financial assurance specified in Section VI.A. and **Exhibit C-1**, to be provided by the Bank Sponsors to guarantee that all Remedial Action required under Section VIII.F is completed up through Bank closure.
20. “Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site

Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.

21. “Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
22. “Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owners and attached as **Exhibit D-2**.
23. “Property Owners” means the owners of fee simple title to the Bank Property.
24. “Remedial Action” means any corrective measures which the Bank Sponsors or Property Owners are required to take to ameliorate any injury or adverse impact to the Bank Property as preserved.
25. “RIBITS” means the Regulatory In-lieu Fee and Bank Information Tracking System.
26. “Service Area” means the geographic area(s) within which impacts to Waters of the U.S. or Covered Habitat that occur may be mitigated or compensated through Credits from the Bank.
27. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.
28. “Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsors.
29. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Bank Sponsors or Property Owners and shall include an event or series of events, such as the intentional release within the Bank Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the Bank Property.
30. “Waters of the U.S.” means all waters and wetlands over which the USACE and the USEPA is granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, *et seq.* This definition encompasses the term “waters of the United States” as defined in 33 C.F.R. Part 328 and any implementing guidance.

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Biological Resources Surveys (**Exhibit G**).

B. Disclaimer

This BEI does not in any manner limit the legal authorities or responsibilities of the IRT, or of any IRT agency, but is, instead, an implementation of such authorities and responsibilities.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this BEI:

1. “Exhibit A” - Bank Location Maps
 - A-1 General Vicinity Map
 - A-2 Map showing Bank Property
2. “Exhibit B” - Service Area Map and Description
 - B-1 Map of the Bank’s Service Area
 - B-2 Narrative description(s) of the Bank’s Service Area(s)
3. “Exhibit C” - Bank Management and Operation Documents
 - C-1 Performance Security Analysis and Schedule
 - C-2 Interim Management Security Analysis and Schedule
 - C-3 Endowment Fund Analysis and Schedule
 - C-4 Instructions and Forms for Submission or Disbursement of Funds
 - C-5 Interim Management Plan
 - C-6 Long-Term Management Plan
 - C-7 Bank Closure Plan
 - C-8 Master Mitigation Account Memorandum of Agreement
4. “Exhibit D” - Real Estate Records and Assurances
 - D-1 Preliminary Title Report, Legal Description, and Parcel Map(s)
 - D-2 Property Assessment and Warranty
 - D-3 Plat Map
 - D-4 Approved-as-to-form Real Estate Assurances
5. “Exhibit E” - Bank Crediting and Credit Transfers

- E-1 Credit Evaluation and Credit Table
- E-2 Credit Purchase Agreement and Payment Receipt Templates
- E-3 Credit Transfer Ledger Template
- 6. “Exhibit F” - Phase I Environmental Site Assessment
- 7. “Exhibit G” - Biological Resources Surveys
 - G-1 Biological Resources Summary
 - G-2 Botanical Resources Report
 - G-3 Review of Special Status Fish and Wildlife Species
 - G-4 Santa Paula Creek Steelhead Habitat Assessment
 - G-5 Wetland Functional Assessment
 - G-6 Wetland Delineation
- 8. “Exhibit H” –Waters of U.S. Jurisdictional Determination and Delineation
- 9. “Exhibit I” – Cultural Resources Records Search

Section IV: Bank Evaluation

A. Bank Site Assessment by the IRT

Representatives of the IRT have inspected and evaluated the Bank’s Waters of the U.S. and Covered Habitat and have agreed upon the assignment of Credits set forth in **Exhibit E-1**.

B. Phase I Environmental Site Assessment

Property Owners have provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit F**, showing that the Bank Property is not subject to any recognized environmental conditions as defined by the American Society for Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (i.e., the presence or likely presence of any Hazardous Substances or petroleum products). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Property Owners represent and warrant to the IRT that all appropriate assessment, clean-up, remedial or removal action has been completed.

C. Permits

The Bank Sponsors will obtain all appropriate permits and other authorizations needed to maintain the Bank. This BEI does not constitute or substitute for any such approval.

D. Property Assessment and Warranty

Property Owners shall notify the IRT of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit D-2**) discovered subsequent to Property Owners' signing of this BEI. The IRT shall evaluate any impacts of the errors or discrepancies on the Bank Property and the Conservation Easement, and may reduce the number of available Credits as a result of such impacts according to the policies of the IRT in effect at the time of notice to the IRT.

Section V: Bank Establishment Date

The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:

1. The BEI has been fully executed by all of the Parties;
2. The Conservation Easement has been accepted by a Grantee approved by the IRT and recorded in the Official Records of the county in which the Bank Property is located, and;
3. The Bank Sponsors have complied with its obligation to furnish financial assurances in accordance with Section VI.

Within 30 days of the Bank Establishment Date, the Bank Sponsors shall upload the final, signed BEI, including all of its Exhibits, to RIBITS and provide an electronic copy to each member of the IRT.

Section VI: Financial Assurances

The Bank Sponsors are responsible for providing financial assurances for the completion of Bank management, monitoring, and Remedial Action in accordance with this BEI, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII.E. The Bank Sponsors shall notify each member of the IRT in accordance with Section XII.K. upon furnishing each of the following financial assurances:

A. Performance Security

Concurrent with the Transfer of the first Credit, Bank Sponsors shall furnish to CDFG Performance Security in the amount of 10% of the Endowment Fund Analysis and Schedule as specified in **Exhibit C-3**. The Performance Security shall be in the form of a cashier's check. The Bank Sponsors shall ensure that the full amount of the Performance Security shall remain available in accordance with Section VIII.E.1.a.2. until the IRT determines that all Remedial Action required under Section VIII.F has been completed up through Bank closure.

B. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsors shall furnish to CDFG Interim Management Security in the amount specified in **Exhibit C-2**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Plan during the first year of the Interim Management Period, as set

forth in the Interim Management Security Analysis and Schedule (**Exhibit C-2**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars. The Interim Management Security shall be in the form of a cashier's check. The Bank Sponsors shall ensure that the full amount of the Interim Management Security shall remain available in accordance with Section VIII.E.1.b.2. until the end of the Interim Management Period.

C. Endowment Fund

1. The Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan and the Endowment Fund Analysis and Schedule (**Exhibit C-3**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.
2. The Endowment Fund is to be held in trust in a fund designated by the Endowment Holder, pursuant to the terms and conditions of the MOA (**Exhibit C-8**). The Bank Sponsors shall fund the Endowment Fund through Endowment Deposits according to the schedule below. The Endowment Fund shall be funded as follows:
 - a. A minimum of 15% of the Endowment Fund shall be funded prior to the earliest of: 1) the second Waters of the U.S. Preservation Credit Release; or 2) the second Covered Habitat Preservation Credit Release;
 - b. A minimum of 40% of the Endowment Fund shall be funded prior to the earliest of: 1) the third Waters of the U.S. Preservation Credit Release; or 2) the third Covered Habitat Preservation Credit Release;
 - c. A minimum of 70% of the Endowment Fund shall be funded prior to the earliest of: 1) the fourth Waters of the U.S. Preservation Credit Release; or 2) the fourth Covered Habitat Preservation Credit Release;
 - d. 100% of the Endowment Fund shall be funded prior to the earliest of: 1) the fifth Waters of the U.S. Preservation Credit Release; or 2) the fifth Covered Habitat Preservation Credit Release.
3. Bank Sponsors shall notify in writing each member of the IRT of each Endowment Deposit made within 30 days of such deposit.

Section VII: Credit Release

Each Credit Release must be requested in writing by the Bank Sponsors and must be approved in writing by the IRT, with approval by the IRT agency(ies) under whose jurisdiction the Credits reside.

A. Waters of the U.S. Preservation Credit Release

1. Upon Bank Sponsors' compliance with all applicable requirements set forth in this Section VII.A., and approval by the IRT, Waters of the U.S Preservation Credits as described in the Credit Table (**Exhibit E-1**) shall be released for Transfer, as

described below. The actual number of Preservation Credits released shall be determined by the USACE, in consultation with the other IRT agencies, based upon funding of the Endowment Fund in accordance with Section VI.D and compliance with requirements of this BEI and any associated authorization. Upon each Credit Release, USACE shall enter the number of Credits Released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred. Preservation Credits may be released as follows:

- a. Release 1: 15% of the total anticipated Waters of the U.S Preservation Credits upon the Bank Establishment Date.
- b. Release 2: Up to an additional 25% of the total anticipated Waters of the U.S. Preservation Credits when Bank Sponsors have funded a minimum of 15% of the Endowment Fund according to Section VI.D.2.a. Release 1 is a prerequisite for release 2.
- c. Release 3: Up to an additional 15% of the total anticipated Waters of the U.S. Preservation Credits when the Bank Sponsors have funded a minimum of 40% of the Endowment Fund per Section VI.D.2.b. Release 2 is a prerequisite for release 3.
- d. Release 4: Up to an additional 15% of the total anticipated Waters of the U.S. Preservation Credits when the Bank Sponsors have funded a minimum of 70% of the Endowment Fund per Section VI.D.2.c. Release 3 is a prerequisite for release 4.
- e. Release 5: All remaining Waters of the U.S. Preservation Credits when the Bank Sponsors have funded 100% of the Endowment Fund per Section VI.E.2.d. Release 4 is a prerequisite for release 5.

B. Covered Habitat Credit Release

1. Credits for Covered Habitat shall be determined and released as described in this Section VII.B and the Credit Table (**Exhibit E-1**). Anticipated Credits have been assigned to the Bank based upon Credit methodologies developed by the IRT.
2. Upon submittal of all documentation required under this BEI by the Bank Sponsors, and approval by the IRT, the CDFG will release Credits for Covered Habitat as described below. The actual number of Credits released shall be determined by CDFG, in consultation with the other IRT agencies, based upon funding of the Endowment Fund in accordance with Section VI.D. Upon each Credit Release, the releasing IRT agency shall enter the number of Credits Released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred.
 - a. Preservation Credits described in the Credit Table (**Exhibit E-1**) for Covered Habitat shall be released as follows:
 - 1) 15% of the total anticipated Preservation Credits upon the Bank Establishment Date.

- 2) 25% of the total anticipated Preservation Credits upon funding the Endowment Fund according to Section VI.D.2.a.
- 3) 15% of the total anticipated Preservation Credits upon funding the Endowment Fund according to Section VI.D.2.b.
- 4) 15% of the total anticipated Preservation Credits upon funding the Endowment Fund according to Section VI.D.2.c.
- 5) The remaining Preservation Credits upon full funding of the endowment Fund according to Section VI.D.2.d.

Section VIII: Operation of the Bank

A. Service Area

The Service Area is described and shown in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon the Bank Establishment Date. Bank Sponsors shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum Credit unit that may be Transferred is 0.01 Credit.
2. In no case shall the number of Credits or any particular type Transferred or obligated exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval of the IRT.
3. Use of Credits at the Bank to mitigate or compensate impacts to Waters of the U.S. or Covered Habitat must be authorized by the appropriate IRT agency or agencies on a case-by-case basis. Projects must first demonstrate no net loss of aquatic functions and/or a minimum 1:1 compensatory mitigation ratio on an acreage basis in order to use Waters of the U.S. Preservation Credits at this Bank.
4. Bank Sponsors shall notify all members of the IRT upon any Credit Transfer in accordance with Section IX.B. of this BEI. Upon Transfer of Credits, the Bank Sponsors shall enter the Credit Transfers into RIBITS.
5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged Bank Property, then the IRT may, at its discretion, direct Bank Sponsors to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsors have reasonably restored such damaged area pursuant to a Remedial Action plan approved by the IRT.
6. If CDFG approves an NCCP which covers all or any part of the Service Area, and that plan uses habitat categories different from those set forth in **Exhibit E-1**, then, at the request of the Bank Sponsors, the remaining Credits for Covered Habitat may

be reallocated at the discretion of the IRT to conform to the habitat categories in the approved NCCP.

7. Credit modifications due to expansion, restoration or other means that have been approved in writing by the IRT, shall be set forth in an amendment to this BEI according to Section XII.D.1.
8. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of **Exhibit E-2**.

C. Interim and Long-term Management and Monitoring

1. Interim Management and Monitoring

Bank Sponsors shall be responsible for conducting management and monitoring activities according to the Interim Management Plan (**Exhibit C-5**) until the end of the Interim Management Period.

2. Long-term Management and Monitoring

At the end of the Interim Management Period, the Property Owners shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owners shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this BEI, the Conservation Easement and the Long-term Management Plan (**Exhibit C-6**). Such activities shall be funded through the Endowment Fund according to Section VIII.E.2.b. Property Owners and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period, Property Owners shall be responsible for submitting annual reports to each member of the IRT in accordance with Section IX.A. of this BEI. The Property Owners shall upload annual reports into RIBITS.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon occurrence of all of the following:
 - a. All Remedial Action required under Section VIII.F. has been completed as evidenced by 1) timely submission of all required annual reports in accordance with Section IX.A; 2) the third anniversary of the completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s); 3) an on-site inspection by the IRT; 4) written approval from the IRT; and

- b. Either:
 - 1) The last authorized Credit has been Transferred; or
 - 2) The Bank Sponsors request Bank closure by written notice to the IRT and IRT provides written approval of the closure; and
- c. All financial responsibilities of the Bank Sponsors have been met, including 100% funding of the Endowment Fund for not less than three years.
- d. Conveyance of the fee title to the Bank Property to the CDFG.

E. Financial Operations

All financial transactions shall be reported in accordance with Section IX.

1. Securities

- a. Performance Security
 - 1) CDFG shall be entitled to draw upon the Performance Security in accordance with Section VIII.F.1.
 - 2) If any portion of the Performance Security is drawn upon pursuant to Section VIII.F.1, then the Bank Sponsors shall replenish the Performance Security to the amount specified in **Exhibit C-1** within 90 days after written notice from CDFG.
 - 3) The Performance Security (or any portion of such security then remaining) shall be released to the Bank Sponsors upon Bank closure pursuant to Section VIII.D.
- b. Interim Management Security
 - 1) CDFG shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the IRT determines that during any 12-month period the Bank Sponsors have not performed all tasks as required under the Interim Management Plan.
 - 2) In the event that the Interim Management Security is drawn upon pursuant to this section, the Bank Sponsors shall replenish the Interim Management Security to the amount specified in **Exhibit C-2** within 90 days after written notice from CDFG.
 - 3) Provided that the Bank Property has been managed in accordance with the Interim Management Plan, the Interim Management Security (or any portion of such security then remaining) shall be released to the Bank Sponsors at the end of the Interim Management Period.

2. Endowment Fund

a. Endowment Fund Deposits

Endowment Holder is to deposit the Endowment Deposits it receives into a fund designated by the Endowment Holder in accordance with the terms and conditions of the MOA attached at **Exhibit C-8**.

b. Endowment Fund Management

- 1) The Endowment Principal amount should not decrease in value through expenditure or investment strategy. The Endowment Principal amount is intended to increase in value to keep up with inflation. Therefore a portion of the interest and earnings on the Endowment Principal balance are to be reinvested by the Endowment Holder into the Endowment Fund. After the Endowment Fund is fully funded for three years, even if interest earnings are insufficient to increase the Endowment Principal to keep up with inflation, no additional Endowment Fund monies will be required from the Property Owners.
- 2) Any Endowment Fund interest earnings beyond those necessary to provide for Endowment Principal growth commensurate with inflation may be made available by the Endowment Holder to the Property Owners to fund annual management of the Bank Property in accordance with the terms of this BEI and the Long-term Management Plan.
- 3) Any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property shall be retained in the Endowment Fund and may be made available by the Endowment Holder to the Property Owners to fund unexpected expenses and Adaptive Management needs.
- 4) Property Owners shall invoice by letter the Endowment Holder for management activities.
- 5) If there is not sufficient funding available from the Endowment Fund interest and earnings or if Long-term Management expenses exceed those estimated in the Endowment Fund Analysis and Schedule (**Exhibit C-3**), the Property Owners shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the IRT, the Property Owners shall submit the resulting proposal in writing to the IRT within 60 days after completion of its consultation with the IRT. Upon written approval of the IRT, the Property Owners shall implement the

approved management measures and tasks.

3. Financial Records and Auditing

The Bank Sponsors and/or Property Owners, as appropriate, shall maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting methods, principles and practices consistently applied. The financial operation of the Bank includes all financial assurances received or expended during the establishment and operation of the Bank. At the request of the IRT, no more frequently than annually, the Bank Sponsors and/or Property Owners, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent licensed Certified Public Accountant and shall submit the auditor's report to the IRT upon completion.

The signatory agencies or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this BEI. Bank Sponsors and Property Owners agree to maintain such records for possible audit for a minimum of three years after Bank closure, or three years after the date of performance, whichever is later. Bank Sponsors and Property Owners agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsors and Property Owners agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this BEI.

F. Remedial Action Plan

Prior to Bank closure, if any Party discovers any injury or adverse impact to the Bank Property as preserved, the Party making the discovery shall notify the other Parties. The IRT may require the Bank Sponsors to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 60 days of the date of written notice from the IRT, the Bank Sponsors shall develop a Remedial Action plan and submit it to the IRT for approval. The Remedial Action plan must identify and describe proposed actions to ameliorate injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsors will implement those actions. The Bank Sponsors shall, at Bank Sponsors' cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Bank Sponsors fail to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Bank Sponsors that the Bank Sponsors are in default and may identify Remedial Action the IRT deems necessary. If (a) the Bank Sponsors fail to develop a Remedial Action plan or to implement Remedial Action

identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Bank Sponsors of Remedial Actions the IRT deemed necessary, then CDFG may draw upon the Performance Security to undertake Remedial Action on the Bank Property.

2. If the IRT determines that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this BEI), then the IRT shall notify the Bank Sponsors. Upon the IRT giving such notice, Bank Sponsors shall immediately cease Transfer of Credits. The IRT will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsors shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Report

Bank Sponsors or Property Owners, as appropriate, shall submit an annual report to each member of the IRT, in hard copy and in editable electronic format, on or before August 15th of each year following the Bank Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the current year (the “Reporting Period”). The Bank Sponsors shall be responsible for the reporting tasks described below until Bank closure. After Bank closure, the Property Owners shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required; and
- c. The total dollar amount expended for management tasks conducted during the reporting period.

2. Transfer of Credits

The annual report shall include an updated Credit Transfer Ledger (**Exhibit E-3**) showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

3. Financial Operation

The annual report shall set forth an itemized account of any and all activity of Bank Sponsors regarding the Performance Security, Interim Management Security, and Endowment Deposits.

B. Credit Transfer Reporting

Upon the Transfer of each and every Credit the Bank Sponsors shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the fully executed Credit Purchase Agreement in the form provided at **Exhibit E-2**; and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit E-3**.

Section X: Responsibilities of the Bank Sponsors and Property Owners

- A. Without limiting any of their other obligations, including without limitation, under the Conservation Easement, Bank Sponsors and Property Owners each hereby agrees and covenants that:

1. If the entity proposed to hold the Conservation Easement is not an IRT agency, Bank Sponsors and Property Owners shall, prior to the execution of the Conservation Easement at **Exhibit D-4** hereof, provide the IRT with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is authorized to do so pursuant to California Civil Code § 815.3 and Government Code § 65965, and has agreed to hold said Conservation Easement.
2. Bank Sponsors shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to Remedial Action, documentation, maintenance, management, monitoring, and reporting, until completion of the Interim Management Period.
3. Bank Sponsors agree to assume responsibility for compensatory mitigation requirements of USACE permits for which it Transfers Credits once a permittee has secured the appropriate number and type of Credits from the Bank Sponsors and to provide USACE with documentation that confirms that the Bank Sponsors have accepted the responsibility for providing the required compensatory mitigation.
4. It shall not discharge or release to or from the Bank Property, or permit others to discharge or release to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any federal, state, or local environmental law or regulation (each a “Hazardous Substance”).
5. Property Owners shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and

Warranty approved by the IRT, and Property Owners shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the IRT.

6. It shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is not consistent with and in accordance with this BEI and its Exhibits.

7. Bank Sponsors and Property Owners shall ensure that the Bank Property is managed and maintained in accordance with this BEI and its Exhibits.

8. Property Owners shall allow, or otherwise provide for, access to the Bank Property by Grantee, the IRT agencies and third parties, as described in the Conservation Easement.

- B. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this BEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this BEI or extensions for the performance of the requirements of this BEI.
- C. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsors or Property Owners must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the IRT

A. IRT Oversight

The IRT agrees to provide appropriate oversight in carrying out provisions of this BEI.

B. IRT Review

The IRT will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 60 days from the date of complete submittal. If the IRT is unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsors or Property Owners.

C. Compliance Inspections

The IRT shall conduct compliance inspections as necessary:

1. To verify the Credits currently available in the Bank; and/or

2. Recommend Remedial Action as needed; or
3. For any other purpose determined by the IRT as necessary to assess compliance with this BEI.

Section XII: Other Provisions

A. Force Majeure

1. The Bank Sponsors and Property Owners shall be responsible to maintain the Bank Property and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Bank Sponsors and Property Owners shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsors, Property Owners, and any person or entity under the direction or control of the Bank Sponsors or Property Owners, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsors, Property Owners, nor any person or entity under the direction or control of the Bank Sponsors or Property Owners, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.
2. The Bank Sponsors and Property Owners shall notify the IRT within 24 hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsors, Property Owners, and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsors and Property Owners shall continue to manage and maintain the Bank Property to the full extent practicable.

B. Dispute Resolution

1. The Parties agree to work together in good faith to resolve disputes concerning this BEI, but any of the Parties may seek any available remedy. Unless any of the Parties has initiated legal action, any Party may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such other Parties may seek clarification of the initial notice;

- c. Within 30 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution.
- d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property or Other Interests

- 1. All transfers of any interest in the Bank Property or the Conservation Easement are subject to the applicable provisions of the Conservation Easement.
- 2. The Property Owners shall have the right to sell, assign, transfer or convey (each a "transfer") its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this BEI must be made in accordance with this BEI and the Conservation Easement, and shall be subject to written concurrence by the IRT. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owners' obligations pursuant to this BEI and the Conservation Easement. From and after the date of any transfer by Property Owners of their interest in the Bank Property, the transferor shall have no further obligations hereunder and all references to Property Owners in this BEI shall thereafter refer to such transferee, except that the transferors' liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owners' interest in the Bank Property made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.2.c.
- 3. The Bank Sponsors may sell or convey its interest in the Bank at any time, provided that Bank Sponsors are in full compliance with all requirements of this BEI (including all financial assurance requirements), and subject to the prior written approval of the IRT. If any of the financial assurances required under this BEI are not completely funded at the time the Bank Sponsors request IRT approval of a sale or conveyance, then the IRT shall not approve such sale or conveyance unless and until either the current Bank Sponsors, or the proposed replacement Bank Sponsor(s), shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsors shall provide to each member of the IRT a written agreement signed by the replacement Bank Sponsor(s) in which the Bank Sponsors assigns to the replacement Bank Sponsor(s), and the replacement Bank Sponsor(s) assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsors under the BEI. Any such sale or conveyance made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.2.c.

D. Modification and Termination of the BEI

1. Amendment and Modification

This BEI, including its Exhibits, may be amended or modified only with the written approval of the Parties. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this BEI.

2. Termination

- a. The Bank Sponsors and Property Owners may jointly withdraw the entire Bank Property and terminate this BEI at any time prior to any Credit Transfer, provided that Waters of the U.S. and other habitat values existing on the Bank Property prior to the initiation of any efforts to restore or enhance the Bank Property shall be preserved in a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the Conservation Easement may require.
- b. In the event this BEI is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.
- c. The IRT may terminate this BEI if the Bank Sponsors or Property Owners sells or conveys the Bank or the Bank Property without the prior written concurrence of the IRT, as required by Section XII.C.
- d. USEPA may terminate its participation upon 30 days' written notice to all other Parties.
- e. The USACE and CDFG may each terminate its participation in this BEI upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:
 - 1) Bank Sponsors or Property Owners have breached one or more covenants, terms or conditions set forth herein;
 - 2) Bank Sponsors or Property Owners, as applicable, has received notice of such breach from the terminating IRT agency in accordance with paragraph XII.B., if applicable, and XII.K.; and
 - 3) Bank Sponsors or Property Owners, as applicable, has failed to cure such breach within 30 days after such notice; provided that in the event such breach is curable in the judgment of the terminating IRT agency, but cannot reasonably be cured within such 30 day period, the terminating IRT agency shall not terminate this BEI so long as Bank Sponsors or Property Owners have commenced the cure of such breach and is diligently pursuing such cure to completion.
- f. If any member of the IRT so requests, the member(s) of the IRT proposing to terminate participation in the BEI agree to meet with the other IRT members to discuss the reason(s) for such termination, prior to the termination taking effect. Notice of a request for such meeting shall be

made by the requesting IRT member(s) not later than 15 calendar days from receipt of the notice of termination.

- g. Termination by one member of the IRT of its involvement in this BEI shall not terminate or affect the relationship between the remaining members of the IRT, toward each other or the Bank Sponsors or Property Owners, under this BEI. Remaining Credits authorized under the authority of the withdrawing agency will no longer be available for Transfer.
- h. Nothing in this Section XII.D.2 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USACE and CDFG in the event of a threatened or actual breach of this BEI.

E. Default

The Bank Sponsors, and/or Property Owners, shall be in default if that Party fails to observe or perform any obligations or responsibilities required of it by this BEI. In the event the Bank Sponsors and/or Property Owners realize it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsors and/or Property Owners are in default, the Parties may elect to either pursue informal dispute resolution consistent with Section XII.B or may cause CDFG to draw upon and expend the appropriate financial security as necessary to continue Bank management, or operation, as provided in Section VI and VIII.E. In the event the informal dispute resolution process is invoked, the CDFG shall not draw upon financial securities until such time as the informal dispute resolution process has been terminated. This Section XII.E shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this BEI or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this BEI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this BEI conflicts with specific language in any document that is incorporated into this BEI by reference, the specific language within the BEI shall be controlling. The captions and headings of this BEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This BEI, and all exhibits, appendices, schedules and agreements referred to in this BEI, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties.

No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this BEI, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII.D.1. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this BEI, whenever this BEI requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This BEI and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this BEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this BEI to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this BEI would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this BEI shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsors and Property Owners:

Richard E. Lyons
Laurie Prange Lyons
P.O. Box 4
Ojai, CA 93023

IRT Members:

U.S. Army Corps of Engineers
Los Angeles District
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Attn: Chief, North Coast Branch

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

California Department of Fish and Game
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager

California Department of Fish and Game
Habitat Conservation Planning Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief

L. Counterparts

This BEI may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This BEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this BEI. The duties, obligations and responsibilities of the Parties to this BEI with respect to third parties shall remain as otherwise provided by law in the event this BEI had never been executed.

N. Availability of Funds

Implementation of this BEI by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this BEI may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this BEI to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

O. No Partnerships

This BEI shall not make or be deemed to make any Party to this BEI an agent for or the partner or joint venturer of any other Party.

P. Governing Law

This BEI shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the laws of the State of California, including but not limited to the Fish and Game Code, and other applicable federal and State of California laws and regulations.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this BEI. This BEI shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this BEI as follows:

Bank Sponsors and Property Owners

Signature: _____

Name: _____

Date: _____

Signature: _____

Name: _____

Date: _____

U.S. Army Corps of Engineers, Los Angeles District

Signature: _____

Name: _____

Title: _____

Date: _____

California Department of Fish and Game, South Coast Region

Signature: _____

Name: _____

Title: _____

Date: _____

U.S. Environmental Protection Agency, Region 9

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A-1

GENERAL VICINITY MAP



Figure 1

EXHIBIT A-2

MAPS OF PROPERTY AND BANK PROPERTY

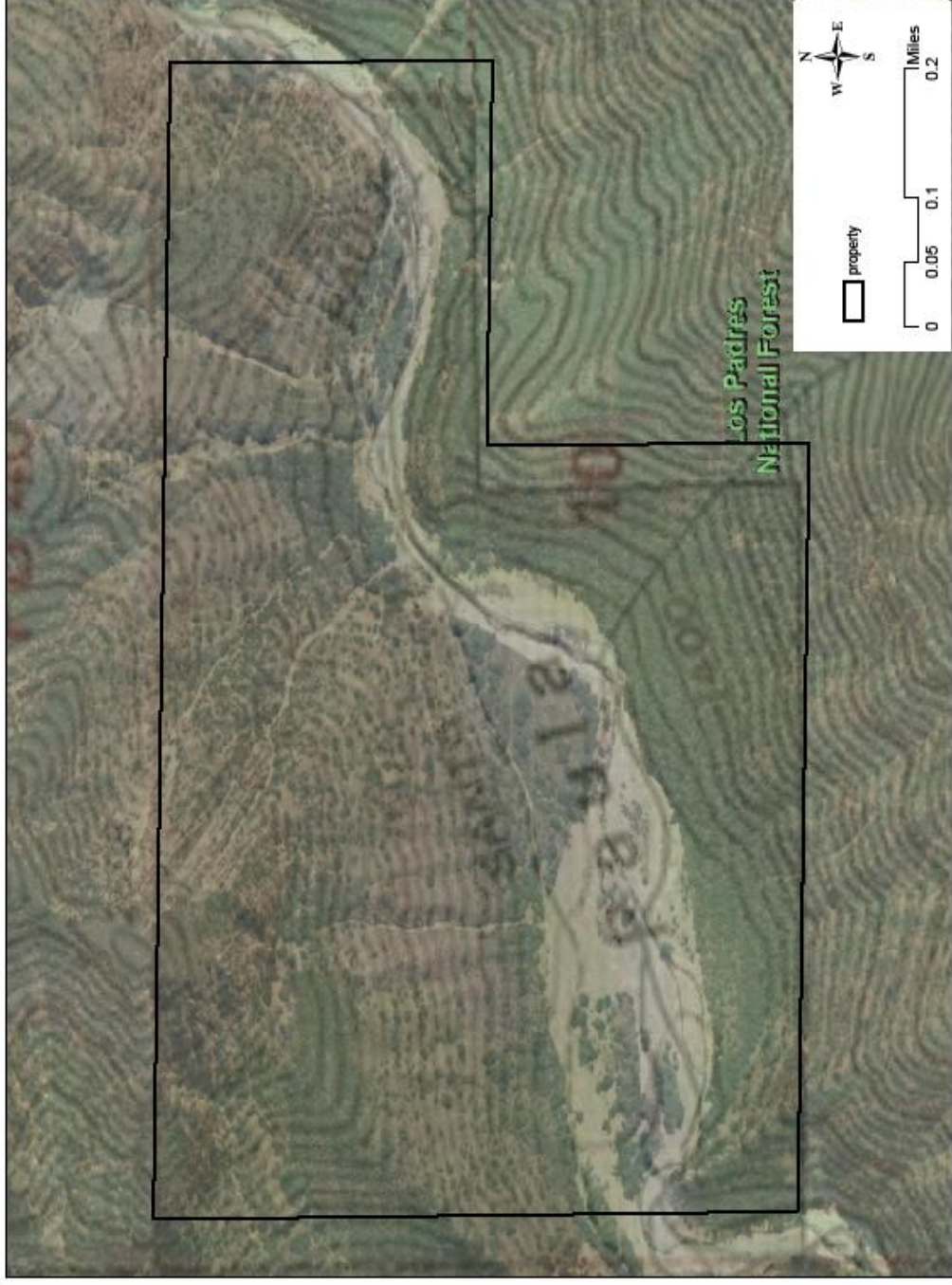


Figure 1. Property and Bank Property boundary depicted on USGS topographic base map.

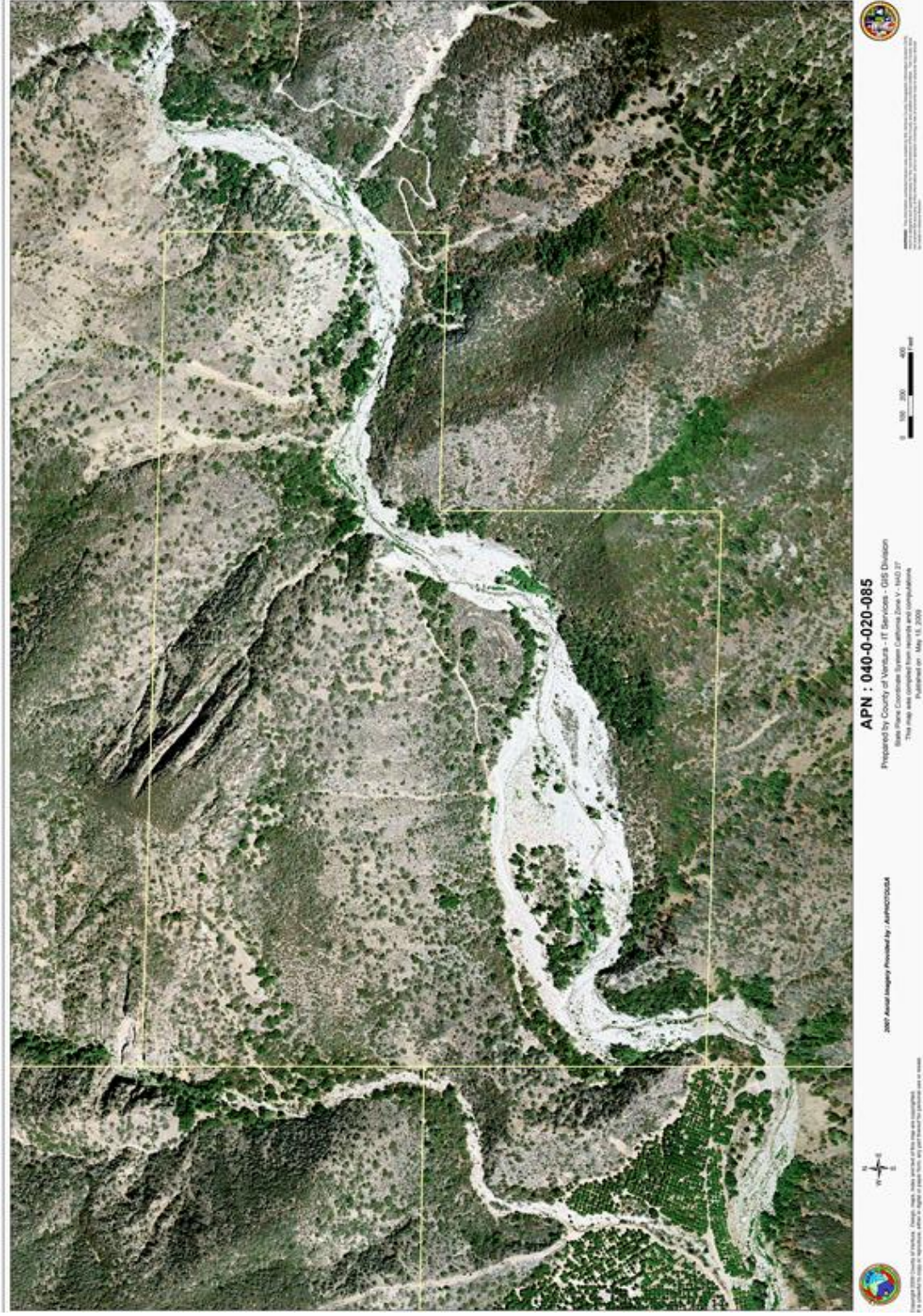


Figure 2

EXHIBIT B-1

MAP OF THE SERVICE AREA

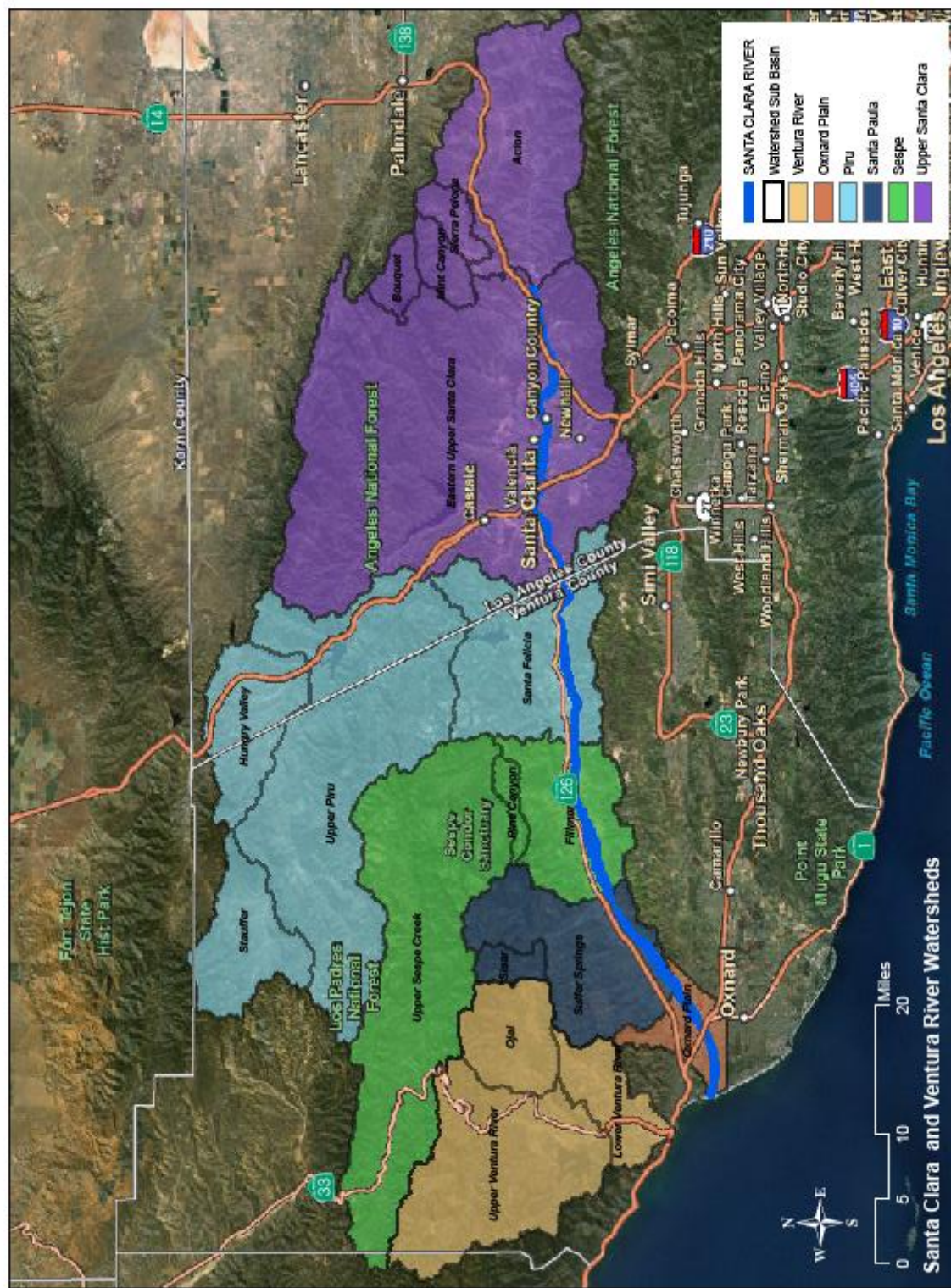


EXHIBIT B-2

NARRATIVE DESCRIPTION OF THE BANK'S SERVICE AREA

The Santa Paula Creek Mitigation Bank's service area is the combined watersheds of the Santa Clara River and the Ventura River within Ventura and Los Angeles counties.

The GIS dataset relied upon to depict the Service Area in Exhibit B-1 is the California Watershed Map (CALWATER version 2.2) of standardized watershed boundaries meeting standardized delineation criteria. The hierarchy of watershed designations consists of six levels of increasing specificity: Hydrologic Region (HR), Hydrologic Unit (HU), Hydrologic Area (HA), Hydrologic Sub-Area (HSA), Super Planning Watershed (SPWS), and Planning Watershed (PWS). The primary purpose of Calwater is the assignment of a single, unique code to a specific watershed polygon. Primary purposes for Calwater 2.2 include but are not limited to mapping, reporting, and statistical analysis of water resources, water supply, water quality, wildlands, agriculture, soils, forests, rangelands, fish habitat, wildlife habitat, cross-referencing state and federal hydrologic unit or watershed codes and names.

EXHIBIT C-1

PERFORMANCE SECURITY ANALYSIS AND SCHEDULE

Performance Security is to be provided by the Bank Sponsors to guarantee that all Remedial Action required under the BEI is completed up through Bank closure. The amount of the Performance Security is required to 10% of the Endowment Analysis, which is calculated to be \$12,000.

EXHIBIT C-2

INTERIM MANAGEMENT SECURITY ANALYSIS AND SCHEDULE

Santa Paula Creek Interim Management Plan Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

EXHIBIT C-3

ENDOWMENT FUND ANALYSIS AND SCHEDULE

Santa Paula Creek Mitigation Bank
Endowment Fund Analysis and
Schedule

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

The capitalization rate is 3.5%. Therefore, the Endowment Fund is calculated to be \$120,000.00.

EXHIBIT C-4

INSTRUCTIONS AND FORMS FOR SUBMISSION OR DISBURSMENT OF FUNDS

LONG-TERM LAND MANAGEMENT FUNDING RECIPIENT AGREEMENT

This Long-Term Land Management Funding Recipient Agreement ("Recipient Agreement") is entered by and among the California Department of Fish and Game, an agency of the State of California (the "CDFG"), the National Fish and Wildlife Foundation (the "Foundation") and Richard E. Lyons and Laurie Prange Lyons (the "Recipient") (together, the "Parties," and individually, a "Party"), as of the date of the signature of the last Party to sign (such date, the "Effective Date").

WHEREAS, CDFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802, and other provisions of California law.

WHEREAS, the Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 *et seq.*, as amended, and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code.

WHEREAS, the Recipient is the sole owner in fee simple of certain real property containing approximately 200 acres located in Ventura County, State of California, commonly known as Santa Paula Creek Mitigation Bank and generally shown on the map attached as **Exhibit A-1** and legally described in **Exhibit A-2** attached hereto and incorporated by this reference (the "Bank Property").

WHEREAS, the Recipient is responsible to protect and manage for conservation purposes the Bank Property in accordance with the 1) Santa Paula Creek Mitigation Bank Enabling Instrument (the "BEI"), by and between Richard E. Lyons and Laurie Prange Lyons ("Bank Sponsors"), Recipient, and Region 5, CDFG, the Los Angeles District of the United States Army Corps of Engineers ("USACE"), and the Region IX of the United States Environmental Protection Agency ("USEPA) entered into concurrently with this Recipient Agreement, and the Long-term Management Plan created under the BEI and 2) a perpetual conservation easement to be executed and recorded over the Bank Property (the "CE"). The CDFG, USACE, and USEPA are together referred to in this Recipient Agreement as the Interagency Review Team (the "IRT").

WHEREAS, the Long-term Management Plan identifies specific land management activities that are required to be performed on the Bank Property to improve, conserve, and/or protect the habitat values of the Bank Property (together, the "Land Management Activities"). The Long-term Management Plan is **Exhibit B** attached hereto and incorporated by this reference.

WHEREAS, a "Property Analysis Record" or equivalent endowment analysis for the Bank Property created by or on behalf of Bank Sponsors and approved by the IRT (the "Endowment Analysis") calculated the amount of money (the "Endowment Amount") necessary to provide a source of perpetual funding for the Land Management Activities. The Endowment Analysis is **Exhibit C** attached hereto and incorporated by

this reference.

WHEREAS, the Bank Sponsors have deposited or will deposit (or cause to be deposited) the Endowment Amount with the Foundation, to be managed and administered in accordance with the Master Mitigation Account Memorandum of Agreement (“MOA”) entered between CDFG and the Foundation as of November 23, 2010.

WHEREAS, the Parties intend that the Recipient will perform the Land Management Activities on the Bank Property in accordance with the BEI, CE, Long-term Management Plan, and the Endowment Analysis, using funds provided by the Foundation from the Endowment Amount in accordance with the terms of this Recipient Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Performance of Land Management Activities**. The Recipient hereby agrees to perform the Land Management Activities on the Bank Property, upon the terms and conditions set forth below. The Recipient also agrees to immediately notify the Foundation in writing upon any amendment or any other change to the Long-term Management Plan approved by the IRT that changes the Land Management Activities that are identified in the Endowment Analysis. If this occurs, the Recipient must transmit to the Foundation as soon as practicable an amended Endowment Analysis, approved by the IRT, that reflects such changes. The amended Land Management Activities (and associated costs) set forth in the amended Endowment Analysis approved by the IRT shall upon receipt by the Foundation supersede and replace their original counterparts, and shall thereafter govern as the “Land Management Activities” and “Endowment Analysis” under this Recipient Agreement.

2. **Funding for Land Management Activities**. The Foundation hereby agrees to provide funds from the Endowment Amount to the Recipient for its performance of the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.

3. **Scope of Services to be Performed**. The Recipient will perform the Land Management Activities as set forth in the Long-term Management Plan and the Endowment Analysis with funds provided under this Recipient Agreement for the Land Management Activities; hereafter reference to the Long-term Management Plan and/or the Endowment Analysis shall include any amendment thereto. The Parties agree and acknowledge that the Long-term Management Plan and the Endowment Analysis were created by or on behalf of the Bank Sponsor and approved by IRT. The Foundation is expressly entitled to rely on the validity of the IRT approval and the accuracy of the Long-term Management Plan and the Endowment Analysis without independent verification. The Foundation shall not be liable in any respect to CDFG, the Recipient, the IRT, or to any other party, for errors, omissions, inaccuracies, or other elements of the Long-term Management Plan or the Endowment Analysis, whether contained

therein or omitted therefrom. The Parties agree and acknowledge that the scope of services the Recipient is required to perform under this Recipient Agreement is limited to the Land Management Activities on the Bank Property to the extent funds are made available under this Recipient Agreement to pay for such Land Management Activities. In addition, in the event an amendment is made to the Long-Term Management Plan that changes the Land Management Activities identified in the Endowment Analysis, thereby requiring an amendment to the Endowment Analysis, the Foundation shall not be liable to CDFG, the IRT, or to any other party for any decision by CDFG or the IRT to amend the Endowment Analysis in any way that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities or the Bank Property.

4. **Term.** This Recipient Agreement shall be effective from the Effective Date until the date (if any) that a successor Recipient approved by IRT becomes obligated to perform the Land Management Activities.

5. **General Financial Provisions.** The Endowment Amount will be invested and otherwise managed financially by the Foundation in accordance with the terms of the MOA. The Recipient shall have no right or responsibility with respect to the investment or financial management of the Endowment Amount under this Recipient Agreement or otherwise. The Land Management Activities addressed under this Recipient Agreement shall be considered “Endowment Measures” for purposes of the MOA unless specified otherwise by CDFG in a written notice delivered to the Foundation.

6. **Payment.**

a. **Payment in the Ordinary Course.**

(1) As a condition precedent to disbursements from the Endowment Amount by the Foundation to the Recipient, CDFG (after consultation with the IRT must confirm in writing that performance standards have been attained and the Endowment Amount has been fully funded for [insert appropriate number of years and the word year or years] as specified in the BEI. In consideration of the Land Management Activities to be performed by the Recipient, the Foundation shall disburse to the Recipient from the Endowment Amount annual, advance payments (each such payment, an “Endowment Payment”) which the Recipient shall use to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Foundation is directed otherwise in writing by CDFG, each Endowment Payment will be made in the amount requested by the Recipient in a written payment request (hereinafter, a “Payment Request”) submitted to the Foundation pursuant to this Section 6. Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities for the applicable calendar year as set forth in the Endowment Analysis adjusted by a measure of inflation over the period of time since the Endowment Analysis was completed (such measure of inflation to be determined and applied by the Foundation in consultation with the CDFG).

(2) The Recipient must submit to the Foundation CDFG’s written

confirmation specified in Section 6(a)(1) with its first Payment Request. The Recipient must submit to the Foundation a Payment Request between July 1 and November 15 in order to receive an Endowment Payment to fund Land Management Activities in the next calendar year. Absent the express written direction of CDFG, the Recipient will not be eligible to receive an Endowment Payment for a forthcoming calendar year in which the Recipient has failed to submit to the Foundation a Payment Request between July 1 and November 15. The Foundation will disburse Endowment Payments in December for Payment Requests properly submitted to the Foundation in the prior July-November.

(3) Requests by the Recipient for non-annualized funds (i.e. funds for single or limited-occurrence expenses as set forth in the Endowment Analysis) shall be included with the Payment Request submitted prior to the calendar year in which use of such funds is scheduled in the Endowment Analysis. The Foundation will disburse non-annualized funds as a part of any December Endowment Payment for Payment Requests made in July-November.

(4) The Recipient shall submit all Payment Requests through the Foundation's electronic grant and contract management system (hereinafter, the "Easygrants System"), accessible to the Recipient through the following internet link: <http://www.nfwf.org/easygrants>. In the event the Easygrants System is inaccessible to the Recipient for technical or other reasons beyond the Recipient's control, the Recipient must contact the Foundation to arrange to submit a Payment Request through alternate means. All Payment Requests must include a written statement by the Recipient that (i) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (ii) the Recipient reasonably expects the Land Management Activities specified in the Endowment Analysis for the applicable calendar year to be actually necessary in that year. CDFG may, upon coordination with the IRT agencies, and at least thirty (30) days prior written notice to the Recipient and written instruction to the Foundation, modify the timing and frequency of Endowment Payments made to the Recipient by the Foundation. However, CDFG hereby acknowledges that any direction by CDFG under this subparagraph to modify the timing or frequency of Endowment Payments may impair or preclude the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFG, the IRT, or to any other party for any decision by CDFG or the IRT to modify the timing or frequency of an Endowment Payment under this subparagraph (4) that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property.

b. Suspension or Reduction of Payments for Performance Reasons. In accordance with the terms of the BEI and/or CE, the IRT may conduct periodic site visits and/or other evaluations of the Bank Property in order to monitor the progress and effectiveness of Land Management Activities performed by the Recipient. If at any time the IRT determines that the Land Management Activities are not being performed in a satisfactory manner (including, without limitation, that the Land Management Activities are not being performed in accordance with the Long-term Management Plan or applicable laws or regulations), CDFG may, after consultation with the IRT issue a written stop-payment notice (hereinafter a "Stop Payment Notice") to the Foundation. A

Stop Payment Notice will instruct the Foundation either to suspend or reduce Endowment Payments to the Recipient until the Foundation is otherwise notified in writing by CDFG. The Foundation shall be entitled to rely on any Stop Payment Notice received from CDFG and shall be obligated to follow the directions contained therein. The Foundation shall not be liable in any manner to the Recipient or to any other person by virtue of following the direction of CDFG contained in any Stop Payment Notice.

c. Suspension or Reduction of Payments for Financial Reasons. From time to time the Foundation or its financial advisors may determine that the Endowment Amount has decreased to levels that threaten its continued existence as a source of perpetual funding for Land Management Activities, whether due to unexpected investment performance or otherwise. In such event, the Foundation shall notify CDFG of such determination. Upon receipt of such notice, CDFG will consult with the IRT, the Foundation and the Recipient as to appropriate modifications to continued Endowment Payments and associated Land Management Activities in order to protect the long-term viability of the Endowment Amount. After such consultation, CDFG will promptly notify the Foundation and the Recipient of any measures, including but not necessarily limited to suspension or reduction of specified Land Management Activities and corresponding reduction or suspension of Endowment Payments, which must be implemented by the Foundation or the Recipient, as the case may be, to address the pertinent circumstances. The Foundation and the Recipient shall be entitled to rely on any such notice received from CDFG and shall be obligated to follow the directions contained therein. Neither the Foundation nor the Recipient shall be liable in any manner to CDFG, the IRT or any other person by virtue of following the direction of CDFG contained in any notice issued under this Subsection 6(c).

d. One-time Payments. CDFG, in accordance with the MOA and after consultation with the IRT agencies, may direct the Foundation in writing to disburse a specific amount of funding to the Recipient, whether requested by the Recipient or not, so that the Recipient may perform an activity, or activities, which CDFG determines to be appropriate with respect to the Bank Property. A one-time payment may fund, but is not necessarily restricted to, activities in response to a catastrophic event (e.g., recovery after a fire). Upon receipt of such one-time payment, the Recipient shall, without delay, perform whatever activity, or activities, the one-time payment is intended to fund as directed by CDFG. CDFG hereby acknowledges that any direction by CDFG under this Subsection 6(d) for the disbursement of a one-time payment not contemplated by the Long-term Management Plan or Endowment Analysis may impair or preclude the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFG, the IRT, or to any other party for any decision by CDFG or the IRT to direct a one-time payment under this Subsection 6(d) that impairs the viability of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property.

e. Overages in Payments. Any overages in payments resulting from discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period, shall be maintained and accounted

for by the Recipient. The overages shall be used for costs of future Land Management Activities.

7. **Review and Reporting Requirements.** The Recipient shall submit to the Foundation, to CDFG and the other IRT an annual funding report ("Annual Funding Report") for each calendar year this Recipient Agreement is in effect. Each Annual Funding Report shall be submitted by the Recipient between January 1 and January 31, or at least thirty (30) days prior to the effective date of termination of this Recipient Agreement. The Annual Funding Report shall (i) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or in the event of termination the current calendar year (collectively the "Reporting Period"); (ii) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period; (iii) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Long-term Management Plan and the Endowment Analysis and the Land Management Activities actually performed during the Reporting Period; and (iv) describe any discrepancy between the costs of Land Management Activities as modeled in the Endowment Analysis and the costs of Land Management Activities actually performed during the Reporting Period.

8. **Notices.** Any notice, demand, request, consent, approval, or other communication that the Parties desire or is required to give the other shall be in writing, with a copy to each of the IRT agencies, and served personally or sent by recognized overnight courier that guarantees next day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

National Fish and Wildlife Foundation
Senior Manager, Impact-Directed Environmental Accounts
90 New Montgomery Street, Suite 1010
San Francisco, CA 94105

U.S. Army Corps of Engineers
Los Angeles District
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Attn: Chief, North Coast Branch

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

California Department of Fish and Game
South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123

Attn: Regional Manager

California Department of Fish and Game
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief

Each Party agrees to notify the other promptly, and in any event no later than thirty (30) days after any change in address or other contact information.

9. **Transfer and Assignment.** The Recipient may not transfer or assign this Recipient Agreement, in whole or in part, to any other individual or legal entity without the prior written consent of the CDFG, in consultation with the IRT, which consent may be withheld. The Foundation may not assign this Recipient Agreement, in whole or in part, to any other individual or entity.

10. **Amendments.** Except as provided in Section 1 with respect to amendments to the Long-term Management Plan and the Endowment Analysis, this Recipient Agreement may be amended only by a written amendment, signed by the Parties. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Recipient Agreement may not be amended via electronic mail.

11. **Termination.**

a. **Termination by CDFG.** CDFG (only after consultation with the IRT agencies) may terminate this Recipient Agreement if the Recipient is in default of this Recipient Agreement. Failure by the Recipient to comply with any material term of this Recipient Agreement, as determined by CDFG shall be deemed to be a default of this Recipient Agreement and shall constitute cause for CDFG to terminate this Recipient Agreement. The CDFG shall provide the other Parties written notice of termination at least ninety (90) days prior to termination becoming effective. The CDFG in the termination notice may provide the Recipient an opportunity to cure its default. Unless otherwise specified in writing by CDFG, upon receipt of a notice of termination the Recipient shall promptly return to the Foundation any unspent and unobligated portion of any Endowment Payment.

b. **Termination by the Recipient.** The Recipient may, with or without cause, terminate this Recipient Agreement by providing at least one hundred and twenty (120) days' prior written notice to both CDFG and the Foundation. Regardless of the date that notice of termination is provided and the passage of the intervening one hundred and twenty (120) days' notice period, termination is not effective unless and until the Recipient has returned to the Foundation any unspent and unobligated portion of any Endowment Payment.

c. **Termination by the Foundation.** The Foundation may, with or without

cause, terminate this Recipient Agreement by providing at least ninety (90) days prior written notice to both CDFG and the Recipient. Regardless of the date that notice of termination is provided and the passage of the intervening ninety (90) day notice period, termination is not effective unless and until the Foundation has transferred in an orderly fashion the custody, control or other power necessary for the investment, management, and administration of the Endowment Amount to an entity identified in writing by CDFG.

d. Termination of the MOA. This Recipient Agreement shall terminate, as to all the Parties, concurrently with termination of the MOA. A copy of any notice of termination issued in accordance with the MOA shall be provided to the Recipient by the terminating party (i.e. CDFG or the Foundation) at the same time it issues the original notice of termination. Unless otherwise specified in writing by CDFG, upon receipt of a notice of termination of the MOA the Recipient shall promptly transfer to CDFG any unspent and unobligated portion of any Endowment Payment.

12. Additional Support. By entering into this Recipient Agreement, neither CDFG nor the Foundation assumes any obligation to provide funding or support (whether financial or otherwise) to the Recipient beyond Endowment Payments in accordance with this Recipient Agreement.

13. Choice of Law. This Recipient Agreement shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Recipient Agreement, the Recipient and the Foundation agree to submit to the jurisdiction of the courts of the State of California.

14. Compliance with Laws; Indemnification.

a. In conducting the Land Management Activities and performing its obligations under this Recipient Agreement, the Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits, approvals, and consents.

b. The Foundation and Recipient shall indemnify and hold harmless each other, CDFG and their respective officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with any breach by the indemnifying Party of its obligations under this Recipient Agreement (including, in the case of the Recipient, of its obligation to perform the Land Management Activities).

c. CDFG shall be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by the Foundation. CDFG shall also be free of liability to the Foundation for any default or non-performance of this Recipient Agreement or Land Management Activities by the Recipient. The Foundation shall be free of liability to CDFG for any default or non-performance of this Recipient Agreement

by the Recipient, and the Foundation shall also be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by CDFG.

d. The terms of this Section will survive termination of this Recipient Agreement.

15. **Disclaimers**. Payments made to the Recipient under this Recipient Agreement do not by direct reference or implication convey the Foundation's or CDFG's endorsement of the Land Management Activities or any deliverables provided pursuant to this Recipient Agreement.

16. **Access to Recipient Records**. CDFG, the Foundation, or the Comptroller General of the United States, or any of their duly authorized representatives, shall, upon three days prior notice, have access to any books, documents, papers and records of the Recipient that are directly pertinent to this Recipient Agreement for purposes of making audits, examinations, excerpts or transcription. The Recipient shall keep all books, documents, papers, or records for at least five years after their preparation.

17. **Severability**. Each provision of this Recipient Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

18. **MOA Conflicts**. In the event a conflict arises between the terms of this Recipient Agreement and the MOA, the Parties will meet and confer to resolve the issue to the mutual satisfaction of the Parties.

19. **Conflict with BEI or the CE**. In the event a conflict arises between the terms of this Recipient Agreement and the BEI, or the CE, CDFG, the Foundation, and the IRT will meet and confer to resolve the issue to the mutual satisfaction of the CDFG, Foundation and the IRT.

20. **Counterparts**. This Recipient Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed this Recipient Agreement, intending to be bound legally.

Recipient (Property Owners)

_____ Date:

Name

Title:

Tax Identification Number:

National Fish and Wildlife Foundation

_____ Date:

Name

Title: Vice President, Impact-Directed Environmental Accounts

California Department of Fish and Game

_____ Date:

Name

Title:

EXHIBIT A-1
Map of Bank Property

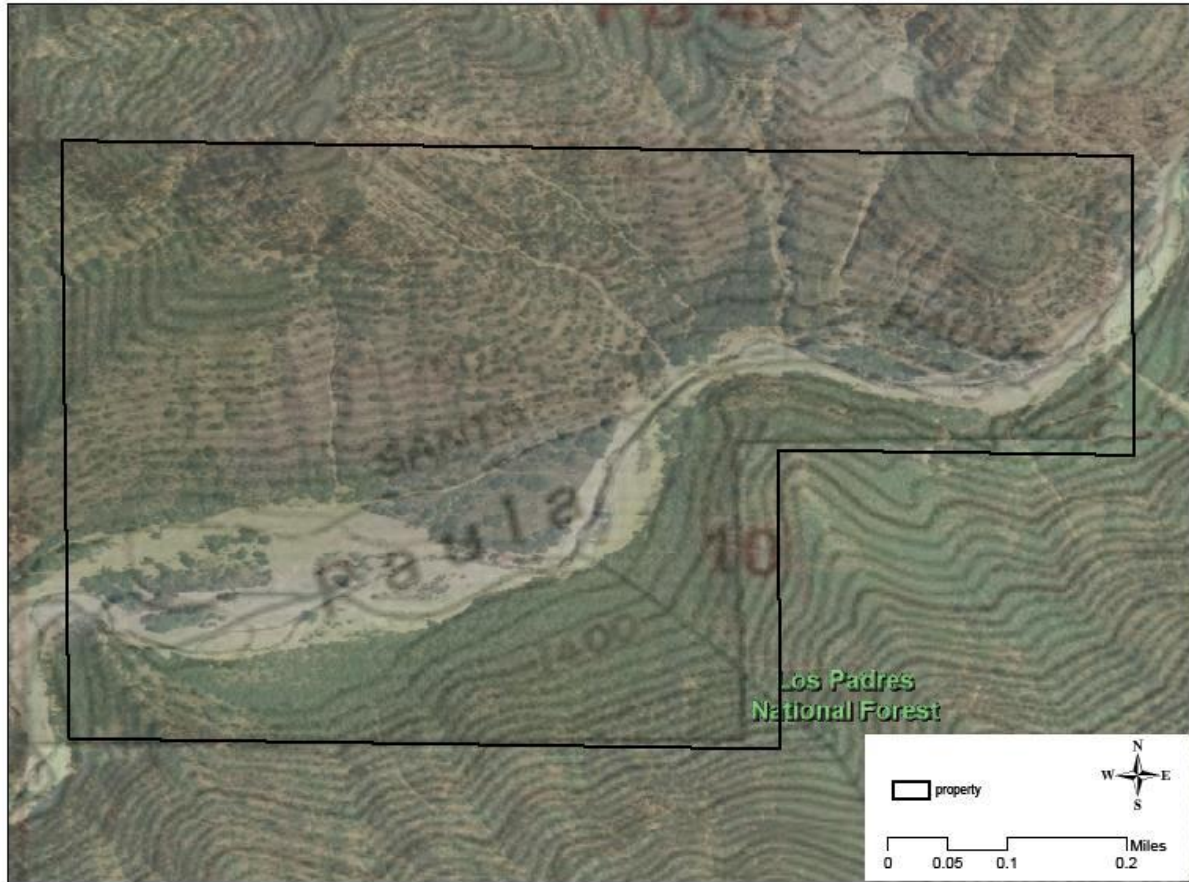


EXHIBIT A-2
Legal Description of Bank Property

The North half of the Southwest quarter, South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

Exhibit B

Santa Paula Creek Mitigation Bank Long-Term Management Plan

I. Introduction

A . Goals and Objectives

The Santa Paula Creek Mitigation Bank (“Bank”) is intended to compensate for unavoidable impacts to, and to conserve and to protect, Waters of the U.S. and Covered Habitat. Richard E. Lyons and Laurie Prange Lyons (“Property Owners”) are the owners of real property containing approximately 200 acres (the “Property”), located near Santa Paula, Ventura County, California. The Bank Property covers the entire Property and includes 124.29 Waters of the U.S. and CDFG Preservation Credits, plus an additional 73.93 CDFG Covered Habitat Preservation Credits only for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell’s vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle. Terms used in this Long-term Management Plan have the same meaning as defined in the Bank Enabling Instrument (“BEI”) or Conservation Easement. Exhibit G describes the biological resources of the Bank property. Additionally, several related technical reports are available on a CD provided with this submittal.

B Purpose of this Long-term Management Plan

The purpose of this Long-term Management Plan is to ensure the Bank Property is managed, monitored, and maintained in perpetuity. This Long-term Management Plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the Waters of the U.S. and Covered Habitat on the Bank Property.

C. Property Owners Responsibilities

Property Owners, their successors and assigns, shall implement this Long-term Management Plan, managing and monitoring the Bank Property in perpetuity to preserve its habitat and Conservation Values in accordance with the BEI, the Conservation Easement, and this Long-term Management Plan. Long-term management tasks shall be funded through the Endowment Fund, held in trust by the National Fish and Wildlife Foundation (the “Endowment Holder”) in accordance with the Memorandum of Agreement entered into between the Endowment Holder and California Department of Fish and Game (“CDFG”), effective November 23, 2010. The Property Owners shall be responsible for providing an annual report to the IRT detailing the time

period covered, an itemized account of the management tasks and total amount expended.

II. Bank Property Description

A. Setting and Location

The Bank Property is located north of Santa Paula, Ventura County, State of California, designated Assessor's Parcel No. 040-0-020-085. The Bank Property is shown on the general vicinity map and the Bank Property map (Exhibit A-1 of Recipient Agreement). The general vicinity map shows the Bank Property location in relation to cities, towns, or major roads, and other distinguishable landmarks. The Bank Property map shows the Bank Property boundaries on a topographic map.

B History and Land Use

In the 1890s the property was reportedly homesteaded by local pioneers who lived there until the early 1930s. At that time, Santa Paula Water Works, the former private water company serving the City of Santa Paula, purchased the property from the homesteaders. Due to the topography of the canyon, the Water Works explored the option of building a water storage dam along Santa Paula Creek at the western boundary of the property. For whatever technical or financial reasons, this option was never implemented and the creek and the canyon remained largely undeveloped and pristine. In 2005, the Bank Sponsors purchased the property from Santa Paula Water Works with the intent of possibly developing it as a residence and/or a commercial vineyard.

The majority of the lands adjoining the proposed Bank are currently managed as recreational open space by the USFS. Other adjacent land uses include commercial agriculture, mainly citrus and avocado production, and oil/natural gas production.

C. Hydrology, Topography, and Soils

The Bank Property is located on what might be described as the bottom of the Santa Paula Creek headwaters. Approximately 0.7 miles upstream lies the confluence of the east and north forks.

The entire watershed tributary to the Bank Property is undeveloped, consisting of steep to very steep topography dominated by coastal sage-chaparral on most aspects except on north-facing slopes, where some conifers can be found. In contrast to the lower watershed below the Sisar Creek confluence, the upper watershed is composed primarily of well-indurated sandstone of

Eocene age (Juncal/Matilija formations). These materials are resistant to abrasion in transport.

Most of the lower watershed is composed of soft shales, and are quickly eroded into fine sediments. As a result, the Bank Property lies within that portion of the Santa Paula Creek watershed which provides the source material for most of the coarse sediment comprising the streambed for the mainstem of Santa Paula Creek.

The nearest streamflow gauge is 2.6 miles downstream of the Bank (U.S. Geological Survey Station 11113500, “Santa Paula Creek near Santa Paula”). The approximate drainage area at the downstream Bank Property boundary is 18.5 square miles. The peak flow of record at the gauge is 27,500 cubic feet/second (cfs) which occurred on January 10, 2005 (Stillwater Sciences 2007). The stream within the parcel is apparently perennial. The approximate discharge was one cfs during a field visit on September 25, 2008 by HydroScience (T. Hanes, pers. comm.), which was a dry year. The streamflow, except for a small baseflow component, is flashy and responds quickly to rainfall once the soils are recharged after the typical summer drought. During the winter baseflows increase as more water moves laterally toward channels and less are intercepted in route to support transpiration. At the gauge, approximately 70% of the mean daily discharges were at or below 10 cfs (Stillwater Sciences 2007). The value at the Bank Property would be expected to be less, probably 6-8 cfs.

The Bank Property is unique in that it supports the widest floodplain/valley width of the entire creek. This feature results from a constriction in the valley bottom and a 90-degree turn in the channel, which may be fault related. The north fork appears to be largely dominated by bedrock, as evidenced by the waterfalls on that fork, which is in contrast to the east fork, where the stream is eroding into the severely constricted valley sides which are composed of relatively more fractured rock. Based on this limited evidence it appears that the east fork is the dominant source of coarse sediment transported by the stream when it enters the Bank Property.

The morphology of the stream is a reflection of the watershed characteristics and the flood dominated hydrology. Floods do the vast majority of sediment transport and this flood dominated regime renders the typical interpretation of a floodplain as a tenuous concept here. Rather than

the stream slowly migrating across the valley floor, the fluvial transport occurs essentially only during flood events, at which time there are large quantities of bedload in transport, and random events such as a tree falling into the stream can cause local deposition and stream evulsion. The stream retains the pattern it had on the recession of the previous flood, until a similar or larger event is again capable of mobilizing the bed.

While the majority of the channel within the parcel can be described as depositional, it is highly dynamic on decadal time scales. As riparian vegetation becomes increasingly dense, this reach will tend to become more depositional outside of the active channel during most events; however, as the event of January 10, 2005 demonstrated, rare events can remove much of the existing riparian vegetation, setting the stage for robust rejuvenation that was evident during the September, 2008 site visit.

The current channel alignment is composed primarily of gravels and cobbles, with frequent boulders and some exposures of bedrock which gives rise to pool formation. These features tend to persist since they exhibit such low hydraulic roughness that bed material in transport tends to move through them, rather than filling them.

D. Existing Easements

The Bank Property is encumbered with a 16-foot wide trail access for U.S. Forest Service (USFS) recreational use.

E . Adjacent Land Uses

The Bank Property is bounded on three sides (north, south, and east) by USFS lands administered under the Forest Management Plan for Los Padres National Forest. Lands to the west are under avocado and citrus cultivation.

III. Habitat and Species Descriptions

A. Biological Resources Survey of Bank Property

Some 209 vascular plant taxa are documented to occur on the Bank Property. Of the 209 vascular plant taxa, 178 (85.2%) are native and the remaining 31 (14.8%) are introduced naturalized species. The vascular plant flora of the property appears to be in better condition than what would normally be expected at similarly sized areas elsewhere in the region and in California. The pristine nature of the property has resulted in a slightly higher ratio of native plant species than typically found for the flora of California (~70% native) or Ventura County (80% native) as a whole (Exhibit G-1).

Palustrine and Riverine habitats provide numerous important wildlife resources for a number of wildlife, including invertebrates (aquatic and terrestrial), fish, amphibians, reptiles, birds, and mammals. This is particularly true when intact upland plant communities occur adjacent to them. The structure of the riparian community, in addition to the relatively high plant structural diversity, provides habitat necessary for foraging, nesting, and cover for many species. In addition, streams such as Santa Paula Creek are important sources of water for a variety of upland wildlife species.

Riparian zones along rivers and streams are also used as migration corridors by various species of wildlife including small and large mammals, birds, and reptiles. These migration corridors often connect habitat patches, and allow for physical and genetic exchange between animal populations. Wildlife can use riparian zones for cover while traveling across otherwise open areas. Numerous species of wildlife are known to occur within Santa Paula Creek, frequenting the Palustrine and Riverine System habitats on a seasonal basis and regularly using resources provided by the creek.

Searches of the CDFG's California Natural Diversity Data Base RareFind3 for the Santa Paula Peak Quadrangle and the surround eight quadrangles (Ojai, Saticoy, Santa Paula, Lion Canyon, Topa Topa Mountain, Devils Heart Peak, Fillmore and Moorpark) revealed 20 special-status wildlife species that are known to occur and are tracked within the vicinity of these quadrangles and the Bank Property.

Eighty-nine (89) wildlife species have been observed or detected onsite, including 2 fish, 4 amphibians, 3 (total expected is 9) reptiles, 33 birds, 9 mammals, and 37 invertebrates. An additional 49 species are reported or expected to occur on the property for a total of 141 species.

Recent (2007-08) streamside surveys and electro-shocking efforts conducted by Stillwater Sciences (Exhibit G-4) indicate that larger than expected numbers of steelhead trout

(*Oncorhynchus mykiss*) occur on the Bank Property and elsewhere in upper Santa Paula (and Sisar) Creek.

In addition to the endangered steelhead trout documented to occur, Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other threatened, endangered or sensitive species. Included in these are the California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle.

It is believed that the existing stream gradient (2-3%+) is a little too steep to provide optimal breeding habitat for the arroyo toad (*Bufo californicus*) within the parcel, although there may be an opportunity to establish this endangered species should an appropriate segment of the system re-establish a gradient less than 2%. This species historically occurred along Santa Paula Creek. Suitable habitat is present to justify the Bank as a possible future reintroduction site for California red-legged frogs.

The Bank Property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. The Bank Property's vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

B. Special-status Species Habitat and Occurrence

The Bank Property provides suitable habitat for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle.

IV. Management and Monitoring

The overall goal of long-term management is to foster the long term viability of the Bank Property's Waters of the U.S. and Covered Habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the Bank Property in perpetuity.

To carry out the management tasks under this Long-term Management Plan, the Property Owners shall hire an individual or organization, acceptable to the IRT, to serve as land manager. The land manager must satisfy the following criteria:

- Possession of a B.S. or B.A. degree in wildlife management, natural resources, ecology,

zoology, botany, biology, or similar degree;

- A minimum of two years' experience in field biology in California (preferably within county where Bank Property is located); and
- Demonstrated experience in similar projects, or in projects requiring similar skills.

A. Biological Resources

The approach to the long-term management of the Bank Property's biological resources is to conduct annual site examinations and monitoring of selected characteristics to determine stability and ongoing trends of the preserved Waters of the U.S., including wetlands and associated buffers, and sensitive species habitat, mainly riverine habitats and riparian vegetation. Annual monitoring will assess the Bank Property's condition, degree of erosion, invasion of exotic or deleterious (e.g., thatch producing) species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this Long-term Management Plan is to conduct monitoring to identify any issues that arise, and using Adaptive Management to determine what actions might be appropriate. Those chosen to accomplish monitoring responsibilities will have the knowledge, training, and experience to accomplish monitoring responsibilities.

Adaptive Management means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Property Owners. Adaptive Management includes those activities necessary to address the effects of climate change, fire, flood, or other natural events, Force Majeure, etc. Before considering any Adaptive Management changes to the Long-term Management Plan, the IRT will consider whether such actions will help ensure the continued viability of Bank Property's biological resources.

The Property Owners shall implement the following:

Element A.1 Waters of the U.S., including wetlands

Objective: Monitor, conserve and maintain the Bank Property's Waters of the U.S., including wetlands and associated buffers. Limit any impacts to Waters of the U.S. from vehicular travel or other adverse impacts.

Task: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site examination in the spring. Notes to be made will include observations of species encountered, water quality, general extent of wetlands, and any occurrences of erosion, and weed invasion.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the Bank file. Alternatively, utilize photographic reference sites, if any, developed during the Interim Management Period. Reference photographs will be taken of the overall wetland mosaic at least every five years from the beginning of the long-term management, with selected reference photos taken on the ground more frequently, twice per year.

Element A.2. Covered Habitat

Objective: Monitor, conserve and maintain the Bank Property's Covered Habitat.

Task: As part of the annual site walk-through, the Bank Property's Covered Habitat will be examined for any changes, current condition or pending needs. Any necessary tasks will be identified, prioritized and implemented as funding is available.

Element A.3 Threatened/Endangered Animal Species Monitoring

Objective: Monitor habitat conditions needed to support steelhead.

Objective: Manage to maintain habitat for southern steelhead trout.

Task: Monitor status every year by conducting qualitative habitat assessment surveys twice per year.

Element A.4 Non-native Invasive Species

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor non-native invasive species, including but not limited to noxious weeds, that diminish site quality for which the bank was established. The Property Owners shall consult the following sources for guidance on what species may threaten the site and on management of those species: The California Department of Food and Agriculture (CDFA) list of "noxious weeds" that are subject to regulation or quarantine by county agricultural departments, the [California Department of Food and Agriculture's Integrated Pest Control Branch](#), and the University of California State Integrated Pest Management Program list of "Exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas".

Task: Mapping of non-native invasive species cover or presence shall occur during the first five years of initiating long-term management, to establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: Each year's annual walk-through survey (or a supplemental survey) will include a qualitative assessment (e.g. visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, primarily in or around the wetlands.

B Security, Safety, and Public Access

The Bank Property is open to general public access consistent with the USFS easement. This will continue to be an allowed use. Research and/or other educational programs or efforts may be allowed on the Bank Property as deemed appropriate by the IRT, but are not specifically part of this Long-term Management Plan.

Element B.1 Trash and trespass

Objective: Monitor sources of trash, vandalism, and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts. These activities are, and will continue to be the responsibility of the USFS as a condition of that agency's easement.

Task: During each site visit, record occurrences of trash and/or trespass. Record type, location, and management mitigation recommendations to

avoid, minimize, or rectify a trash and/or trespass impact.

C. Reporting and Administration

Element C.1 Annual Report

Objective: Provide annual report on all monitoring conducted and general site conditions to IRT and any other appropriate parties.

Task: Prepare annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT by August 15 of each year.

Task: Make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention, and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

V. Amendments and Notices

A. Amendments

The Property Owners and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the Long-term Management Plan to better meet management objectives and preserve the habitat and Conservation Values of the Bank Property. Any proposed changes will be designed with input from all parties. Any and all amendments to the Long-term Management Plan shall be approved by the IRT in writing and such approved amendments thereto shall be considered required management components and shall be implemented by the Property Owners.

If the CDFG determine, in writing, that continued implementation of the Long-term Management Plan would jeopardize the continued existence of a state listed species, any written amendment to this Long-term Management Plan, determined by the CDFG as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Property Owners.

B. Notices

Any notices regarding this Long-term Management Plan shall be directed as follows:

Richard E. Lyons and Laurie Prange Lyons
PO Box 4, Ojai, CA 93024
805-525-2200 main
805-525-2556
civicrecords@gmail.com

U.S. Army Corps of Engineers
Los Angeles District, Ventura Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Attn: Chief, North Coast Branch

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

California Department of Fish and Game
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager

California Department of Fish and Game
Habitat Conservation Planning Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief

VI. Funding and Task Prioritization

A. Funding

Table 1 summarizes the anticipated costs of long-term management for the Bank. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting. The total annual funding anticipated is \$4,200.00; therefore, with the current annual estimated capitalization rate of 3.5% the total Endowment Fund amount required will be \$120,000.00.

In accordance with the BEI, long-term management activities will be funded via the Endowment Fund held in trust by the Endowment Holder. Any Endowment Fund interest earnings beyond those necessary to provide Endowment Principal growth commensurate with inflation and any revenues remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property will be made available by the Endowment Holder to the Property Owners to fund the long-term management and monitoring activities on the Bank Property in a manner consistent with this Long-term Management Plan.

B. Task Prioritization

Due to unforeseen circumstances, prioritization of tasks, including tasks resulting from new requirements, may be necessary if insufficient funding is available to accomplish all tasks. The Property Owners and the Interagency Review Team (“IRT”) shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate habitat quality; and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the IRT and as authorized by the IRT in writing.

Exhibit C.

Santa Paula Creek Mitigation Bank Long Term Management Plan Annual Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

EXHIBIT C-5

INTERIM MANAGEMENT PLAN

Interim Management Plan

Santa Paula Creek Mitigation Bank

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Table 1. Bank Management, Monitoring Activities, Level of Effort, Frequency and Cost.

Santa Paula Creek Mitigation Bank

Interim Annual Management Plan

I. Introduction

A. Goals and Objectives

The Santa Paula Creek Mitigation Bank (“Bank”) is intended to compensate for unavoidable impacts to, and to conserve and to protect, Waters of the U.S. and Covered Habitats. Richard E. Lyons and Laurie Prange Lyons (“Property Owners”) are the owners of real property containing approximately 200 acres (the “Property”), located near Santa Paula, Ventura County, California. Richard E. Lyons and Laurie Prange Lyons are also the Bank Sponsors of the Bank. The Bank Property covers the entire Property and includes 124.29 Waters of the U.S. and CDFG Covered Habitat Preservation Credits, and an additional 73.93 CDFG Covered Habitat Preservation Credits only for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell’s vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle. Terms used in this Interim Annual Management Plan have the same meaning as defined in the Bank Enabling Instrument (“BEI”) and Conservation Easement.

B. Purpose of this Interim Annual Management Plan

The purpose of this Interim Annual Management Plan is to ensure the Bank Property is managed, monitored, and maintained from Bank Establishment until the Endowment Fund has been fully funded for three years. This Interim Annual Management Plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the Waters of the U.S. and Covered Habitat on the Bank Property.

C. Bank Sponsors’ Responsibilities

Bank Sponsors, their successors and assigns, shall manage and monitor the Bank Property during the Interim Annual Management Period to preserve its habitat and Conservation Values in accordance with the BEI and this Interim Annual Management Plan.

II. Bank Property Description

A. Setting and Location

The Bank Property is located north of Santa Paula, Ventura County, State of California, designated Assessor's Parcel No. 040-0-020-085. The Bank Property is shown on the general vicinity map (Figure 1) and the Bank Property map (Figure 2). The general vicinity map shows the Bank Property location in relation to cities, towns, or major roads, and other distinguishable landmarks. The Bank Property map shows the Bank Property boundaries on a topographic map.

B. History and Land Use

The history of the land uses and human activity associated with the Bank Property is described in Exhibit F, Phase I Environmental Assessment. The land in the general area of the Bank Property is currently either undisturbed open space (i.e., U.S. Forest Service land) or in agriculture (mainly citrus and avocados currently).

C. Hydrology, Topography, and Soils

The Bank Property is located on what might be described as the bottom of the Santa Paula Creek headwaters. Approximately 0.7 miles upstream lies the confluence of the east and north forks.

The entire watershed tributary to the Bank Property is undeveloped, consisting of steep to very steep topography dominated by coastal sage-chaparral on most aspects except on north-facing slopes, where some conifers can be found. In contrast to the lower watershed below the Sisar Creek confluence, the upper watershed is composed primarily of well-indurated sandstone of Eocene age (Juncal and Matilija formations). These materials are resistant to abrasion while in transport. Most of the lower watershed is composed of soft shales, and are quickly eroded into fine sediments. As a result, the Lyons parcel lies within that portion of the Santa Paula Creek watershed which provides the source material for most of the coarse sediment comprising the streambed for the mainstem of Santa Paula Creek.



Figure 1



Figure 2

The nearest streamflow gauge is 2.6 miles downstream of the Bank Property (U.S. Geological Survey Station 11113500, "Santa Paula Creek near Santa Paula"). The approximate drainage area at the downstream Bank Property boundary is 18.5 square miles. The peak flow of record at the gauge is 27,500 cubic feet/second (cfs) which occurred on January 10, 2005 (Stillwater Sciences 2007). The stream within the Bank Property is perennial. The approximate discharge was one cfs during a field visit on September 25, 2008 by HydroScience (T. Hanes, pers. comm.), which was a dry year. The streamflow, except for a small baseflow component, is flashy and responds quickly to rainfall once the soils are recharged after the typical summer drought. During the winter baseflows increase as more water moves laterally toward channels and less are intercepted in route to support transpiration. At the gauge, approximately 70% of the mean daily discharges were at or below 10 cfs (Stillwater Sciences 2007). The value at the Bank Property would be expected to be less, probably 6-8 cfs.

The Bank Property is unique in that it supports the widest floodplain/valley width of the entire creek. This feature results from a constriction in the valley bottom and a 90-degree turn in the channel, which may be fault related. The north fork appears to be largely dominated by bedrock, as evidenced by the waterfalls on that fork, which is in contrast to the east fork, where the stream is eroding into the severely constricted valley sides which are composed of relatively more fractured rock. Based on this limited evidence it appears that the east fork is the dominant source of coarse sediment transported by the stream when it enters the Bank Property.

The morphology of the stream is a reflection of the watershed characteristics and the flood dominated hydrology. Floods do the vast majority of sediment transport and this flood dominated regime renders the typical interpretation of a floodplain as a tenuous concept here. Rather than the stream slowly migrating across the valley floor, the fluvial transport occurs essentially only during flood events, at which time there are large quantities of bedload in transport, and random events such as a tree falling into the stream can cause local deposition and stream evulsion. The stream retains the pattern it had on the recession of the previous flood, until a similar or larger event is again capable of mobilizing the bed.

While the majority of the channel within the Bank Property can be described as depositional, it is highly dynamic on decadal time scales. As riparian vegetation becomes increasingly dense, this reach will tend to become more depositional outside of the active channel during most events; however, as the event of January 10, 2005 demonstrated, rare events can remove much of the existing riparian vegetation, setting the stage for robust rejuvenation that was evident during the September, 2008 site visit.

The current channel alignment is composed primarily of gravels and cobbles, with frequent boulders and some exposures of bedrock which gives rise to pool formation. These features tend to persist since they exhibit such low hydraulic roughness that bed material in transport tends to move through them, rather than filling them.

D. Existing Easements

The Bank Property is encumbered with a 16-foot wide trail access for U.S. Forest Service (USFS) recreational use.

E. Adjacent Land Uses

The Bank Property is bounded on three sides (north, south, and east) by USFS lands administered under the Forest Management Plan for Los Padres National Forest. Lands to the west are under avocado and citrus cultivation.

III. Habitat and Species Descriptions

A. Biological Resources Survey of Bank Property

Some 209 vascular plant taxa are documented to occur on the Bank Property. Of the 209 vascular plant taxa, 178 (85.2%) are native and the remaining 31 (14.8%) are introduced naturalized species. The vascular plant flora of the property appears to be in better condition than what would normally be expected at similarly sized areas elsewhere in the region and in California. The pristine nature of the property has resulted in a slightly higher ratio of native plant species than typically found for the flora of California (~70% native) or Ventura County (80% native) as a whole (see Exhibit G-2).

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Riparian zones along rivers and streams are also used as migration corridors by various species of wildlife including small and large mammals, birds, and reptiles. These migration corridors often connect habitat patches, and allow for physical and genetic exchange between animal populations. Wildlife can use riparian zones for cover while traveling across otherwise open areas. Numerous species of wildlife are known to occur within Santa Paula Creek, frequenting the Palustrine and Riverine System habitats on a seasonal basis and regularly using resources provided by the creek.

Searches of the California Department of Fish and Game's (CDFG) California Natural Diversity Data Base RareFind3 for the Santa Paula Peak Quadrangle and the surround eight quadrangles (Ojai, Saticoy, Santa Paula, Lion Canyon, Topa Topa Mountain, Devils Heart Peak, Fillmore and Moorpark) revealed 20 special-status wildlife species that are known to occur and are tracked within the vicinity of these quadrangles and the Bank Property.

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Recent (2007-08) streamside surveys and electro-shocking efforts conducted by Stillwater Scientists indicate that larger than expected numbers of steelhead trout (*Oncorhynchus mykiss*) occur on the Bank Property and elsewhere in upper Santa Paula (and Sisar) Creek.

In addition to the endangered steelhead trout documented to occur, Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other threatened, endangered or sensitive species. Included in these are the California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle.

It is believed that the existing stream gradient (2-3%+) is a little too steep to provide optimal breeding habitat for the arroyo toad (*Bufo californicus*) within the parcel, although there may be an opportunity to establish this endangered species should an appropriate segment of the system

re-establish a gradient less than 2%. This species historically occurred along Santa Paula Creek. Suitable habitat is present to justify the Bank as a possible future reintroduction site for California red-legged frogs.

The Bank Property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. The Bank Property's vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

B. Special-status Species Habitat and Occurrence

The Bank Property provides suitable habitat for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle.

IV. Management and Monitoring

The overall goal of interim management is to foster the long term viability of the Bank Property's Waters of the U.S. and Covered Habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the Bank under the Interim Management Period.

The Bank Sponsors will take an Adaptive Management approach to project development and operation. Adaptive Management promotes flexible decision making that can be adjusted in the face of uncertainties as outcomes from management actions become better understood (Williams et al. 2009). Adaptive Management is a decision making process that has six key principles: problem assessment, design, implementation, monitoring, evaluation, and adjustment. The Adaptive Management process should establish clear, biologically appropriate goals and triggers tied to mitigation measures. Based on the monitoring results, a series of adaptive actions should be identified as possible solutions to identified sources of wildlife and/or habitat impacts, if any. The Adaptive Management process should develop triggers based on available data and perceived risk that signal the level of adaptive action that is required.

Through the Adaptive Management process, management decisions can be made in response to monitoring assessments. Adaptive Management decisions could include (but are not limited to) changes in public access or use resulting in additional conservation measures, further impact research or monitoring, and/or additional resource compensation.

To carry out the management tasks under this Interim Management Plan, the Bank Sponsors will

hire an individual or organization, acceptable to the IRT, to serve as land manager. The land manager must satisfy the following criteria:

- Possession of a B.S. or B.A. degree in wildlife management, natural resources, ecology, zoology, botany, biology, or similar degree;
- A minimum of two years' experience in field biology in California (preferably within county where Bank Property is located); and
- Demonstrated experience in similar projects, or in projects requiring similar skills.

A. Biological Resources

The approach to the interim management of the Bank Property's biological resources is to conduct one annual site examination and monitoring of selected characteristics to determine stability and ongoing trends of the preserved waters of the U.S., including wetlands and associated buffers, and sensitive species habitat, mainly riverine habitats and riparian vegetation. At the conclusion of the Interim Management Period, subsequent annual monitoring will occur under the Long-term Management Plan and will assess the Bank Property's condition, degree of erosion, invasion of exotic or deleterious (e.g., thatch producing) species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this Interim Management Plan is to conduct monitoring to identify any issues that arise until the Long-term Management Plan goes into effect.

The Bank Sponsors shall implement the following:

Element A.1 Waters of the U.S., including wetlands

Objective: Monitor, conserve and maintain the Bank Property's Waters of the U.S., including wetlands and associated buffers. Limit any impacts to Waters of the U.S. from vehicular travel or other adverse impacts.

Task: One annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive

species, erosion, will be noted, evaluated and mapped during a site examination in the spring. Notes to be made will include observations of species encountered, water quality, general extent of wetlands, and any occurrences of erosion, and weed invasion.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the Bank file. Alternatively, utilize photographic reference sites, if any, developed during Interim Management Period. Reference photographs will be taken of the overall wetland mosaic at the beginning of the interim management, with selected reference photos taken on the ground more frequently, twice per year.

Element A.2. Covered Habitat

Objective: Monitor, conserve and maintain the Bank Property's Covered Habitat.

Task: As part of the annual site walk-through, the Bank Property's Covered Habitat will be examined for any changes, current condition or pending needs. Any necessary tasks will be identified, prioritized and implemented as funding is available.

Element A.3 Threatened/Endangered Animal Species Monitoring

Objective: Monitor habitat conditions once per year to support steelhead and other animal species.

Task: Monitor status by conducting qualitative habitat assessment survey.

Element A.4 Non-native Invasive Species

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor non-native invasive species, including but not limited to noxious weeds, that diminish site quality for which the Bank was established. The Bank Sponsors shall consult the following sources for guidance on what species may threaten the site and on management of those species: The California Department of Food and Agriculture (CDFA) list of "noxious weeds"

that are subject to regulation or quarantine by county agricultural departments, the [California Department of Food and Agriculture's Integrated Pest Control Branch](#), and the University of California State Integrated Pest Management Program list of “Exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas”.

Task: Mapping of non-native invasive species cover or presence shall establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: The one annual walk-through survey will include a qualitative assessment (e.g. visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, primarily in or around the wetlands.

B. Security, Safety, and Public Access

The Bank Property is open to general public access consistent with the USFS easement. This will continue to be an allowed use. Research and/or other educational programs or efforts may be allowed on the Bank Property as deemed appropriate by the IRT, but are not specifically part of the Interim Management Plan.

Element B.1 Trash and Trespass

Objective: Monitor sources of trash, vandalism, and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts. These activities are, and will continue to be the responsibility of the USFS as a condition of that agency's easement.

Task: During each site visit, record occurrences of trash and/or trespass. Record type, location, and management mitigation recommendations to avoid, minimize, or rectify a trash and/or trespass impact.

B. Reporting and Administration

Element C.1 Annual Report

Objective: Provide one annual report on all monitoring conducted and general site conditions to IRT and any other appropriate parties.

Task: Prepare an annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT within one calendar year of the Bank Establishment Date.

Task: Make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention, and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date. These would then be addressed in the Long-term Management Plan.

V. Amendments and Notices

A. Amendments

The Bank Sponsors and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the Interim Management Plan to better meet management objectives and preserve the habitat and Conservation Values of the Bank Property. Any proposed changes will be designed with input from all parties. Any and all amendments to the Interim Management Plan shall be approved by the IRT in writing and such approved amendments thereto shall be considered required management components and shall be implemented by the Bank Sponsors.

If the CDFG determines, in writing, that continued implementation of the Interim Management Plan would jeopardize the continued existence of a state listed species, any written amendment to this Interim Management Plan, determined by the CDFG as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Bank Sponsors.

B. Notices

Any notices regarding this Interim Management Plan shall be directed as follows:

Richard E. Lyons and Laurie Prange Lyons
PO Box 4, Ojai, CA 93024

805-525-2200 Main
805-525-2556 FAX
civicrecords@gmail.com

U.S. Army Corps of Engineers
Los Angeles District, Ventura Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Attn: Chief, Regulatory Division

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

California Department of Fish and Game
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager

California Department of Fish and Game
Habitat Conservation Planning Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief

VI. Costs

Table 1 summarizes the anticipated costs of interim management for the Bank. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting. The anticipated required funding is approximately \$4,200.00.

Table 1. Annual Interim Management Costs

Santa Paula Creek Interim Management Plan Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/yr	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/yr	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/yr	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/yr	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/yr	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/yr	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/yr	12th month
D.1 Administration/Contingency	As-needed			700.00	Once/yr	As needed
Total Estimated Annual Cost				4200.00		

EXHIBIT C-6

LONG-TERM MANAGEMENT PLAN

Long-term Management Plan Santa Paula Creek Mitigation Bank

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Santa Paula Creek Mitigation Bank Long-Term Management Plan

I. Introduction

A . Goals and Objectives

The Santa Paula Creek Mitigation Bank (“Bank”) is intended to compensate for unavoidable impacts to, and to conserve and to protect, Waters of the U.S. and Covered Habitat. Richard E. Lyons and Laurie Prange Lyons (“Property Owners”) are the owners of real property containing approximately 200 acres (the “Property”), located near Santa Paula, Ventura County, California. The Bank Property covers the entire Property and includes 124.29 Waters of the U.S. and CDFG Covered Habitat Preservation Credits, plus an additional 73.93 CDFG Covered Habitat Preservation Credits only for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell’s vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle. Terms used in this Long-term Management Plan have the same meaning as defined in the Bank Enabling Instrument (“BEI”) or Conservation Easement. Exhibit G describes the biological resources of the Bank property. Additionally, several related technical reports are available on a CD provided with this submittal.

B Purpose of this Long-term Management Plan

The purpose of this Long-term Management Plan is to ensure the Bank Property is managed, monitored, and maintained in perpetuity. This Long-term Management Plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the Waters of the U.S. and Covered Habitat on the Bank Property.

C. Property Owners Responsibilities

Property Owners, their successors and assigns, shall implement this Long-term Management Plan, managing and monitoring the Bank Property in perpetuity to preserve its habitat and Conservation Values in accordance with the BEI, the Conservation Easement, and this Long-term Management Plan. Long-term management tasks shall be funded through the Endowment Fund, held in trust by the National Fish and Wildlife Foundation (the “Endowment Holder”) in accordance with the Memorandum of Agreement entered into between the Endowment Holder and California Department of Fish and Game (“CDFG”), effective November 23, 2010. The Property Owners shall be responsible for providing an annual report to the IRT detailing the time

period covered, an itemized account of the management tasks and total amount expended.

II. Bank Property Description

A. Setting and Location

The Bank Property is located north of Santa Paula, Ventura County, State of California, designated Assessor's Parcel No. 040-0-020-085. The Bank Property is shown on the general vicinity map (Figure 1) and the Bank Property map (Figure 2). The general vicinity map shows the Bank Property location in relation to cities, towns, or major roads, and other distinguishable landmarks. The Bank Property map shows the Bank Property boundaries on a topographic map.

B History and Land Use

In the 1890s the property was reportedly homesteaded by local pioneers who lived there until the early 1930s. At that time, Santa Paula Water Works, the former private water company serving the City of Santa Paula, purchased the property from the homesteaders. Due to the topography of the canyon, the Water Works explored the option of building a water storage dam along Santa Paula Creek at the western boundary of the property. For whatever technical or financial reasons, this option was never implemented and the creek and the canyon remained largely undeveloped and pristine. In 2005, the Bank Sponsors purchased the property from Santa Paula Water Works with the intent of possibly developing it as a residence and/or a commercial vineyard.

The majority of the lands adjoining the proposed Bank are currently managed as recreational open space by the USFS. Other adjacent land uses include commercial agriculture, mainly citrus and avocado production, and oil/natural gas production.

C. Hydrology, Topography, and Soils

The Bank Property is located on what might be described as the bottom of the Santa Paula Creek headwaters. Approximately 0.7 miles upstream lies the confluence of the east and north forks.

The entire watershed tributary to the Bank Property is undeveloped, consisting of steep to very steep topography dominated by coastal sage-chaparral on most aspects except on north-facing slopes, where some conifers can be found. In contrast to the lower watershed below the Sisar Creek confluence, the upper watershed is composed primarily of well-indurated sandstone of

Eocene age (Juncal/Matilija formations). These materials are resistant to abrasion in transport.

Most of the lower watershed is composed of soft shales, and are quickly eroded into fine sediments. As a result, the Bank Property lies within that portion of the Santa Paula Creek watershed which provides the source material for most of the coarse sediment comprising the streambed for the mainstem of Santa Paula Creek.

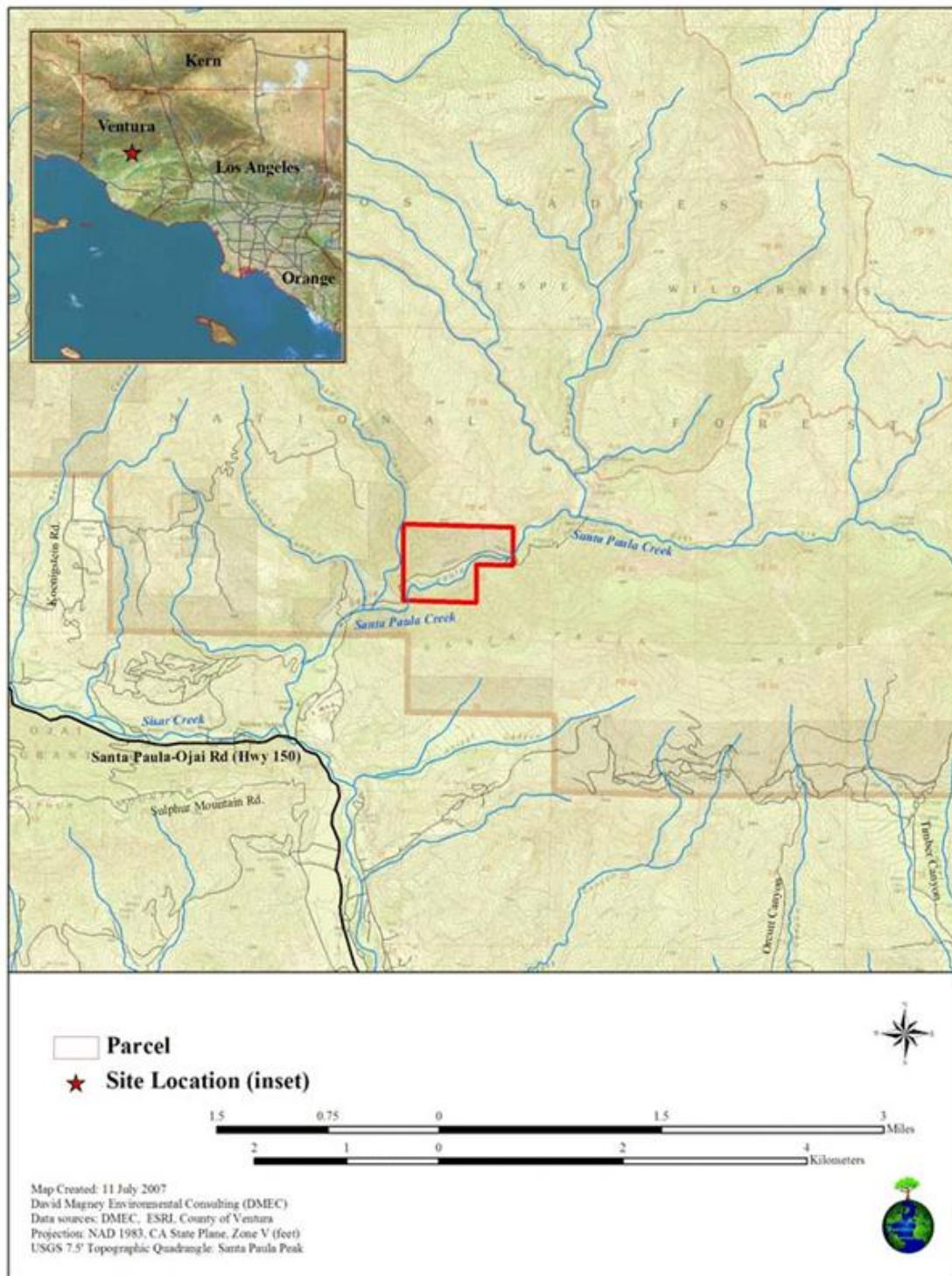


Figure 1



Figure 2

The nearest streamflow gauge is 2.6 miles downstream of the Bank (U.S. Geological Survey Station 11113500, “Santa Paula Creek near Santa Paula”). The approximate drainage area at the downstream Bank Property boundary is 18.5 square miles. The peak flow of record at the gauge is 27,500 cubic feet/second (cfs) which occurred on January 10, 2005 (Stillwater Sciences 2007). The stream within the parcel is apparently perennial. The approximate discharge was one cfs during a field visit on September 25, 2008 by HydroScience (T. Hanes, pers. comm.), which was a dry year. The streamflow, except for a small baseflow component, is flashy and responds quickly to rainfall once the soils are recharged after the typical summer drought. During the winter baseflows increase as more water moves laterally toward channels and less are intercepted in route to support transpiration. At the gauge, approximately 70% of the mean daily discharges were at or below 10 cfs (Stillwater Sciences 2007). The value at the Bank Property would be expected to be less, probably 6-8 cfs.

The Bank Property is unique in that it supports the widest floodplain/valley width of the entire creek. This feature results from a constriction in the valley bottom and a 90-degree turn in the channel, which may be fault related. The north fork appears to be largely dominated by bedrock, as evidenced by the waterfalls on that fork, which is in contrast to the east fork, where the stream is eroding into the severely constricted valley sides which are composed of relatively more fractured rock. Based on this limited evidence it appears that the east fork is the dominant source of coarse sediment transported by the stream when it enters the Bank Property.

The morphology of the stream is a reflection of the watershed characteristics and the flood dominated hydrology. Floods do the vast majority of sediment transport and this flood dominated regime renders the typical interpretation of a floodplain as a tenuous concept here. Rather than the stream slowly migrating across the valley floor, the fluvial transport occurs essentially only during flood events, at which time there are large quantities of bedload in transport, and random events such as a tree falling into the stream can cause local deposition and stream evulsion. The stream retains the pattern it had on the recession of the previous flood, until a similar or larger event is again capable of mobilizing the bed.

While the majority of the channel within the parcel can be described as depositional, it is highly dynamic on decadal time scales. As riparian vegetation becomes increasingly dense, this reach will tend to become more depositional outside of the active channel during most events; however, as the event of January 10, 2005 demonstrated, rare events can remove much of the existing riparian vegetation, setting the stage for robust rejuvenation that was evident during the September, 2008 site visit.

The current channel alignment is composed primarily of gravels and cobbles, with frequent boulders and some exposures of bedrock which gives rise to pool formation. These features tend to persist since they exhibit such low hydraulic roughness that bed material in transport tends to move through them, rather than filling them.

D. Existing Easements

The Bank Property is encumbered with a 16-foot wide trail access for U.S. Forest Service (USFS) recreational use.

E. Adjacent Land Uses

The Bank Property is bounded on three sides (north, south, and east) by USFS lands administered under the Forest Management Plan for Los Padres National Forest. Lands to the west are under avocado and citrus cultivation.

III. Habitat and Species Descriptions

A. Biological Resources Survey of Bank Property

Some 209 vascular plant taxa are documented to occur on the Bank Property. Of the 209 vascular plant taxa, 178 (85.2%) are native and the remaining 31 (14.8%) are introduced naturalized species. The vascular plant flora of the property appears to be in better condition than what would normally be expected at similarly sized areas elsewhere in the region and in California. The pristine nature of the property has resulted in a slightly higher ratio of native plant species than typically found for the flora of California (~70% native) or Ventura County (80% native) as a whole (Exhibit G-2).

Palustrine and Riverine habitats provide numerous important wildlife resources for a number of wildlife, including invertebrates (aquatic and terrestrial), fish, amphibians, reptiles, birds, and

mammals. This is particularly true when intact upland plant communities occur adjacent to them. The structure of the riparian community, in addition to the relatively high plant structural diversity, provides habitat necessary for foraging, nesting, and cover for many species. In addition, streams such as Santa Paula Creek are important sources of water for a variety of upland wildlife species.

Riparian zones along rivers and streams are also used as migration corridors by various species of wildlife including small and large mammals, birds, and reptiles. These migration corridors often connect habitat patches, and allow for physical and genetic exchange between animal populations. Wildlife can use riparian zones for cover while traveling across otherwise open areas. Numerous species of wildlife are known to occur within Santa Paula Creek, frequenting the Palustrine and Riverine System habitats on a seasonal basis and regularly using resources provided by the creek.

Searches of the CDFG's California Natural Diversity Data Base RareFind3 for the Santa Paula Peak Quadrangle and the surround eight quadrangles (Ojai, Saticoy, Santa Paula, Lion Canyon, Topa Topa Mountain, Devils Heart Peak, Fillmore and Moorpark) revealed 20 special-status wildlife species that are known to occur and are tracked within the vicinity of these quadrangles and the Bank Property.

Eighty-nine (89) wildlife species have been observed or detected onsite, including 2 fish, 4 amphibians, 3 (total expected is 9) reptiles, 33 birds, 9 mammals, and 37 invertebrates. An additional 49 species are reported or expected to occur on the property for a total of 141 species.

Recent (2007-08) streamside surveys and electro-shocking efforts conducted by Stillwater Sciences (Exhibit G-4) indicate that larger than expected numbers of steelhead trout (*Oncorhynchus mykiss*) occur on the Bank Property and elsewhere in upper Santa Paula (and Sisar) Creek.

In addition to the endangered steelhead trout documented to occur, Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other threatened, endangered or sensitive species. Included in these are the California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle.

It is believed that the existing stream gradient (2-3%+) is a little too steep to provide optimal breeding habitat for the arroyo toad (*Bufo californicus*) within the parcel, although there may be an opportunity to establish this endangered species should an appropriate segment of the system re-establish a gradient less than 2%. This species historically occurred along Santa Paula Creek.

Suitable habitat is present to justify the Bank as a possible future reintroduction site for California red-legged frogs.

The Bank Property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. The Bank Property's vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

B. Special-status Species Habitat and Occurrence

The Bank Property provides suitable habitat for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle.

IV. Management and Monitoring

The overall goal of long-term management is to foster the long term viability of the Bank Property's Waters of the U.S. and Covered Habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the Bank Property in perpetuity.

To carry out the management tasks under this Long-term Management Plan, the Property Owners shall hire an individual or organization, acceptable to the IRT, to serve as land manager. The land manager must satisfy the following criteria:

- Possession of a B.S. or B.A. degree in wildlife management, natural resources, ecology, zoology, botany, biology, or similar degree;
- A minimum of two years' experience in field biology in California (preferably within county where Bank Property is located); and
- Demonstrated experience in similar projects, or in projects requiring similar skills.

A. Biological Resources

The approach to the long-term management of the Bank Property's biological resources is to conduct annual site examinations and monitoring of selected characteristics to determine stability

and ongoing trends of the preserved Waters of the U.S., including wetlands and associated buffers, and sensitive species habitat, mainly riverine habitats and riparian vegetation. Annual monitoring will assess the Bank Property's condition, degree of erosion, invasion of exotic or deleterious (e.g., thatch producing) species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this Long-term Management Plan is to conduct monitoring to identify any issues that arise, and using Adaptive Management to determine what actions might be appropriate. Those chosen to accomplish monitoring responsibilities will have the knowledge, training, and experience to accomplish monitoring responsibilities.

Adaptive Management means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Property Owners. Adaptive Management includes those activities necessary to address the effects of climate change, fire, flood, or other natural events, Force Majeure, etc. Before considering any Adaptive Management changes to the Long-term Management Plan, the IRT will consider whether such actions will help ensure the continued viability of Bank Property's biological resources.

The Property Owners shall implement the following:

Element A.1 Waters of the U.S., including wetlands

Objective: Monitor, conserve and maintain the Bank Property's Waters of the U.S., including wetlands and associated buffers. Limit any impacts to Waters of the U.S. from vehicular travel or other adverse impacts.

Task: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site examination in the spring. Notes to be made will include observations of species encountered, water quality, general extent of wetlands, and any occurrences of erosion, and weed invasion.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the Bank file. Alternatively, utilize photographic reference sites, if any, developed during the Interim

Management Period. Reference photographs will be taken of the overall wetland mosaic at least every five years from the beginning of the long-term management, with selected reference photos taken on the ground more frequently, twice per year.

Element A.2. Covered Habitat

Objective: Monitor, conserve and maintain the Bank Property's Covered Habitat.

Task: As part of the annual site walk-through, the Bank Property's Covered Habitat will be examined for any changes, current condition or pending needs. Any necessary tasks will be identified, prioritized and implemented as funding is available.

Element A.3 Threatened/Endangered Animal Species Monitoring

Objective: Monitor habitat conditions needed to support steelhead.

Objective: Manage to maintain habitat for southern steelhead trout.

Task: Monitor status every year by conducting qualitative habitat assessment surveys twice per year.

Element A.4 Non-native Invasive Species

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor non-native invasive species, including but not limited to noxious weeds, that diminish site quality for which the bank was established. The Property Owners shall consult the following sources for guidance on what species may threaten the site and on management of those species: The California Department of Food and Agriculture (CDFA) list of "noxious weeds" that are subject to regulation or quarantine by county agricultural departments, the [California Department of Food and Agriculture's Integrated Pest Control Branch](#), and the University of California State Integrated Pest Management

Program list of “Exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas”.

Task: Mapping of non-native invasive species cover or presence shall occur during the first five years of initiating long-term management, to establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: Each year’s annual walk-through survey (or a supplemental survey) will include a qualitative assessment (e.g. visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, primarily in or around the wetlands.

B Security, Safety, and Public Access

The Bank Property is open to general public access consistent with the USFS easement. This will continue to be an allowed use. Research and/or other educational programs or efforts may be allowed on the Bank Property as deemed appropriate by the IRT, but are not specifically part of this Long-term Management Plan.

Element B.1 Trash and trespass

Objective: Monitor sources of trash, vandalism, and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts. These activities are, and will continue to be the responsibility of the USFS as a condition of that agency’s easement.

Task: During each site visit, record occurrences of trash and/or trespass. Record type, location, and management mitigation recommendations to avoid, minimize, or rectify a trash and/or trespass impact.

C. Reporting and Administration

Element C.1 Annual Report

Objective: Provide annual report on all monitoring conducted and general site conditions to IRT and any other appropriate parties.

Task: Prepare annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT by August 15 of each year.

Task: Make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention, and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

V. Amendments and Notices

A. Amendments

The Property Owners and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the Long-term Management Plan to better meet management objectives and preserve the habitat and Conservation Values of the Bank Property. Any proposed changes will be designed with input from all parties. Any and all amendments to the Long-term Management Plan shall be approved by the IRT in writing and such approved amendments thereto shall be considered required management components and shall be implemented by the Property Owners.

If the CDFG determine, in writing, that continued implementation of the Long-term Management Plan would jeopardize the continued existence of a state listed species, any written amendment to this Long-term Management Plan, determined by the CDFG as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Property Owners.

B. Notices

Any notices regarding this Long-term Management Plan shall be directed as follows:

Richard E. Lyons and Laurie Prange Lyons
PO Box 4, Ojai, CA 93024
805-525-2200 main

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civicrecords@gmail.com

U.S. Army Corps of Engineers
Los Angeles District, Ventura Office
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Attn: Chief, North Coast Branch

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Region IX
75 Hawthorne Street
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Attn: Director, Water Division

California Department of Fish and Game
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager

California Department of Fish and Game
Habitat Conservation Planning Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief

VI. Funding and Task Prioritization

A. Funding

Table 1 summarizes the anticipated costs of long- term management for the Bank. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting. The total annual funding anticipated is \$4,200.00; therefore, with the current annual

estimated capitalization rate of 3.5% the total Endowment Fund amount required will be \$120,000.00.

In accordance with the BEI, long-term management activities will be funded via the Endowment Fund held in trust by the Endowment Holder. Any Endowment Fund interest earnings beyond those necessary to provide Endowment Principal growth commensurate with inflation and any revenues remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property will be made available by the Endowment Holder to the Property Owners to fund the long-term management and monitoring activities on the Bank Property in a manner consistent with this Long-term Management Plan.

B. Task Prioritization

Due to unforeseen circumstances, prioritization of tasks, including tasks resulting from new requirements, may be necessary if insufficient funding is available to accomplish all tasks. The Property Owners and the Interagency Review Team (“IRT”) shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate habitat quality; and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the IRT and as authorized by the IRT in writing.

Table 1.

Santa Paula Creek Mitigation Bank
Long Term Management Plan
Annual Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

EXHIBIT C-7

BANK CLOSURE PLAN

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon occurrence of all of the following:
 - a. All Remedial Action has been completed as evidenced by 1) timely submission of all required annual reports in accordance with Section IX.B; 2) the third anniversary of the completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s); 3) an on-site inspection by the IRT; 4) written approval from the IRT; and
 - b. Either:
 - 1) The last authorized Credit has been Transferred; or
 - 2) The Bank Sponsors requests Bank closure by written notice to the IRT and IRT provides written approval of the closure; and
 - c. All financial responsibilities of the Bank Sponsors have been met, including 100% funding of the Endowment Fund for not less than three years; and
 - d. Conveyance of fee title to the Bank Property to the California Department of Fish and Game (CDFG).

Upon Bank closure, the CDFG will be fully responsible for implementing the Long-term Management Plan on the Bank Property.

Deviation from the Bank Closure Plan is subject to review and written approval by the IRT.

EXHIBIT C-8

Master Mitigation Account Memorandum of Agreement

**Master Mitigation Account
Memorandum of Agreement between the
California Department of Fish and Game and the
National Fish and Wildlife Foundation**

This Master Mitigation Account Memorandum of Agreement (this "Agreement") is entered between the California Department of Fish and Game, an agency of the State of California (the "CDFG") and the National Fish and Wildlife Foundation, a District of Columbia non-profit corporation (the "Foundation") (together, the "Parties," and individually, a "Party"), as of the date of the signature of the second Party to sign (such date, the "Effective Date").

I. PURPOSES

1. The purposes of this Agreement are to establish the California Department of Fish and Game Master Mitigation Account (the "CDFG Account") to receive long-term endowment and other monies to be used to conserve, protect, restore and enhance fish, wildlife, native plants and habitats under the jurisdiction of the CDFG ("Account Purpose"), and to provide for the Foundation's deposit, investment, management and administration of the CDFG Account for the Account Purpose. The Foundation will direct monies in the CDFG Account to specified conservation, protection, restoration, enhancement, or related purposes as described in the "Deposit Documents," as hereinafter defined.
2. The primary source of funds to be deposited, invested, managed and administered under this Agreement are monies to be paid by individuals or private or governmental entities (hereafter referred to individually as a "Participant" and collectively as the "Participants") as a requirement of approvals, permits or other authorizations issued by the CDFG to minimize and mitigate certain unavoidable impacts of Participant projects on fish, wildlife, native plants and habitats (the "CDFG Approvals").
3. The legal and regulatory programs pursuant to which such CDFG Approvals may be given include, but are not necessarily limited to, the California Endangered Species Act (Cal. Fish and Game Code Section 2050 *et seq.*), the California Lake and Streambed Alteration Program (Cal. Fish and Game Code Section 1600 *et seq.*), the California Natural Community Conservation Planning Act (Cal. Fish and Game Code Section 2800 *et seq.*), and the California Environmental Quality Act (Cal. Public Resources Code Section 21000 *et seq.*).
4. As described more fully herein, the Foundation will be responsible to ensure that monies deposited in the CDFG Account will be deposited, invested and managed in accordance with this Agreement and the CDFG's direction and investment policy guidance to achieve the objectives set forth in this Agreement and the applicable Deposit Documents. Long-term endowment funds deposited into the CDFG Account will be managed as a long-term investment intended to exist indefinitely and fund necessary

costs of long-term management of mitigation lands and mitigation projects required under CDFG Approvals, and will be invested accordingly in a diversified investment portfolio in accordance with the endowment investment policy statement approved by the CDFG attached to this Agreement as Exhibit A and incorporated herein by reference, as the CDFG may amend the same from time-to-time. The CDFG Account may also be used for the deposit and management of funds other than long-term endowment monies, such as funds intended to pay for near-term management, site enhancement, restoration, or other activities designed to further the conservation, protection, restoration, and enhancement of fish, wildlife, and plant resources subject to the CDFG's jurisdiction. Funds other than long-term endowment funds will be invested accordingly in a cash management portfolio established and maintained by the Foundation.

5. The use of the CDFG Account will be limited by the amount of money available in the CDFG Account at any given time, and by the stated purposes as described in the applicable Deposit Documents. The Foundation shall disburse funds in the CDFG Account in accordance with direction provided by the CDFG and as set forth in the Deposit Documents and "Recipient Agreements," as hereinafter defined. In the event NFWF becomes aware of a conflict between the direction provided by the CDFG in its Deposit Documents and any Recipient Agreements, the Foundation shall notify and request direction from the CDFG prior to any disbursement.

II. AUTHORITY

1. The CDFG is an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species. (Cal. Fish and Game Code Section 1802.)

2. The Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 *et seq.*, as amended (the "Establishment Act"), and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The Establishment Act directs the Foundation to undertake activities that further the conservation and management of fish, wildlife, and plant resources for present and future generations and authorizes the Foundation to accept funds from any legal source to further its mission. The Establishment Act also requires the Foundation to report annually to the United States Congress on its proceedings and activities, including by providing Congress with a "full and complete statement of its receipts, expenditures, and investments" each year. (16 U.S.C. Section 3706(b)).

3. This Agreement is authorized under the California Fish and Game Code Sections 1600 *et seq.*, 1802, 2050 *et seq.*, and 2800 *et seq.*; California Code of Regulations, Title 14, California Fish and Game Commission Policies; California Government Code Section 65965; and other applicable laws and regulations.

III. DEFINITIONS

1. "Acquisition Measure" shall have the meaning assigned to such term in Section VI(4) of this Agreement.
2. "Agreement" shall have the meaning assigned to such term in the Preamble to this Agreement.
3. "Annual Fee" is addressed within Section VII(3).
4. "CDFG" shall have the meaning assigned to such term in the Preamble to this Agreement.
5. "CDFG Account" shall have the meaning assigned to such term in Section I(1) of this Agreement.
6. "CDFG Representative" shall mean the designated staff person for the CDFG (or his or her alternate, acting in the place of the primary CDFG Representative) responsible for primary communications and administration related to this Agreement pursuant to Sections IV(1) and XI(3).
7. "Deposit Documents" shall mean documents such as permits, consents, authorizations, approvals and other writings issued by the CDFG which describe the sources and purposes of the various funds deposited into the CDFG Account. A "Set of Deposit Documents" is associated with a single project but may include more than one permit, consent, authorization, approval, or other writing issued by CDFG. In addition, at its election, the CDFG may create a standard form Deposit Document for certain Sub-Accounts (as defined below) that includes information the CDFG determines is necessary, such as: 1) Project name; 2) Project location; 3) land ownership and designated manager of the Project site; 4) Project proponent and affiliate(s); and 5) specific mitigation measures or other measures agreed to by the Participant(s) that are to be funded from the monies deposited into the Sub-Account for the applicable Project.
8. "Effective Date" shall have the meaning assigned to such term in the Preamble to this Agreement.
9. "Endowment Measure" shall have the meaning assigned to such term in Section VI(4) of this Agreement.
10. "Enhancement Measure" shall have the meaning assigned to such term in Section VI(4) of this Agreement.
11. "Establishment Act" shall have the meaning assigned to such term in Section II(2) of this Agreement.

12. "Foundation" shall have the meaning assigned to such term in the Preamble to this Agreement.
13. "Foundation Representative" shall mean the designated staff person for the Foundation (or his or her alternate, acting in the place of the primary Foundation Representative) responsible for primary communications and administration related to this Agreement pursuant to Sections V(1) and XI(3).
14. "Participant" and "Participants" shall have the meanings assigned to such terms in Section I(2) of this Agreement.
15. "Party" and "Parties" shall have the meanings assigned to such terms in the Preamble to this Agreement.
16. "Per Sub-Account Deposit Fee" is addressed within Section VII(2) of this Agreement.
17. "Project" shall mean a mitigation project consistent with the Account Purpose that has been selected by the CDFG for funding with amounts in the CDFG Account in accordance with the procedures set forth in this Agreement.
18. "Recipient" shall mean any person or entity that receives monies from the CDFG Account for the performance of a Project as set forth in a Recipient Agreement.
19. "Recipient Agreement" shall mean a contract, grant agreement, invoice, work order, or other written agreement or arrangement between the Foundation and a Recipient for the performance of a Project, including but not limited to long-term management activities, to be funded through a Sub-Account (as defined below).
20. "RFP" shall have the meaning assigned to such term in Section V(6) of this Agreement.
21. "Sub-Account" shall mean each individual sub-account within the CDFG Account established for the Endowment Measures, Acquisition Measures, and/or Enhancement Measures associated with each Set of Deposit Documents. The Foundation shall track and account for each Sub-Account in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFG Account. Within each Sub-Account, the Foundation shall track and account for all monies deposited by Participants or other depositors in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFG Account.
22. "Sub-Account Representative" shall have the meaning assigned to such term in Section IV(1) of this Agreement.

IV. CDFG RESPONSIBILITIES

1. The CDFG shall appoint the CDFG Representative and an alternate, who shall represent the CDFG in carrying out its obligations under this Agreement. The CDFG Representative and the alternate shall be the only persons authorized to approve deposits into, or direct disbursements out of, the CDFG Account. As described in additional detail in Section VI(5) below, the CDFG, by and through the CDFG Representative, shall retain sole responsibility for specifying the amount and designated purpose of funds to be deposited into the CDFG Account. If and to the extent the CDFG elects to designate a representative other than the CDFG Representative for a particular Sub-Account or other purpose under this Agreement (such person, a "Sub-Account Representative"), the CDFG shall notify the Foundation in writing of such election and, thereafter, the Sub-Account Representative shall function as the "CDFG Representative" hereunder for the purposes specified in such notice. The initial CDFG Representative and alternate are designated in Section XI(3). The CDFG shall notify the Foundation of any change in the CDFG Representative, Alternate or Sub-Account Representative by giving notice pursuant to Section XI.
2. From time to time, the CDFG Representative shall direct the Foundation in writing to disburse funds from Sub-Accounts to pay for performance of specified Projects consistent with the applicable Deposit Documents. Such disbursement may occur pursuant to a Recipient Agreement between the Foundation and the applicable Recipient of funds from a Sub-Account or by any other means specified by the CDFG (which may include, without limitation, direct disbursements by the Foundation to Recipients automatically in specified amounts and/or at specified intervals). The CDFG shall have the right at any time to review and approve (a) all Recipient Agreements, including any amendments, prior to their execution and (b) all requests from Recipients for disbursements of funds from the CDFG Account, prior to the Foundation's making such disbursements. If the CDFG directs the Foundation to make disbursements from the CDFG Account to one or more Recipients in specified amounts and/or at specified intervals, the Foundation is entitled to rely upon such direction and shall make such disbursements in the amounts and/or at the intervals so specified until and unless otherwise directed by the CDFG in writing.
3. The CDFG may elect to use money from the CDFG Account for Projects to be carried out by the CDFG rather than by a third-party Recipient. In such instances, the CDFG Representative will transmit to the Foundation Representative a Project budget, a brief description of Project activities, and associated payment procedures for transfer of money from the CDFG Account to the CDFG as payment for performance of the relevant Project.
4. If the CDFG elects to conduct any annual technical reviews to evaluate the progress and results of Projects funded by the CDFG Account, the CDFG may request the participation of the Foundation in such reviews. If the CDFG determines that termination or cancellation of a particular Project is warranted, the CDFG Representative will so inform the Foundation in writing.

5. The CDFG shall provide information to the general public, as appropriate, about the CDFG Account pursuant to any requirements the CDFG may have under the California Public Records Act or other authorities.

V. FOUNDATION RESPONSIBILITIES

1. The Foundation shall appoint the Foundation Representative and an alternate, who shall represent the Foundation in carrying out its obligations under this Agreement. The CDFG may rely on all written communications made hereunder by the Foundation Representative or alternate as the communications of the Foundation itself. The Foundation shall notify the CDFG in writing of any change in the Foundation Representative or alternate within ten (10) days of such change by giving notice to the CDFG pursuant to Section XI.

2. The Foundation shall maintain the CDFG Account in an interest bearing or investment account at one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation or Securities Investor Protection Corporation (each an "Account Holder" and together the "Account Holders"). In consultation with third parties and/or the Foundation, the CDFG will determine the appropriate investment strategy or strategies to apply to the CDFG Account, including each Sub-Account within the CDFG Account. For accounting purposes, the Foundation shall ensure that the CDFG Account shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure that all Sub-Accounts within the CDFG Account are distinguishable from each other.

3. The Foundation shall invest amounts in the CDFG Account consistent with this Agreement, including but not limited to this Article V and Sections I(4), and VI(6) of this Agreement and applicable State and Federal laws, and in accordance with investment guidance determined by the CDFG and communicated to the Foundation in writing for implementation by each of the Account Holders. In addition, if requested by the CDFG, the Foundation shall invest amounts in any Sub-Account in an investment pool to achieve a specified purpose and tenure of the relevant funds consistent with the applicable Deposit Document. Day-to-day investment decisions will be made by the professional investment advisor or financial institution with which the Foundation has established or will establish an investment advisory relationship. The Foundation may rely on the advice of any such adviser, and may delegate day-to-day investment decision-making authority, consistent with applicable State and Federal law, to such adviser with respect to management of the CDFG Account or any Sub-Account. Investment income accruing to each Sub-Account will be credited thereto (with investment income accruing on pooled funds apportioned *pro rata* to each Sub-Account within such pool) and shall be used to carry out the purposes of the various Sub-Accounts as set forth in the applicable Deposit Documents.

4. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the CDFG Account with other funds held or managed by the Foundation that are subject to identical investment purposes and restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the CDFG Account commingled in this manner shall at all times remain subject to the investment guidance specified by the CDFG for such funds. In addition, notwithstanding this authorization, and in accordance with Section V(2) above, the Foundation shall ensure that funds in the CDFG Account shall at all times be distinguishable within the Foundation's internal account system from the balances of all other accounts maintained or managed by the Foundation.

5. The Foundation shall administer the CDFG Account consistent with Section VII, below.

6. If requested by the CDFG, under separate agreements with the CDFG, the Foundation shall prepare one or more specialized requests for proposals (each an "RFP") for Projects to be selected by the CDFG and funded by the CDFG Account.

7. The Foundation shall pay Recipients' requests for disbursements in accordance with the procedures set forth in the respective Recipient Agreements or, if no Recipient Agreement exists, as otherwise specified by the CDFG in writing.

8. The Foundation will transfer money from the CDFG Account to the CDFG as payment for performance of Projects by the CDFG in accordance with payment procedures provided by the CDFG pursuant to Section IV(3).

9. If requested by the CDFG, the Foundation shall participate with the CDFG in annual technical reviews to evaluate the progress and results of Projects funded by the CDFG Account. The Foundation will also take appropriate steps to terminate or cancel a Project if directed to do so by the CDFG.

VI. STANDARD OPERATING PROCEDURES

The CDFG and the Foundation expect that, in the ordinary course, the procedures set forth in this Section VI will govern the deposit, management, and disbursement of funds in Sub-Accounts within the CDFG Account. If and to the extent that an applicable Deposit Document or Set of Deposit Documents, provisions of applicable law or regulation, or written instructions delivered by the CDFG to the Foundation specify additional or different procedures for such deposit, management, or disbursement, then such alternate procedures shall be deemed to apply.

1. Permits, consents, authorizations, and/or related approvals issued by the CDFG may directly require Participants to pay funds to the Foundation for management pursuant to

this Agreement, or the CDFG may direct Participants to pay such funds to the Foundation through other communications transmitted to Participants in conjunction with or after issuance of the applicable Deposit Document(s).

2. For each payment of funds to the Foundation associated with a Set of Deposit Documents the CDFG shall either transmit, or require the paying Participant to transmit with its payment, to the Foundation copies of the Set of Deposit Documents or other communications requiring such payment.

3. For each payment of funds to the Foundation pursuant to Section VI(1) above, the Set of Deposit Documents or other communications transmitted to the Foundation (or, if not, a separate written instrument delivered by the CDFG to the Foundation) shall specify (a) the paying Participant and affiliates, (b) the paying Participant's project name, (c) the location of the paying Participant's project (or other activity) giving rise to the required payment, (d) land ownership and designated manager of the project site, and (e) the mitigation measures required to be funded by such payment.

4. The CDFG shall classify (either in the Set of Deposit Documents or a separate written instrument delivered to the Foundation) each specific mitigation measure identified in a Deposit Document or other instrument delivered to the Foundation as either (a) a long-term maintenance or management measure (each, an "Endowment Measure"), (b) a near-term land acquisition measure (each, an "Acquisition Measure"), or (c) a near-term restoration, enhancement, rehabilitation or other measure not described in (a) or (b) (each, an "Enhancement Measure").

5. The Parties expressly agree and acknowledge that as between the Parties the specification of mitigation measures and mitigation funds in a Set of Deposit Documents is the sole and exclusive responsibility of the CDFG. Without limiting the foregoing, the amount of mitigation funds specified for any Endowment Measures, whether calculated pursuant to a Property Analysis Record or otherwise, shall be the sole and exclusive responsibility of the CDFG and applicable Participant(s), and shall in no respect be the responsibility of the Foundation. The CDFG agrees and acknowledges that the Foundation is expressly entitled to rely on the validity of all such mitigation measures and the accuracy of the calculation of mitigation funds without independent verification. The Foundation shall not be liable in any respect to the CDFG, or to any other party, for any errors, omissions, inaccuracies, or other elements in the specification of such mitigation measures or mitigation funds.

6. With respect to the funds received by the Foundation in connection with each Set of Deposit Documents, the Foundation shall establish an individual Sub-Account corresponding to each measure identified in Section VI(4)(a)-(c) above provided for in the Set of Deposit Documents. The Foundation shall deposit funds it receives in connection with a particular Set of Deposit Documents and designated, respectively, for Enhancement Measures, Acquisition Measures, or Endowment Measures, into the applicable Sub-Account established with respect to that Set of Deposit Documents.

7. Pending disbursement in accordance with this Agreement, the Foundation shall (a) invest funds in Endowment Measure Sub-Accounts in accordance with the endowment investment policy statement approved in writing by the CDFG attached to this Agreement as Exhibit A, as the same may be amended from time-to-time and (b) invest funds in Enhancement Measure and Acquisition Measure Sub-Accounts in accordance with the Foundation's then-prevailing investment policy statement governing cash management. A copy of the Foundation's current investment policy statement governing cash management is attached to this Agreement as Exhibit B and incorporated herein by this reference. The Foundation shall notify the CDFG of any change to such policy statement no later than ten (10) days after such change becomes effective.

8. At the direction of the CDFG, the Foundation shall enter into Recipient Agreements for the performance of appropriate Projects or other activities by Recipients to be funded with amounts in Enhancement Measure and Acquisition Measure Sub-Accounts. Recipient Agreements shall be subject to approval by the CDFG. The Foundation shall enter into such Recipient Agreements and shall pay Recipients for performance of such Projects and activities in accordance with the terms of such Recipient Agreements. The CDFG may also direct the Foundation to make direct disbursements (without a governing Recipient Agreement) of amounts in Enhancement Measure and Acquisition Measure Sub-Accounts to Recipients (or other persons or entities) for performance of appropriate Projects or activities as determined by the CDFG.

9. At the direction of the CDFG, the Foundation shall enter into Recipient Agreements for the performance of appropriate Projects or other activities by Recipients to be funded with amounts in Endowment Measure Sub-Accounts. Recipient Agreements shall be subject to approval by the CDFG. The Foundation shall enter into such Recipient Agreements and shall pay Recipients for performance of such Projects and activities in accordance with the terms of such Recipient Agreements. The CDFG may also direct the Foundation to make direct disbursements (without a governing Recipient Agreement) of amounts in Endowment Measure Sub-Accounts to Recipients (or other persons or entities) for performance of appropriate Projects or activities as determined by the CDFG. At the CDFG's election transmitted in writing to the Foundation, Recipient Agreements or direct disbursement arrangements governing payment for Endowment Measures may expressly provide for payment by the Foundation to Recipients (or other persons or entities) of specific dollar amounts at specific time intervals, including advance payments, without the CDFG's ongoing approval of individual payments. In such instances, the CDFG reserves the right to issue a "stop payment" notice to the Foundation (upon receipt of which the Foundation shall immediately cease any further disbursements from the applicable Sub-Account) if the CDFG determines that the applicable Recipient (or other person or entity) is not properly implementing the Endowment Measure for which it is receiving disbursement of Sub-Account funds or that there is a need to reduce the amount of funds being disbursed. At the CDFG's request, the Foundation and its investment advisors will consult with the CDFG as to the projected financial impact of any potential disbursement from an Endowment Measure Sub-Account on the continuing expected financial viability of such Sub-Account.

VII. GENERAL ACCOUNT ADMINISTRATION

1. Within ten (10) days after the Effective Date, the Foundation shall establish the CDFG Account. Each Sub-Account shall be created and funded within the CDFG Account as and when the Foundation receives Sub-Account funds. In connection with the creation and funding within the CDFG Account, the Foundation shall assign unique identifying information to each Sub-Account.
2. Each Sub-Account shall be subject to a one-time Per Sub-Account Deposit Fee of three thousand dollars (\$3,000). The Per Sub-Account Deposit Fee is to cover the cost of establishing the Sub-Account in the Foundation's financial and accounting systems and is to be paid by the Participant separate from the CDFG-directed deposit amount. The Foundation shall have the right to increase the Per Sub-Account Fee once every five years (each an "Adjustment Date") after the Effective Date if necessary to ensure that the Per Sub-Account Fee reflects inflation after the year 2010 and retains its purchasing power in 2010 dollars. The amount of any such increase shall be based upon the increase, if any, in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, 1982-84 = 100 ("Index"). The "Beginning Index" shall be the Index published most recently before the Effective Date. The "Comparison Index" shall be the Index published most recently before the Adjustment Date. If the Comparison Index is greater than the Beginning Index, then the Per Sub-Account Fee shall be increased by an amount equal to the ratio that the Comparison Index bears to the Beginning Index, as rounded to the nearest dollar. As an example, if the Beginning Index is 215 and the Comparison Index is 220, then the increase shall be \$70 ($\$3,000 \times 220/215$). In accordance with Section VI(4) above, funds deposited into the CDFG Account for purposes of a particular Set of Deposit Documents may result in the creation of up to three (3) separate Sub-Accounts, each of which shall be subject to the Per Sub-Account Deposit Fee. If not paid through other means, the Foundation shall assess and collect the Per Sub-Account Fee on the applicable deposit amount (such Per Sub-Account Fee to be deducted by the Foundation from the deposit amount itself).
3. Each Sub-Account shall also be subject to an Annual Fee, to cover the cost of annual administration, operation and accounting of such Sub-Account. The Annual Fee on Enhancement Measure Sub-Accounts, Acquisition Measure Sub-Accounts, and undifferentiated Sub-Accounts shall be the greater of three percent (3%) of the balance of each such Sub-Account or one thousand dollars (\$1,000.00). The Annual Fee on Endowment Measure Sub-Accounts shall be the greater of one percent (1%) of the balance of each such Sub-Account or one thousand dollars (\$1,000.00). The Foundation shall assess and collect the Annual Fee either quarterly or annually, in either case at the Foundation's election, during each year in which the applicable Sub-Account is in existence. The Foundation shall collect the appropriate Annual Fee by deducting it from the balance of each respective Sub-Account.

4. Unless directed otherwise by the CDFG, the Foundation shall submit CDFG Account activity reports for each Sub-Account to the CDFG Representative semi-annually by June 15 and December 15 (for all non-Endowment Measure Sub-Accounts) and by March 15 (for Endowment Measure Sub-Accounts) of each year the CDFG Account is in existence. In each activity report, the Foundation shall report on deposits, disbursements, fees, and earnings and other investment income during the period to which the report pertains, with a reconciliation of the remaining unobligated balance. The activity reports will also summarize the current status of all active Recipient Agreements and will include a description of the work or other activities performed under such Recipient Agreements for which disbursements from the CDFG Account were made during the applicable reporting period. Upon request, the Foundation shall also provide to the CDFG Representative copies of its audited financial statements for any completed fiscal year.

5. With respect to Endowment Measure Sub-Accounts, the Parties agree to use best efforts to jointly develop (after the Effective Date) one or more additional reporting thresholds that would trigger reporting to the CDFG in addition to the reports described in Section VII(4) immediately above. The intent of this provision is to design a process by which the Foundation would, or would cause its investment advisors to, provide notice to the CDFG in the event that actual investment returns or prevailing economic conditions pose a material risk of depletion with respect to the Endowment Measure Sub-Accounts. The thresholds that would trigger such additional reporting will be developed by the CDFG and the Foundation in consultation with the Foundation's investment advisors. The Parties further agree to jointly develop one or more options that may be employed by the CDFG to mitigate such risk as and when it might arise. These options may include, but are not necessarily limited to, a determination and directive by the CDFG to suspend or reduce disbursements from the Endowment Measure Sub-Accounts for a period of time until the risk of depletion has receded to acceptable levels.

6. The Parties agree and acknowledge that, at their mutual election, they may enter into further agreements regarding the establishment, maintenance, and/or operation of additional Sub-Accounts created within the CDFG Account. If and to the extent that any such further agreements contain terms or conditions different from those set forth in this Agreement, the terms of such further agreements shall be deemed to supersede the provisions of this Agreement with respect to such additional Sub-Accounts.

7. No funds disbursed from the CDFG Account may be used by any Recipient to pay for lobbying activities, illegal activities, unauthorized (not identified in Deposit Documents) operating expenses or any litigation expenses, except that with the prior written approval of the CDFG such funds may be disbursed by the Foundation for the actual and reasonable costs of enforcement or defense of conservation easements or fee titles for mitigation properties.

8. The Foundation shall ensure that no funds disbursed from the CDFG Account are permitted to be used for any purpose prohibited by Section VII(7), above, or to unlawfully augment any Recipient's federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. Section 1301(a) (the "Purpose Statute"), Title

31, U.S.C. Section 1341 (the “Anti-Deficiency Act”), Title 31, U.S.C. Section 3302(b) (the “Miscellaneous Receipts Act”), or other applicable law.

VIII. LIMITATIONS ON FOUNDATION’S LIABILITY

The Foundation shall not be liable to the CDFG or other persons for losses arising from investments pursuant to this Agreement that are consistent with the CDFG-approved endowment investment policy statement. The Foundation shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the Foundation’s obligations under this Agreement by such employees when they are acting within the course and scope of their employment.

IX. FIDUCIARY OBLIGATIONS OF FOUNDATION

1. The Foundation shall make no disbursement or obligation of funds in the CDFG Account, including but not limited to the Endowment Measure Sub-Accounts, except in strict accordance with the provisions of this Agreement.
2. The Foundation shall have a duty of loyalty to the CDFG with respect to the CDFG Account, and shall not use or borrow against funds in the CDFG Account for its own benefit, except for assessment and collection of the fees due to the Foundation as provided by this Agreement.
3. Except to the extent provided in this Agreement, the endowment investment policy statement approved by the CDFG attached as Exhibit A, or any other applicable agreement between the CDFG and the Foundation, the Foundation’s fiduciary obligations with respect to investment of funds held in the Endowment Measure Sub-Accounts shall be governed by the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), codified under California law at Cal. Prob. Code §18501 et seq. or any applicable successor to such law.
4. Except to the extent provided in the Foundation’s investment policy statement governing cash management or any other applicable agreement between the CDFG and the Foundation, the Foundation’s fiduciary obligations with respect to investment of funds held in the Enhancement Measure or Acquisition Measure Sub-Accounts shall be governed by Cal. Prob. Code §5240-5241, which sets forth requirements applicable to assets held by nonprofit corporations for investment.

X. TERM, TERMINATION, AND TRANSFER OF AGREEMENT

1. This Agreement shall terminate (a) on the tenth (10th) anniversary of the Effective Date if not extended by the Parties in writing prior thereto or (b) without cause on the date specified by either Party in a written notice delivered to the other Party not less than one hundred eighty (180) days prior to the intended date of termination.
2. Upon termination of this Agreement, the Foundation shall immediately transfer all monies remaining in the CDFG Account, other than monies properly due and owing to the Foundation or its financial institutions hereunder, to the control of the CDFG or an entity designated by the CDFG to serve as a successor.
3. Within ninety (90) days following final disbursement of the funds in the CDFG Account to any successor, the Foundation shall provide to the CDFG a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement, from the date of the last semi-annual accounting through the date of final disbursement, together with copies of all Recipient Agreements and other documents that the CDFG may reasonably request.

XI. CONTACT INFORMATION/COMMUNICATIONS

1. All approvals, notices, reports and other communications required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, receipt-confirmed facsimile, or electronic .pdf format (with a copy of the electronic .pdf communication also delivered by another means provided in this Section XI(1)). Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.
2. All deposits to the CDFG Account by Participants or the CDFG made by check shall be mailed to the Foundation's headquarters office at 1133 15th Street, NW, Suite 1100, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits to the CDFG Account by Participants or the CDFG made by electronic funds transfer shall be directed to the Foundation (Taxpayer I.D. Number 52-138-4139), in accordance with wiring instructions provided by the Foundation to the payor at the time of deposit.

3. The individuals named below shall be the Representatives of the CDFG and the Foundation for purposes of this Agreement. Contact information for the CDFG Representative and Foundation Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the CDFG Account shall be as set forth in Section XI(2) above):

If to the CDFG:

Sandra Morey
Deputy Director
Ecosystem Conservation Division
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814
Phone: (916)653-6956
Facsimile: (916) 653-3673
Email: Smorey@dfg.ca.gov

CDFG Alternate:

Branch Chief
Habitat Conservation Planning Branch
California Department of Fish and Game
1416 Ninth Street
Suite 1260
Sacramento, CA 95814
Phone: (916)653-9864
Facsimile: (916) 653-2588
Email: sroman@dfg.ca.gov

If to the Foundation:

Liz Epstein
Senior Manager, IDEA
National Fish and Wildlife Foundation
90 New Montgomery Street
Suite 1010
San Francisco, California
Phone: (415) 243-3102
Facsimile: (415) 778-0998
liz.epstein@nfwf.org

Foundation Alternate:

AJ Shelton
Manager, IDEA
National Fish and Wildlife Foundation
90 New Montgomery Street
Suite 1010
San Francisco, California 94105
Phone: (415) 243-3106
Facsimile: (415) 778-0998
Email: AJ.shelton@nfwf.org

XII. MISCELLANEOUS PROVISIONS

1. The Foundation may not assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the CDFG, which the CDFG may withhold. The CDFG may assign its rights to a successor agency without the consent of the Foundation provided that the successor agency is legally obligated to assume or otherwise assumes the CDFG's obligations hereunder.

2. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).

3. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee or representative of the other Party.

4. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

5. Nothing contained in this Agreement is intended to unlawfully delegate the CDFG's duties or to limit the authority of the CDFG to fulfill its statutory or regulatory responsibilities.

6. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between the CDFG and any third parties, including Recipients whose Projects are funded from the CDFG Account.

7. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, disregarding principles of conflicts of law. Venue for any action arising out of this Agreement shall be in the Superior Court of the County of Sacramento, California.

8. Any waiver by either Party of any term or provision of this Agreement must be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any other event or circumstance.

9. The headings used in this Agreement are for convenience only and shall not determine or limit the interpretation, construction or meaning of this Agreement.

10. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and may not be amended, except in writing signed by each Party hereto. Each Party to this Agreement warrants to the other that its respective signatory has full right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

CALIFORNIA DEPARTMENT OF FISH AND GAME

By:

A handwritten signature in black ink, appearing to read "John McCamman", written over a horizontal line.

John McCamman, Director

Date:

Nov 23, 2010

NATIONAL FISH AND WILDLIFE FOUNDATION

By:

A handwritten signature in black ink, appearing to read "Jeff Trandahl", written over a horizontal line.

Jeff Trandahl, Executive Director

Date:

Nov 17, 2010

EXHIBIT A

Foundation Investment Policy Statement Governing Endowment Management (CDFG-Approved)

CALIFORNIA DEPARTMENT OF FISH AND GAME

INVESTMENT POLICY STATEMENT FOR MITIGATION ENDOWMENT ACCOUNTS HELD BY THE NATIONAL FISH AND WILDLIFE FOUNDATION

Definitions

“CDFG”	The California Department of Fish and Game, an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species.
“COMMITTEE”	The IDEA Endowment Committee of the Foundation.
“ENDOWMENT FUNDS”	These consist of assets held by the Foundation within its Impact-Directed Environmental Accounts program and designated by the CDFG for long-term management with a growth and income focus. These are hereafter referred to as Endowment Funds or, collectively, the “Endowment.”
“FOUNDATION”	The National Fish and Wildlife Foundation.
“IPS”	This investment policy statement for CDFG mitigation endowment accounts held by the Foundation.
“MANAGER”	The investment management organization(s) engaged as the Foundation’s investment manager. As of August 2010, the Manager is Commonfund.

Broad Philosophy

This IPS governs the investment management of Endowment Funds that are generated as a component of required environmental mitigation as set forth in permits, licenses, authorizations, and/or other “decision documents” issued by, through, or otherwise subject to the jurisdiction of the CDFG. The legal and regulatory programs pursuant to which such Endowment Funds are generated include, but are not necessarily limited to, the California Endangered Species Act (Cal. Fish and Game Code Section 2050 *et seq.*), the California Lake and Streambed Alteration Program (Cal. Fish and Game Code Section 1600 *et seq.*), the California Natural Community Conservation Planning Act (Cal. Fish and Game Code Section 2800 *et seq.*), and the California Environmental Quality Act (Cal. Public Resources Code Section 21000 *et seq.*).

The CDFG has executed a Memorandum of Agreement (“MOA”) with the Foundation regarding the Foundation’s management of several categories of funds required by the CDFG to pay for environmental mitigation measures. One specific category of funds that may be required by the CDFG, and deposited into one or more accounts at the Foundation, is referred to as “long-term land management” or “endowment” funding. These funds are intended to provide a source of long-term, perhaps perpetual, yearly funding for the parcels of real property with which they are associated. It is the CDFG’s expectation that such funds will be managed by the Foundation and invested by the Manager in a manner that enhances the likelihood that the initial principal amount of endowment funding for a particular parcel will provide sufficient investment growth and income to pay for required management and maintenance of that property over an indefinite period of time. Such funds will comprise the Endowment addressed by this IPS.

The Endowment Funds governed by this IPS will be maintained in financial accounts held at the Foundation, which will administer the Endowment in accordance with the terms hereof. Except to the extent provided otherwise in this IPS, in the MOA, or as otherwise specified by the CDFG in writing, the Foundation will manage the Endowment in accordance with the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), codified in California at Cal. Prob. Code §18501 *et seq.* This IPS will remain in effect until modified at the direction of the CDFG, acting in consultation with the Committee. The Committee will monitor the performance of the Endowment Funds and of the Manager and may make recommendations to the CDFG, from time to time as warranted, for potential changes in the objectives and policies set forth herein. Final responsibility for the provisions of this IPS and any changes hereto will at all times remain with the CDFG. The Manager is expected to propose to the Foundation any revisions to these objectives and policies at any time that the Manager deems appropriate or advisable, and the Foundation will thereafter convey such proposed revisions to the CDFG for its consideration.

The Foundation has delegated to the Manager the day-to-day management and investment of the Endowment Funds. Under the scope of this delegation, the Manager shall have discretion to manage the Endowment Funds in a manner that best achieves the

investment objectives within the guidelines set forth in this IPS. In discharging its duties as investment manager, the Manager shall invest and manage the Endowment Funds in good faith and as a prudent investor would, exercising reasonable care, skill, and caution. The Foundation has delegated the investment management authority it might otherwise have to the Manager in the good faith belief that the Manager will achieve the objectives set forth in this IPS. The CDFG has approved this delegation and has reserved the right to request and/or approve future delegation(s) to other investment managers of the day-to-day management and investment of the Endowment Funds.

Overall Objectives

This IPS is designed to:

- Establish appropriate **risk and return objectives** in light of the risk tolerance and the indefinite investment time horizon for the Endowment.
- Establish **asset allocation guidelines** and suitable investments for the Endowment, consistent with the risk and return objectives of this IPS.
- Provide a framework for **ongoing monitoring** of investment performance of the Endowment.

Risk and Return Objectives

Return Objectives. The overall objective with respect to the investment of Endowment Funds hereunder is to generate a level of financial support sufficient to pay the annual costs of long-term management for indefinite periods of time on parcels of real property secured or identified as “mitigation parcels” in connection with permits, authorizations, and other proceedings of the CDFG. It is the CDFG’s expectation that these costs will be funded exclusively from the corresponding Endowment Funds deposited for each parcel and, thus, that no other funding sources will contribute to defraying these costs.

The CDFG calculates the principal amount of each tranche of Endowment Funds (each corresponding to an individual parcel of real property) using an assumed net annual drawdown rate of 3.50%. The CDFG has also assumed 3% annually as an estimate of long-term inflation and 1% annually as an estimate of the administrative costs of operating the Endowment. Accordingly, in investing Endowment Funds, the Manager will seek to attain an average nominal annual total return, net of any fees charged by the Manager or any underlying investment managers, of at least seven and one-half percent (7.50%) over the long term. This target average nominal annual return is referred to hereinafter as the “Return Goal.”

This IPS is based on the assumption that the spending on a CDFG mitigation parcel for land management activities over the long term will average no more than 3.50% annually of the average market value of the parcel's corresponding Endowment Funds. This approach is intended to preserve the principal of the Endowment Funds to the extent practicable while generating a level of income that will be available to fund land management activities on the mitigation parcels. To the extent the CDFG deems it necessary or desirable to allow a spending level greater than that projected for any particular parcel (which projection will be based on an assumed annual spend rate of 3.50%), the likelihood will increase that investment earnings alone (both appreciation and income) on the corresponding Endowment Funds will be insufficient to fund management activities on the relevant parcel in perpetuity. Thus, a decision by the CDFG to allow a spending level greater than that projected for any particular parcel will decrease the statistical likelihood that the Endowment Funds for that parcel will exist in perpetuity.

In addition to using the Return Goal, the Committee will evaluate the Manager's performance on a relative basis by comparing it against market performance benchmarks and appropriate capital market measures, such as securities indices. The Manager's performance relative to these benchmarks and measures is referred to hereinafter as the "Relative Performance Goal." The Relative Performance Goal will be measured by comparing actual Endowment investment results over the current quarter – as well as over moving, annualized one, three, and five year time periods – against a weighted Endowment portfolio benchmark.

The weighted Endowment portfolio benchmark will be created by including in the benchmark appropriate indexed returns (e.g., Barclays Aggregate, S&P 500, etc.), pro rata, according to the asset class weightings in the Endowment's target allocation. The overall Endowment benchmark for a period may be adjusted if there are disparities in asset allocations during any single time frame caused by very large Endowment inflows or outflows and/or tactical allocations that would cause the benchmark to be inappropriate for the time period being examined.

Risk Objectives. The acceptable risk profile for the Endowment should generally be for the Manager to assume the lowest possible risk consistent with achieving the Return Goal. While negative returns in any single year may be unavoidable, over longer terms, the Manager should select asset allocations that are expected to achieve overall positive portfolio returns. In order to allow ongoing assessment and monitoring of portfolio risk, the Manager will prepare and present to the Committee at least annually a report on the overall risk profile of the portfolio based on the then-existing asset allocation thereof. This report will also be made available to the CDFG.

Risk can be construed to include multiple different outcomes including loss of principal, failure to meet an expected return, or, most commonly, volatility of investment returns around an expected mean (also known as "standard deviation"). The CDFG's policy

regarding investment risk, consistent with modern portfolio theory and UPMIFA's express preference for diversification in endowment portfolios, is that risk cannot be eliminated but should be managed.

The Committee is delegating to the Manager the responsibility of understanding the risks inherent in the investment strategy selected to attempt to achieve the Return Goal, ensuring that the Endowment portfolio is properly compensated for these risks, measuring and monitoring those risks, and periodically communicating this risk information to the Committee and, to the extent requested, the CDFG. Most importantly, the level of overall Endowment portfolio risk taken should be consistent with the statistically-likely achievement of the overall Return Goal.

Asset Allocation Guidelines

General. Endowment Funds shall be invested in a diversified, balanced portfolio that may include fixed income instruments, equity instruments, real assets, alternative investments, and cash. The Endowment Funds may be invested in any combination of individual securities, separately managed accounts with investment managers, commingled funds, or mutual funds. In the case of investments by third-party investment managers, those managers will have full discretion over their own portfolio management decisions consistent with the guidelines provided by this IPS. In the case of investments in commingled funds and mutual funds, their management will be carried out within their respective structures and in accordance with their applicable prospectus materials.

The specific asset allocations within the Endowment portfolio, including necessary or appropriate rebalancing among the asset classes from time to time, will remain the responsibility of the Manager, exercising reasonable judgment in light of prevailing market conditions and the objectives of this IPS, including the permissible asset allocation ranges that follow.

During Transition Period. The CDFG has determined that the Endowment Funds designated for a particular mitigation parcel should not be drawn upon at all during the first three years after which such Endowment Funds have been received. (Funding for land management activities on mitigation parcels during this three-year transition period (hereafter, the "Transition Period") will be drawn from sources other than the Endowment Funds.) Given this determination, the CDFG and the Committee are delegating to the Manager the discretion to deviate from the asset allocation that would otherwise apply under this IPS for Endowment Funds held during their Transition Period.

In particular, it is possible that certain minimum asset allocation bands (as set forth below) will not be met with respect to Endowment Funds held during their Transition Period. While it is expected that new Endowment Funds will generally be invested in the standard asset allocation incrementally (i.e., averaged in) over the course of the

Transition Period, the CDFG and the Committee recognize that there may be market conditions that warrant slower or faster investment of new Endowment Funds in the standard asset allocation. Given that the Manager may determine it best not to fully deploy a certain tranche of Endowment Funds in the standard asset allocation immediately, the CDFG and the Committee are delegating to the Manager the discretion to decide in what short-term investment vehicle(s) such Endowment Funds should be invested during the Transition Period pending deployment into the standard asset allocation.

Asset Allocation Ranges. The permissible asset allocation ranges for the asset classes in which the Manager will invest the Endowment, consistent with the overall risk and return objectives of this IPS, are as follows:

<i>Asset Class</i>	<i>Minimum</i>	<i>Target</i>	<i>Maximum</i>	<i>Benchmark</i>
Total Equity	15%	25%	50%	
Domestic Equity		7%		Russell 3000
International Equity		6%		MSCI World x
US				
Emerging Markets Equity		7%		MSCI EM
Private Equity		5%		S&P 500 + 4%
Total Fixed Income	15%	25%	50%	
Core Bonds		10%		Barclays
Aggregate				
Global Sovereign Debt		15%		World Govt
Bond				
Real Assets	5%	25%	40%	
TIPs		7%		Barclays TIPs
Commodities		8%		DJ UBS
Commodities				
Natural Resources		5%		S&P Energy +
4%				
Real Estate		5%		NCREIF
Marketable Alternatives	5%	25%	40%	
Directional Hedge Funds		13%		HFRI Hedged
Equity				
Relative Value Funds		12%		HFRI FOF
Conservative				
Cash	0%	0%	10%	3 month TBill

1. The primary purpose of the equity and real asset portion of the Endowment portfolio is to provide the potential for growth of principal and protect the purchasing power of the portfolio.
2. The equity and real asset portion should normally represent approximately 50% of the total Endowment assets. It is recognized that the equity and real asset portion entails the assumption of greater risk from market variability.
3. The primary purpose of the fixed income portion is to provide a deflation hedge and to reduce overall volatility in the portfolio.
4. The fixed income portion should normally represent approximately 25% of the total Endowment assets. This ratio may be changed from time to time to take advantage of variations in market conditions. Variances from the 50%/25% ratio of equity to fixed income may occur as the Manager brings the portfolio into balance or attempts to capitalize upon valuation shifts in the market.
5. Alternative investments should normally represent approximately 25% of the portfolio.
6. Although cash is recognized as an asset class hereunder, Endowment Funds will generally be fully invested at all times and cash will generally be held only to meet liquidity needs or during the portfolio rebalancing process.
7. The ratios above are targets for the allocation of Endowment Funds to the various asset classes. Actual allocation of Endowment Funds among the asset classes will vary based upon market conditions and the Manager's exercise of discretion in attempting to best meet the objectives of this IPS.
8. Endowment Funds will be diversified both by asset class and within these asset classes as noted above. The fixed income portion will typically be diversified with regard to credit, maturity, and sector. The equity and real asset portion will typically be diversified by sector, industry, asset type, and market capitalization. The alternative investment portion will typically be diversified by manager, style, and objective. These added elements of diversification will have the goal of preventing any single security, sector, or asset type from having a disproportionately large impact on the performance of the total Endowment portfolio.

Guidelines for Equities and Real Assets

1. The equity and real asset portion will be diversified over sectors, industries, assets, and size of organizations. In no event and at no time will the securities of any one issuer exceed 5% at cost and 8% at market of the total Endowment portfolio.
2. Decisions regarding sectors, industries, asset types, or specific securities will be left to the discretion of the Manager, who will exercise care and diligence in discharging its fiduciary responsibility.

3. Performance will be monitored (including up to quarterly evaluation of core managers) on a regular basis and evaluated over a rolling three-year period.

Guidelines for Fixed Income

1. The Manager should employ active management techniques with respect to the fixed income portion of the Endowment portfolio but changes in the average maturity of fixed income instruments should be moderate and incremental. The Manager should discuss liquidity needs with the Committee as appropriate.
2. The fixed income portion should be diversified such that the securities of any one issuer, with the exception of the United States Government or its agencies, are limited at any time to 5% at cost and 8% at market of the total portfolio. Further, fixed income securities should generally be of investment grade. The use of high yield bonds is permitted, provided such bonds are held within a commingled fund or mutual fund and used to further diversify the Endowment portfolio. However, no more than 10% (at market) of the total Endowment portfolio may be allocated to high yield bonds. If a security already held in the portfolio is downgraded, the Manager will evaluate it carefully to determine whether the security should be kept in the portfolio or eliminated within a prudent time frame.
3. Performance will be monitored on a regular basis and evaluated over a rolling three-year period.

Guidelines for Alternative Investments

1. The alternative investment portion of the Endowment portfolio may be included or excluded at the discretion of the Manager at any time the total balance of the Endowment is equal to or less than thirty million dollars (\$30,000,000).
2. In no event and at no time will the securities, units, or other assets of any one issuer of alternative investments exceed 3% at cost and 5% at market of the total portfolio.
3. Decisions regarding specific alternative investments will be left to the discretion of the Manager, who will exercise care and diligence in discharging its fiduciary responsibility.
4. Performance will be monitored on a regular basis and evaluated over a rolling three-year period.

Guidelines for Cash

1. The Manager will periodically discuss liquidity needs with the Committee.
2. Beyond cash needed for liquidity purposes, the cash portion will be included or excluded at the discretion of the Manager in seeking to achieve the objectives of this IPS.

Ongoing Monitoring

Performance Objectives

1. The benchmark objective for the asset classes will be as follows:
Equities: MSCI All Country World Index
Fixed Income: (weighted) 40% Barclays Aggregate, 60% World Government Bond Index
Real Assets: CPI + 4%
Marketable Alternatives: HFRI Fund of Fund Composite
2. The benchmark objectives for the individual investment strategies are defined in the asset allocation table above.
3. With respect to each individual asset class, performance will also be measured by a benchmark objective that total return rank above the 50th percentile against a universe of similar funds.
4. All benchmarks and objectives will apply to a three-year rolling period.

Guidelines for Transactions

As a general guideline, all transactions shall be entered into on the basis of the best execution which is interpreted to mean the best realized price.

Monitoring of Objectives and Results

1. All objectives and policies set forth in this IPS remain in effect until modified by the CDFG in consultation with the Committee. The Committee will promptly communicate any such modifications to the Manager in writing.
2. If the Manager believes that the policies or guidelines inhibit the investment performance or are otherwise inconsistent with any objectives set forth in this IPS, it is the responsibility of the Manager to so notify the Committee.
3. The Endowment portfolio will be monitored on a continual basis for consistency in asset allocation and return objectives. Asset concentrations will also be monitored for exposure to sectors, industries, and individual securities, notwithstanding the fact the Manager is responsible for investment decisions. The CDFG and the Committee may evaluate the Manager to ensure that the factors underlying the performance expectations remain in place.
4. The Manager will report on the following to the Committee quarterly with respect to both the Endowment as a whole and each parcel-specific sub-account within the Endowment:
 - a. Current holdings at cost and market
 - b. Purchases and sales during the period being reported
 - c. Additions and withdrawals during the period being reported
 - d. Total return net of commissions and fees
 - e. Changes in staff or ownership of the Manager to the extent these changes potentially impact the ability of the Manager to fulfill its duties hereunder

EXHIBIT B

Foundation Investment Policy Statement Governing Cash Management

NATIONAL FISH AND WILDLIFE FOUNDATION IMPACT-DIRECTED ENVIRONMENTAL ACCOUNTS

INVESTMENT POLICY FOR CASH RESERVES As of July 1, 2010

Definitions

- “FOUNDATION”** The National Fish and Wildlife Foundation.
- “FUNDS”** These consist of the cash balances held by the Foundation within its Impact-Directed Environmental Accounts program and managed in accordance with this Investment Policy Statement. These are hereafter referred to as the Funds.
- “COMMITTEE”** The IDEA Funds Management Committee of the Foundation.
- “MANAGER”** The investment management organization(s) engaged as the Foundation’s investment manager. As of July 2010, the Managers are Bank of America and SunTrust Bank.

Broad Philosophy

The investments shall be made solely in the interest of the National Fish and Wildlife Foundation and its clients. The Committee’s approach to management of the Funds reflects consideration of both preservation of principal and the assumption of the degree of risk associated with the “Investment Universe” specified below in order to achieve commensurate returns. The Committee recognizes that risks, volatility, and possibility of loss in purchasing power are present to some degree with all types of investment vehicles. While high levels of risk are to be avoided, the assumption of the risk associated with the “Investment Universe” specified below is warranted and encouraged in order to allow the Manager the opportunity to achieve satisfactory results consistent with the objectives and the fiduciary character of the Funds.

The Committee has determined that the Funds should be managed in a way that reflects the following directives:

- The Funds shall be invested with the care, skill, prudence, and diligence under the circumstances prevailing from time to time that a prudent person acting in a similar capacity would use.
- Consistent year-to-year results are preferred to large fluctuations in rates of return.
- The level of risk-taking associated with the “Investment Universe” specified below is justified as a method of providing adequate returns.
- Funds shall be invested so as to minimize the risk of large losses and control excessive volatility.
- Short-term fluctuations in value shall be considered secondary to overall results.

Responsibilities of the Committee

The Committee will not reserve any control over investment decisions, with the exception of specific limitations described below. The Manager will be held responsible and accountable to achieve the objectives stated herein. The Committee believes that the limitations will not hamper the Manager; however, the Manager if necessary should request modification that is deemed appropriate. The Committee recognizes its responsibility to ensure that the assets of the Funds are managed effectively and prudently, by a Manager operating in full compliance with all applicable laws.

The specific responsibilities of the Committee in the investment process include, and are limited to:

- Developing sound and consistent investment policy guidelines
- Establishing reasonable investment objectives
- Selecting qualified investment managers
- Communicating the investment policy guidelines and objectives to the Manager, who, in turn, will be accountable for achieving investment results consistent with those guidelines and objectives
- Monitoring and evaluating performance results to assure that policy guidelines are being adhered to and that objectives are being met, and
- Taking appropriate action in the case of the Manager’s failure to perform to mutual expectations

The Committee believes that it can best exercise the responsibilities above by “managing the investment manager.” The Foundation recognizes that for the best probable results,

the determination of detailed investment strategy and day-to-day investment management must lie with professional managers and not with the Committee.

Responsibilities of the Manager

The Manager will be responsible for making all investment decisions regarding the assets of the Funds and will be accountable for the objectives indicated herein.

Within the specific constraints identified in this investment policy, the Manager is expected to exercise complete investment discretion. The Manager also expressly assumes the following obligations:

- The Manager is responsible for frequent communication with the Committee on all significant matters pertaining to investment policies. The Committee expects to be promptly informed of any material changes in investment strategy and other matters broadly affecting policy. The Committee recognizes that its investment guidelines and objectives should be based on sound principles that are likely to serve the Foundation and its clients well in all reasonably foreseeable market environments
- The Manager will provide the Foundation with timely quarterly performance reports that include performance comparisons with relevant market indices.
- The Manager and its employees assigned to manage the Funds are responsible for strict compliance with the pertinent provisions of all applicable laws and regulations, including but not limited to those implemented by the U.S. Internal Revenue Service and the U.S. Securities and Exchange Commission, as they pertain to their duties, functions, and responsibilities as fiduciaries.

Investment Policy Guidelines

The Committee's guidelines for investments for the Funds are as follows:

- Fixed income investments should be defined as fixed income obligations.
- The Manager will make reasonable efforts to preserve the principal of the Funds, but preservation of the principal shall not be imposed as an absolute requirement on individual investments.
- The Manager will continuously manage and review the investment portfolio.
- The Manager will exercise prudence when investing in fixed income securities so that adequate diversification is achieved within that asset class.
- To the extent deemed desirable, the Manager may invest in money market funds whose quality is consistent with investment grade assets.

- The “duration” of the portfolio will be no more than 2 years, with duration serving as a measure of the approximate price volatility of a bond. Since one objective of this Investment Policy Statement is to limit volatility with respect to investment of the Funds, duration is an appropriate metric; a portfolio duration of 2 years implies that for a 1% change in interest rates, there will be a 2% change in price.
- The Manager may not invest more than 5% at cost of the Funds in the bonds, commercial paper, or other debt instruments of any one company or entity (with corporate affiliates being treated as the same entity for these purposes). Obligations of the U.S. Government or its agencies are exempted from this requirement.
- In order to help prevent a possible loss upon the forced sale of a security to meet a required disbursement of Funds, the Committee will, upon request and to the extent practicable, provide the Manager with the estimated required net cash flow on a timely basis.
- All assets selected for the Funds must have a readily ascertainable market value and must be readily marketable.

Investment Universe

Permitted securities include, but are not limited to, the following:

- Cash equivalents as defined in the fixed income permissible universe, i.e., U.S. Treasuries and fixed income securities.
- Investment grade corporate bonds.
- Obligations of the U. S. Government and, to the extent that payment of principal and interest is backed by the full faith and credit of the United State, its agencies and instrumentalities.
- Investment grade Municipal Bonds issued on behalf of states, territories, or possessions of the United States and their political subdivisions, agencies, authorities, and instrumentalities.
- Asset-backed securities (such as auto, credit card, and manufactured housing-backed issues) rated BBB+ or better by Standard and Poor’s or Moody’s and that meet appropriate weighted average life and price requirements.
- Commercial Paper rated A1/P1 by Standard and Poor’s or Moody’s.
- The Manager may invest all or any portion of the Funds in mutual funds that are, themselves, invested exclusively in investments included in the above Investment

Universe. Where funds are used, each fund is expected to operate within the parameters established by its Prospectus.

Investment Objectives and Evaluation

The common objective of the Committee and the Manager is to make sound and prudent decisions concerning the Funds. As a means to this end, the Committee must make responsible decisions regarding the selection, monitoring, and evaluation of investment managers.

The Manager must make responsible decisions regarding the selection of specific securities and the general timing of purchases and sales necessary to achieve a satisfactory total return consistent with this Investment Policy. The Committee believes that the Manager should be evaluated on its long-term track record and its ability to demonstrate excellent performance on a risk-adjusted basis.

In addition, the Committee hereby incorporates the following principle with respect to evaluating Manager performance:

- Absolute rates of return are useful to communicate performance expectations to an investment manager, but such absolute returns must be measured over an extended multi-year time period. Relative measures should also be used to determine whether the Manager is adding value through the investment process. Therefore, the Manager's results in investing the Funds should be compared regularly with the performance of similar funds and with appropriate indices as determined by the Committee.

Evaluation and Review

The Committee will review actual results achieved by the Manager to determine whether:

- The Manager performed according to the investment philosophy and policy guidelines set forth herein.
- The Manager performed satisfactorily when compared with similar funds and with relevant market indices.

The Manager performed satisfactorily on an absolute total return basis, taking into account the amount of risk (as measured by recognized volatility analysis).

EXHIBIT D-1

PRELIMINARY TITLE REPORT,

which includes LEGAL DESCRIPTION, and PLAT MAPS



CHICAGO TITLE COMPANY

PRELIMINARY REPORT

*In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.*

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of Chicago Title Insurance Company, a Nebraska corporation.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

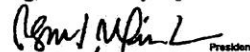
It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.


Countersigned

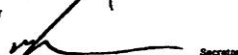


Chicago Title Company

BY


President

ATTEST


Secretary

Visit Us on our Website: www.ctic.com



Chicago Title Company

ISSUING OFFICE: 500 E. Esplanade Drive, Suite 102 • Oxnard, CA 93036
805 656-1300 • FAX 805 642-8279

PRELIMINARY REPORT

Amended

Title Officer: Sharon Skercevic

Title No.: 11-**68004789**-A-SS

Locate No.: CACTI7756-7756-5680-0068004789

TO: Richard Lyons
P. O. Box 808
Santa Paula, CA 93061

ATTN: Rich Lyons

PROPERTY ADDRESS: Santa Paula, California

EFFECTIVE DATE: April 21, 2011, 07:30 A.M.

The form of policy or policies of title insurance contemplated by this report is:

PRELIMINARY TITLE REPORT

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A FEE as to Parcel(s) 1 and 6;
AN EASEMENT more fully described below as to Parcel(s) 2, 3, 4 and 5

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

**Richard E. Lyons, Jr. and Laurie Prange Lyons, husband and wife, as joint tenants, as to
Parcels 1 through 5, inclusive; and
t4o, Inc., a California corporation, subject to Note No. 1
, as to Parcel 6**

3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

PF\DJ 05/03/2011

LEGAL DESCRIPTION

EXHIBIT "A"

Parcel 1:

The North half of the Southwest quarter, the South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

EXCEPT all the oil, gas condensate, distillate and other minerals and all products and by products thereof, in and under and that may be produced from said land as granted to t4o, Inc., a California corporation, in deed recorded September 14, 2010, as Document No. 20100914-138782 of Official Records.

Parcel 2:

A non-exclusive easement for access and utility purposes over a strip of land, 40 feet wide, over that portion of Section 9, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof, the center line described as follows:

Beginning at the Southeasterly terminus of the 3rd course of Parcel C described as South 69° 46' 40" East 52.16 feet in document recorded as Document No. 2001-180357 of Official Records, said point also being the beginning of a non tangent curve concave to the Southwest having a radius of 278.87 feet and to which a radial line bears North 33° 36' 05" East; thence along said curve Southeasterly 38.68 feet through a central angle of 07° 56' 50" to the true point of beginning; thence,

1st: South 55° 14' 57" West to the Northerly line of State Highway 150 as described in deed recorded in Book 171, Page 449 of Deeds; thence,

2nd: North 55° 14' 57" East to the Southerly line of said Parcel C; thence,

3rd: North 55° 14' 57" East 89.53 feet; thence,

4th: North 61° 28' 50" East 90.52 feet; thence,

5th: North 42° 34' 02" East 63.19 feet to the beginning of a tangent curve concave Southeasterly having a radius of 60.00 feet; thence,

6th: Northeasterly and Southeasterly 75.87 feet through a central angle of 72° 27' 10"; thence,

7th: South 64° 58' 48" East 293.33 feet; thence,

8th: South 84° 31' 10" East 145.19 feet to the beginning of a tangent curve concave Southwesterly having a radius of 300.00 feet; thence,

9th: Southeasterly 302.42 feet through a central angle of 57° 45' 32"; thence,

10th: South 26° 45' 38" East 65.72 feet to the beginning of a tangent curve concave Northerly having a radius of 150.00 feet; thence,

11th: Southeasterly and Northeasterly 352.67 feet through a central angle of 134° 42' 42"; thence,

12th: North 18° 31' 40" East 219.70 feet to the beginning of a tangent curve concave Westerly having a radius of 200.00 feet; thence,

13th: Northerly 122.36 feet through a central angle of 35° 03' 08"; thence,

14th: North 16° 31' 28" West 132.18 feet to the beginning of a tangent curve concave Easterly having a radius of 250.00 feet; thence,

15th: Northwesterly and Northeasterly 225.43 feet through a central angle of 51° 39' 51"; thence,

16th: North 35° 08' 23" East 106.89 feet; thence,
17th: North 24° 58' 59" East 165.45 feet to the beginning of a tangent curve concave Southeasterly having a radius of 200.00 feet; thence,
18th: Northeasterly 54.34 feet through a central angle of 15° 34' 01"; thence,
19th: North 40° 33' 00" East 95.83 feet to the beginning of a tangent curve concave Northwesterly having a radius of 200.00 feet; thence,
20th: Northeasterly 68.51 feet through a central angle of 19° 37' 37"; thence,
21st: North 20° 55' 23" East 237.28 feet to the beginning of a tangent curve concave Southeasterly having a radius of 100.00 feet; thence,
22nd: Northeasterly 43.04 feet through a central angle of 24° 39' 34"; thence,
23rd: North 45° 34' 57" East 69.58 feet; thence,
24th: North 37° 31' 45" East 114.70 feet to the beginning of a tangent curve concave Westerly having a radius of 100.00 feet; thence,
25th: Northeasterly and Northwesterly 112.01 feet through a central angle of 64° 10' 31"; thence,
26th: North 26° 38' 46" West 369.11 feet to the beginning of a tangent curve concave Southwesterly having a radius of 400.00 feet; thence,
27th: Northwesterly 287.35 feet through a central angle of 41° 09' 38"; thence,
28th: North 67° 48' 24" West 11.26 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,
29th: Northwesterly and Northeasterly 190.28 feet through a central angle of 109° 01' 20"; thence,
30th: North 41° 12' 56" East 140.82 feet to the beginning of a tangent curve concave Northwesterly having a radius of 100.00 feet; thence,
31st: Northeasterly and Northwesterly 74.85 feet through a central angle of 42° 53' 09"; thence,
32nd: North 01° 40' 13" West 233.21 feet to the beginning of a tangent curve concave Southwesterly having a radius of 100.00 feet; thence,
33rd: Northwesterly 45.61 feet through a central angle of 26° 08' 05"; thence,
34th: North 27° 48' 18" West 376.48 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,
35th: Northwesterly and Northeasterly 139.47 feet through a central angle of 79° 54' 29"; thence,
36th: North 52° 06' 11" East 135.72 feet to the beginning of a tangent curve concave Northwesterly having a radius of 600.00 feet; thence,
37th: Northeasterly 514.73 feet through a central angle of 49° 09' 12"; thence,
38th: North 02° 56' 59" East 178.82 feet to the beginning of a tangent curve concave Southeasterly having a radius of 150.00 feet; thence,
39th: Northeasterly 131.76 feet through a central angle of 50° 19' 40"; thence,
40th: North 53° 16' 39" East 178.02 feet; thence,
41st: North 46° 32' 46" East 302.36 feet; thence,

42nd: North 40° 01' 30" East 332.06 feet; thence,
43rd: North 53° 54' 46" East 200.91 feet; thence,
44th: North 28° 45' 40" East 228.51 feet; thence,
45th: North 75° 54' 24" East 177.77 feet; thence,
46th: North 67° 37' 17" East 231.55 feet; thence,
47th: North 83° 05' 54" East 284.60 feet; thence,
48th: South 82° 46' 08" East 291.43 feet; thence,
49th: South 89° 31' 46" East 137.56 feet; thence,
50th: North 40° 43' 17" East 100.00 feet to a point on the East line of said Section 9.

Parcel 3:

A non-exclusive easement for access and utility purposes over a strip of land, 40 feet wide, over that portion of land described as Parcel 2 in document recorded January 23, 1980, in Book 5583, Page 824 of Official Records, in the County of Ventura, State of California, in the office of the County Recorder of said County, the center line described as follows:

Beginning at the Southeasterly terminus of the 3rd course of Parcel C described as South 69° 46' 40" East 52.16 feet in document recorded as Document No. 2001-180357 of Official Records, said point also being the beginning of a non tangent curve concave to the Southwest having a radius of 278.87 feet and to which a radial line bears North 33° 36' 05" East; thence along said curve Southeasterly 38.68 feet through a central angle of 07° 56' 50" to the true point of beginning; thence,

1st: South 55° 14' 57" West to the Northerly line of State Highway 150 as described in deed recorded in Book 171, Page 449 of Deeds; thence,

2nd: North 55° 14' 57" East to the Southerly line of said Parcel C; thence,

3rd: North 55° 14' 57" East 89.53 feet; thence,

4th: North 61° 28' 50" East 90.52 feet; thence,

5th: North 42° 34' 02" East 63.19 feet to the beginning of a tangent curve concave Southeasterly having a radius of 60.00 feet; thence,

6th: Northeasterly and Southeasterly 75.87 feet through a central angle of 72° 27' 10"; thence,

7th: South 64° 58' 48" East 293.33 feet; thence,

8th: South 84° 31' 10" East 145.19 feet to the beginning of a tangent curve concave Southwesterly having a radius of 300.00 feet; thence,

9th: Southeasterly 302.42 feet through a central angle of 57° 45' 32"; thence,

10th: South 26° 45' 38" East 65.72 feet to the beginning of a tangent curve concave Northerly having a radius of 150.00 feet; thence,

11th: Southeasterly and Northeasterly 352.67 feet through a central angle of 134° 42' 42"; thence,

12th: North 18° 31' 40" East 219.70 feet to the beginning of a tangent curve concave Westerly having a radius of 200.00 feet; thence,

13th: Northerly 122.36 feet through a central angle of 35° 03' 08"; thence,

14th: North 16° 31' 28" West 132.18 feet to the beginning of a tangent curve concave Easterly having a

radius of 250.00 feet; thence,

15th: Northwesterly and Northeasterly 225.43 feet through a central angle of $51^{\circ} 39' 51''$; thence,

16th: North $35^{\circ} 08' 23''$ East 106.89 feet; thence,

17th: North $24^{\circ} 58' 59''$ East 165.45 feet to the beginning of a tangent curve concave Southeasterly having a radius of 200.00 feet; thence,

18th: Northeasterly 54.34 feet through a central angle of $15^{\circ} 34' 01''$; thence,

19th: North $40^{\circ} 33' 00''$ East 95.83 feet to the beginning of a tangent curve concave Northwesterly having a radius of 200.00 feet; thence,

20th: Northeasterly 68.51 feet through a central angle of $19^{\circ} 37' 37''$; thence,

21st: North $20^{\circ} 55' 23''$ East 237.28 feet to the beginning of a tangent curve concave Southeasterly having a radius of 100.00 feet; thence,

22nd: Northeasterly 43.04 feet through a central angle of $24^{\circ} 39' 34''$; thence,

23rd: North $45^{\circ} 34' 57''$ East 69.58 feet; thence,

24th: North $37^{\circ} 31' 45''$ East 114.70 feet to the beginning of a tangent curve concave Westerly having a radius of 100.00 feet; thence,

25th: Northeasterly and Northwesterly 112.01 feet through a central angle of $64^{\circ} 10' 31''$; thence,

26th: North $26^{\circ} 38' 46''$ West 369.11 feet to the beginning of a tangent curve concave Southwesterly having a radius of 400.00 feet; thence,

27th: Northwesterly 287.35 feet through a central angle of $41^{\circ} 09' 38''$; thence,

28th: North $67^{\circ} 48' 24''$ West 11.26 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,

29th: Northwesterly and Northeasterly 190.28 feet through a central angle of $109^{\circ} 01' 20''$; thence,

30th: North $41^{\circ} 12' 56''$ East 140.82 feet to the beginning of a tangent curve concave Northwesterly having a radius of 100.00 feet; thence,

31st: Northeasterly and Northwesterly 74.85 feet through a central angle of $42^{\circ} 53' 09''$; thence,

32nd: North $01^{\circ} 40' 13''$ West 233.21 feet to the beginning of a tangent curve concave Southwesterly having a radius of 100.00 feet; thence,

33rd: Northwesterly 45.61 feet through a central angle of $26^{\circ} 08' 05''$; thence,

34th: North $27^{\circ} 48' 18''$ West 376.48 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,

35th: Northwesterly and Northeasterly 139.47 feet through a central angle of $79^{\circ} 54' 29''$; thence,

36th: North $52^{\circ} 06' 11''$ East 135.72 feet to the beginning of a tangent curve concave Northwesterly having a radius of 600.00 feet; thence,

37th: Northeasterly 514.73 feet through a central angle of $49^{\circ} 09' 12''$; thence,

38th: North $02^{\circ} 56' 59''$ East 178.82 feet to the beginning of a tangent curve concave Southeasterly having a radius of 150.00 feet; thence,

39th: Northeasterly 131.76 feet through a central angle of $50^{\circ} 19' 40''$; thence,

40th: North 53° 16' 39" East 178.02 feet; thence,
 41st: North 46° 32' 46" East 302.36 feet; thence,
 42nd: North 40° 01' 30" East 332.06 feet; thence,
 43rd: North 53° 54' 46" East 200.91 feet; thence,
 44th: North 28° 45' 40" East 228.51 feet; thence,
 45th: North 75° 54' 24" East 177.77 feet; thence,
 46th: North 67° 37' 17" East 231.55 feet; thence,
 47th: North 83° 05' 54" East 284.60 feet; thence,
 48th: South 82° 46' 08" East 291.43 feet; thence,
 49th: South 89° 31' 46" East 137.56 feet; thence,

50th: North 40° 43' 17" East 100.00 feet to a point on the East line of said Section 9, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

Parcel 4:

A non-exclusive easement for access and utility purposes over a strip of land, 40 feet wide, over that portion of land described as Parcel B in the Parcel Map Waiver No. 1006, recorded September 12, 2001, as Document No. 2001-180357 of Official Records, in the County of Ventura, State of California, in the office of the County Recorder of said County, the center line described as follows:

Beginning at the Southeasterly terminus of the 3rd course of Parcel C described as South 69° 46' 40" East 52.16 feet in document recorded as Document No. 2001-180357 of Official Records, said point also being the beginning of a non tangent curve concave to the Southwest having a radius of 278.87 feet and to which a radial line bears North 33° 36' 05" East; thence along said curve Southeasterly 38.68 feet through a central angle of 07° 56' 50" to the true point of beginning; thence,

1st: South 55° 14' 57" West to the Northerly line of State Highway 150 as described in deed recorded in Book 171, Page 449 of Deeds; thence,
 2nd: North 55° 14' 57" East to the Southerly line of said Parcel C; thence,
 3rd: North 55° 14' 57" East 89.53 feet; thence,
 4th: North 61° 28' 50" East 90.52 feet; thence,
 5th: North 42° 34' 02" East 63.19 feet to the beginning of a tangent curve concave Southeasterly having a radius of 60.00 feet; thence,
 6th: Northeasterly and Southeasterly 75.87 feet through a central angle of 72° 27' 10"; thence,
 7th: South 64° 58' 48" East 293.33 feet; thence,
 8th: South 84° 31' 10" East 145.19 feet to the beginning of a tangent curve concave Southwesterly having a radius of 300.00 feet; thence,
 9th: Southeasterly 302.42 feet through a central angle of 57° 45' 32"; thence,
 10th: South 26° 45' 38" East 65.72 feet to the beginning of a tangent curve concave Northerly having a radius of 150.00 feet; thence,
 11th: Southeasterly and Northeasterly 352.67 feet through a central angle of 134° 42' 42"; thence,

12th: North 18° 31' 40" East 219.70 feet to the beginning of a tangent curve concave Westerly having a radius of 200.00 feet; thence,

13th: Northerly 122.36 feet through a central angle of 35° 03' 08"; thence,

14th: North 16° 31' 28" West 132.18 feet to the beginning of a tangent curve concave Easterly having a radius of 250.00 feet; thence,

15th: Northwesterly and Northeasterly 225.43 feet through a central angle of 51° 39' 51"; thence,

16th: North 35° 08' 23" East 106.89 feet; thence,

17th: North 24° 58' 59" East 165.45 feet to the beginning of a tangent curve concave Southeasterly having a radius of 200.00 feet; thence,

18th: Northeasterly 54.34 feet through a central angle of 15° 34' 01"; thence,

19th: North 40° 33' 00" East 95.83 feet to the beginning of a tangent curve concave Northwesterly having a radius of 200.00 feet; thence,

20th: Northeasterly 68.51 feet through a central angle of 19° 37' 37"; thence,

21st: North 20° 55' 23" East 237.28 feet to the beginning of a tangent curve concave Southeasterly having a radius of 100.00 feet; thence,

22nd: Northeasterly 43.04 feet through a central angle of 24° 39' 34"; thence,

23rd: North 45° 34' 57" East 69.58 feet; thence,

24th: North 37° 31' 45" East 114.70 feet to the beginning of a tangent curve concave Westerly having a radius of 100.00 feet; thence,

25th: Northeasterly and Northwesterly 112.01 feet through a central angle of 64° 10' 31"; thence,

26th: North 26° 38' 46" West 369.11 feet to the beginning of a tangent curve concave Southwesterly having a radius of 400.00 feet; thence,

27th: Northwesterly 287.35 feet through a central angle of 41° 09' 38"; thence,

28th: North 67° 48' 24" West 11.26 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,

29th: Northwesterly and Northeasterly 190.28 feet through a central angle of 109° 01' 20"; thence,

30th: North 41° 12' 56" East 140.82 feet to the beginning of a tangent curve concave Northwesterly having a radius of 100.00 feet; thence,

31st: Northeasterly and Northwesterly 74.85 feet through a central angle of 42° 53' 09"; thence,

32nd: North 01° 40' 13" West 233.21 feet to the beginning of a tangent curve concave Southwesterly having a radius of 100.00 feet; thence,

33rd: Northwesterly 45.61 feet through a central angle of 26° 08' 05"; thence,

34th: North 27° 48' 18" West 376.48 feet to the beginning of a tangent curve concave Easterly having a radius of 100.00 feet; thence,

35th: Northwesterly and Northeasterly 139.47 feet through a central angle of 79° 54' 29"; thence,

36th: North 52° 06' 11" East 135.72 feet to the beginning of a tangent curve concave Northwesterly having a radius of 600.00 feet; thence,

37th: Northeasterly 514.73 feet through a central angle of 49° 09' 12"; thence,

38th: North 02° 56' 59" East 178.82 feet to the beginning of a tangent curve concave Southeasterly having a radius of 150.00 feet; thence,

39th: Northeasterly 131.76 feet through a central angle of 50° 19' 40"; thence,

40th: North 53° 16' 39" East 178.02 feet; thence,

41st: North 46° 32' 46" East 302.36 feet; thence,

42nd: North 40° 01' 30" East 332.06 feet; thence,

43rd: North 53° 54' 46" East 200.91 feet; thence,

44th: North 28° 45' 40" East 228.51 feet; thence,

45th: North 75° 54' 24" East 177.77 feet; thence,

46th: North 67° 37' 17" East 231.55 feet; thence,

47th: North 83° 05' 54" East 284.60 feet; thence,

48th: South 82° 46' 08" East 291.43 feet; thence,

49th: South 89° 31' 46" East 137.56 feet; thence,

50th: North 40° 43' 17" East 100.00 feet to a point on the East line of said Section 9, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

Parcel 5:

A non-exclusive easement for ingress and egress over those portions of Parcels A and B as shown on Parcel Map Waiver No. 1227, recorded January 9, 2004, as Document No. 20040109-5809 of Official Records, as defined in the document entitled "Settlement and General Release", recorded August 20, 1974, in Book 4302, Page 861 of Official Records.

Parcel 6:

All the oil, gas condensate, distillate and other minerals lying in and under the North half of the Southwest quarter, the South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

APN: 040-0-020-085

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2011-2012.
2. Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts are:
Tax Identification No.: 040-020-085
Fiscal Year: 2010 - 2011
1st Installment: \$289.77
2nd Installment: \$289.77
3. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.
4. **Rights and easements** for navigation and fishery which may exist over that portion of said land lying beneath the waters of Santa Paula Creek.
5. **Any adverse claim** based upon the assertion that:
 - a. Some portion of said land has been created by artificial means, or has accreted to such portion so created.
 - b. Some portion of said land has been brought within the boundaries thereof by an avulsive movement of Santa Paula Creek, or has been formed by accretion to any such portion.
6. **Any title** or claim of interest of the United States of America, the State of California, or claimants, thereunder, based upon the charge that said land was known to be mineral in character on February 1, 1879, the date of the survey thereof by the surveyor general was approved.
7. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to:	The Pacific Telephone & Telegraph Company
Purpose:	Public utilities
Recorded:	April 21, 1910, Book 6, Page 308, of Miscellaneous Records
Affects:	A portion of Parcel 3, 4 and 5

The exact location and extent of said easement is not disclosed of record.

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

8. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Ventura County
Purpose: Public road
Recorded: May 11, 1920, Book 171, Page 450, of Deeds
Affects: Portion of Parcel 5

9. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Ventura County
Purpose: Public road
Recorded: August 20, 1921, Book 182, Page 237, of Deeds
Affects: A portion of Parcel 4 and 5

10. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: United States of America
Purpose: Fire break
Recorded: March 22, 1934, Book 393, Page 364, of Official Records
Affects: A portion of Parcel 1

and re-recorded April 4, 1934, Book 393, Page 386, of Official Records

11. **An unrecorded** License, dated October 29, 1931, executed by Petroleum Securities Company in favor of the United States of America, for a fire break and trail over a portion of said land, as recited in deed from Carrie Estelle Doheny, a widow, recorded December 9, 1944, in Book 706, Page 481 of Official Records.

The exact location and extent of said easement is not disclosed of record.

Affects: Parcels 2, 3, 4 and 5

12. **An unrecorded** Easement Deed, dated February 26, 1934, executed by Petroleum Securities Company in favor of the United States of America, for a fire break over a portion of said land as recited in deed last above mentioned.

The exact location and extent of said easement is not disclosed of record.

Affects: Parcels 2, 3, 4 and 5

ITEMS: (continued)

Title No. 11-68004789-A-SS
Locate No. CACT17756-7756-5680-0068004789

13. **An unrecorded** License, dated November 27, 1944, executed by Carrie Estelle Doheny in favor of Standard Oil Company of California, to construct, reconstruct, maintain, use and repair a private road over a portion of said land as disclosed by the deed last above mentioned.

The exact location and extent of said easement is not disclosed of record.

Affects: Parcels 2, 3, 4 and 5

14. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Standard Oil Company of California
Purpose: Road
Recorded: April 3, 1945, Book 708, Page 188, of Official Records
Affects: Portion of Parcel 5

15. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: State of California
Purpose: Public highway, drainage facilities, a certified copy thereto being Case No. 45086, Superior Court of Ventura
Recorded: March 20, 1958, Book 1599, Page 580, of Official Records
Affects: A portion of Parcel 3, 4 and 5

16. **An oil and gas lease** for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein.

Dated: March 1, 1972
Lessor: Grafe-Callahan Construction Co., a Nebraska Corporation
Lessee: Lawrence Barker, Jr., an individual
Recorded: April 10, 1974, Book 4246, Page 69, of Official Records

No assurance is made as to the present ownership of the leasehold created by said lease, nor as to other matters affecting the rights or interests of the lessor or lessee in said lease.

Affects: Parcels 2, 3, 4 and 5

17. **Terms**, conditions, provisions, covenants and easement, as contained in an agreement entitled "Settlement and General Release" dated August 9, 1974, between Santa Paula Water Works, Ltd., a corporation, Westates Petroleum Company a corporation; Santa Clara Land Company, Ltd., a Limited Partnership; Woodward Properties, Inc., a corporation; Grafe-Callahan Construction Company, a corporation; and Lawrence Barker, Jr., by an instrument recorded August 20, 1974, in Book 4302, Page 861, Official Records.

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

Affects: The herein described land and other land.

A Substitution of Alternative Temporary Easement Under Settlement and General Release Agreement, dated February 17, 1978, executed by and between Santa Paula Water Works, Ltd.; Santa Clara Land Company, Ltd.; Lawrence A. Barker, Jr., and Thomas Aquinas College, was recorded March 7, 1978, in Book 5068, Page 128, of Official Records.

- 18. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: April 8, 1977, Book 4813, Page 503, of Official Records
Affects: A portion of Parcel 3, 4 and 5

Restrictions on the use, by the owners of said land, of the easement area as set forth in the easement document shown hereinabove.

Reference is made to said document for full particulars.

- 19. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: September 21, 1978, Book 5214, Page 408, of Official Records
Affects: A portion of Parcel 2, 3 and 4

- 20. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Grafe-Callahan Construction Company
Purpose: Ingress and egress to the Southeast quarter of Section 9, Township 4 North, Range 21 West
Recorded: September 21, 1978, Book 5214, Page 627, of Official Records
Affects: A portion of Parcel 4 and 5

The location of the above said easement is set forth in an agreement recorded April 27, 1979, in Book 5378, Page 1 of Official Records.

- 21. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Thomas Aquinas College, a California non-profit corporation
Purpose: Right to dispose of storm water
Recorded: October 23, 1978, Book 5241, Page 390, of Official Records
Affects: A portion of Parcel 4

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

22. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: February 22, 1982, Instrument No. 14834, of Official Records
Affects: A portion of Parcel 2 and 3

23. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: August 23, 1982, Instrument No. 77939, of Official Records
Affects: A portion of Parcel 4

24. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: January 25, 1983, Instrument No. 007883, of Official Records
Affects: A portion of Parcel 4 and 5

25. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Arco Petroleum Corporation and Valex Petroleum Corporation
Purpose: Road access
Recorded: May 3, 1983, Instrument No. 44876, of Official Records
Affects: A portion of Parcel 2, 3, 4 and 5

26. **Matters** contained in that certain document entitled "Easement Grant" dated April 8, 1975, executed by Thomas Aquinas College recorded September 20, 1984, Instrument No. 105355, of Official Records.

Reference is hereby made to said document for full particulars.

27. **Matters**, easements and other conditions in unrecorded instruments as disclosed by Ratification of Amendment to and Restatement of Deed of Trust and Security Agreement, recorded July 31, 1987, as Document No. 87-123736 of Official Records.

See document for full particulars.

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

- 28. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: United States of America
Purpose: Public trail for foot and horse traffic only and an administrative road
Recorded: February 4, 1988, Instrument No. 88-14765, of Official Records
Affects: A portion of Parcel 1

- 29. Covenants, conditions and restrictions**, but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document referred to in the numbered item last above shown.

- 30. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: August 17, 1988, Instrument No. 88-118452, of Official Records
Affects: A portion of Parcel 2 and 3

- 31. An oil and gas lease** for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein.

Dated: January 1, 1991
Lessor:
Lessee: Lawrence Barker, Jr.
Recorded: August 2, 1991, Instrument No. 91-112287, of Official Records

No assurance is made as to the present ownership of the leasehold created by said lease, nor as to other matters affecting the rights or interests of the lessor or lessee in said lease.

Affects: Parcel 1 and other land

- 32. Matters** contained in that certain document entitled "Deed Restriction" dated None Shown, executed by Seneca Resources Corporation recorded September 12, 2001, Instrument No. 2001-0180355, of Official Records.

Reference is hereby made to said document for full particulars.

Affects: A portion of Parcel 4 and 5

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

- 33. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Seneca Resources Corporation, a Pennsylvania corporation
Purpose: Road ingress and egress and water pipelines
Recorded: September 12, 2001, Instrument No. 2001-0180359, of Official Records
Affects: Parcel 3

- 34. Covenants, conditions and restrictions**, but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document referred to in the numbered item last above shown.

- 35. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Thomas Aquinas College
Purpose: Road, ingress and egress
Recorded: September 12, 2001, Instrument No. 2001-180360, of Official Records
Affects: A portion of Parcel 4

- 36. Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: Southern California Edison Company
Purpose: Public utilities
Recorded: January 15, 2003, Instrument No. 2003-14193, of Official Records
Affects: Parcel 5

Restrictions on the use, by the owners of said land, of the easement area as set forth in the easement document shown hereinabove.

Reference is made to said document for full particulars.

The exact location and extent of said easement is not disclosed of record.

- 37. Matters** contained in that certain document entitled "Declaration and Agreement to Restrict the Use of Property - Biological Deed Restriction" dated July 12, 2005, executed by Thomas Aquinas College recorded September 2, 2005, Instrument No. 20050902-220860, of Official Records.

Reference is hereby made to said document for full particulars.

Affects: Parcel 5

ITEMS: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACT17756-7756-5680-0068004789

38. Any defect or claim which may exist or arise that the appurtenant road easement referred to as Parcel 5 is not specifically located of record.

39. A subsurface oil and gas lease for the term therein provided, with certain covenants, conditions and provisions, together with easements, if any, as set forth therein.

Dated:	October 5, 2010
Lessor:	t4o, Inc., a California corporation
Lessee:	Vintage Petroleum, LLC, a Delaware limited liability company
Disclosed By:	Subsurface Oil ,Gas and Mineral Lease
Recorded:	October 28, 2010, Instrument No. 20101028-166981, of Official Records

No assurance is made as to the present ownership of the leasehold created by said lease, nor as to other matters affecting the rights or interests of the lessor or lessee in said lease.

40. Water rights, claims or title to water, whether or not disclosed by the public records.

END OF ITEMS

Note 1. The Policy of Title Insurance will include an Arbitration Provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the company and the insured arising out of or relating to this policy, any service of the company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance Coverage.

Note 2. The RESPA Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Cost includes a provision for average charges, allowing settlement service providers to establish an average recording fee. The average recording charge for all residential loan transactions (including refinances) is \$80.00 and the charge for all residential sale transactions with a purchase money loan is \$88.00. Divide the average charge between the buyer and seller as per contract or local custom. The average charge is applied regardless of the number of documents recorded in the transaction, the number of pages in each document or the actual recording charges. If your transaction is not a residential loan or sale with a new loan, please contact your title provider for actual recording charges.

NOTES: (continued)

Title No. 11-**68004789**-A-SS
Locate No. CACTI7756-7756-5680-0068004789

Note 3. Part of the RESPA Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs requires the settlement agent to disclose the agent and underwriter split of title premiums, including endorsements as follows:

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. Chicago Title Company retains 88% of the total premium and endorsements.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. Chicago Title Insurance Company retains 12% of the total premium and endorsements.

Note 4. If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.

Note 5. Wiring instructions for Chicago Title Company, Oxnard, CA, are as follows:

Receiving Bank:	Citibank (West), F.S.B. 787 W. 5th Street Los Angeles, CA 90071
ABA Routing No.:	322271724
Credit Account Name:	Chicago Title Company - Ventura Payoff/Administration 500 E. Esplanade Drive, Suite 102, Oxnard, CA 93036
Credit Account No.:	203739032
Reference No.:	11- 68004789

These wiring instructions are for this specific transaction involving the Title Department of the Oxnard office of Chicago Title Company. These instructions therefore should not be used in other transactions without first verifying the information with our accounting department. It is imperative that the wire text be exactly as indicated. Any extraneous information may cause unnecessary delays in confirming the receipt of funds.

Note 6. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirements cannot be met, please call the company at the number provided in this report.

END OF NOTES

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EXHIBIT D-2

PROPERTY ASSESSMENT and WARRANTY

for

Santa Paula Creek Mitigation Bank

This Property Assessment and Warranty ("Property Assessment") is made as of this ____ day of _____, 201__, by Richard E. Lyons and Laurie Prange Lyons ("Property Owners"), for the benefit of the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency, and the California Department of Fish and Game, South Coast Region, which agencies are jointly referred to in this Property Assessment as the "Signatory Agencies." Property Owners acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by the Signatory Agencies in entering into the Bank Enabling Instrument ("BEI") for the Santa Paula Creek Mitigation Bank.

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Bank Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by Chicago Title Company, 21 April 2011, No. 11-68004789-A-SS (the "Preliminary Report"), covering the Bank Property, as described in **Attachments 1 and 2** attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance or other exception to title and the manner in which it may affect the conservation easement to be recorded against the Bank Property (the "Conservation Easement") pursuant to the BEI.

Property Owners covenants, represents and warrants to each of the Signatory Agencies as follows:

1. Property Owners are the sole owners in fee simple of certain real property containing approximately 200 acres located in the City of Santa Paula, County of Ventura, State of California, designated as Assessor's Parcel Number 040-0-020-085 (the "Bank Property"), as legally described in the Preliminary Report. Property Owners have, and upon the recordation of the Conservation Easement Property Owners shall have, good, marketable and indefeasible fee simple title to the Bank Property subject only to any exceptions approved in advance of recordation, in writing, by the Signatory Agencies.

2. The Bank Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the BEI.

3. The Bank Property includes legal access to and from State Highway 150.

4. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Bank Property is set forth in **Attachment 3** attached to and incorporated by reference in this Property Assessment. Except as disclosed in **Attachment 3**, there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests). **Attachment 4**, attached hereto and incorporated by reference in this Property Assessment, depicts all relevant and plottable property lines, easements, dedications, etc. on the Bank Property.

5. Prior to recordation of the Conservation Easement, Property Owners shall certify to the Signatory Agencies in writing that this Property Assessment remains true, accurate and complete in all respects.

6. Property Owners have no knowledge or notice of any legal or other restrictions upon the use of the Bank Property for conservation purposes, or affecting its Conservation Values, as described in the Conservation Easement, or any other matters that may adversely affect title to the Bank Property or interfere with the establishment of a mitigation bank thereon.

7. Property Owners have not granted any options, or committed or obligated to sell the Bank Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the Signatory Agencies.

8. The following attachments are incorporated by reference in this Property Assessment:

- a) Attachment 1 – Preliminary Report; see Exhibit D-1
- b) Attachment 2 – Encumbrance Document;
- c) Attachment 3 – Summary and Explanation of Encumbrances; and
- d) Attachment 4 - Map(s).

PROPERTY OWNERS

Richard E. Lyons

Date

Laurie Prange Lyons

Date

Attachment 1

(see Exhibit D-1, Preliminary Title Report

Attachment 2

Encumbrance Documents

Too large of a file for electronic review copy. Will be inserted into final bound copies.

Attachment 3

Summary and Explanation of Encumbrances

The Bank Property covers Parcel 1 on the Preliminary Report

MONETARY LIENS

None

EASEMENTS AND RIGHTS OF WAY

1. Item #10

- Date: 22 March 1934
- Grantor: Santa Paula Water Works
- Grantee: United States of America
- Description: Fire break
- Analysis: No effect to Conservation Values because easement has been abandoned per the terms of the easement as no fire break has been used in the last five years.

2. Item #28 (document # 88-014765)

- Date: 4 February 1988
- Grantor: Santa Paula Water Works
- Grantee: United States of America
- Description: Trail and foot and horse traffic and administrative road easement
- Analysis: No effect to Conservation Values

1.78 acres of Bank Property subject to easement

198.22 acres of Bank Property *not* subject to easement

LEASES

See below under Other Interests

COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

None

OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)

1. Oil and Gas Lease – Item #31 (document # 91-112287)

Lessor: Santa Clara Land Company (Santa Clara Land Company acquired the mineral rights to the Bank Property from Santa Paula Water Works in 1972, which was subsequently quit-claimed back to Santa Paula Water Works in 2001. However, in the 2005 grant deed from Santa Paula Water Works to the Lyons' it contained an exception – citing to the 1972 severance despite the 2001 quit claim - which was cleared up by the second quit claim by Santa Clara Land Company to the Lyons in 2005.)

Lessee: Lawrence Barker, Jr.

Date: 1 January 1991

Description: The right to prospect, explore, mine, drill, and operate the leased land for oil, gas, and other substances

Analysis: No effect; the lease expired in January 2011.

2. Subsurface Oil and Gas Lease – Item #39 (document # 20101028-166981)

- Lessor: t40, Inc.
- Lessee: Vintage Petroleum, LLC
- Date: 5 October 2010
- Description: Oil/mineral subsurface lease begins at 500 feet below the surface. The top 500 feet remain inaccessible and protected from disturbance as part of the Bank's Conservation Easement. The mineral lease includes only off-site, subsurface drilling equal to or greater than 500 feet below the surface.
- Analysis: No effect to natural resources of the Bank Property. There will be no noise or lighting impacts to the Bank Property as a result of the off-site drilling operations, should they occur, due to distance and existing, natural topography.

3. Severance of Mineral Rights

- On 14 September 2010 Richard and Laurie Lyons severed all mineral rights by grant deed to t4o, Inc., a California corporation, which they wholly own. See document # 20100914-00138782-01/2.
- On 24 May 2011 t4o quit-claimed the surface (down to 500 feet) mineral rights back to Richard and Laurie Lyons as individuals. See document # 20110524-00078958-01/1.

Attachment 4
Maps

(see Exhibit A-2, Long Term Management Plan, Figures 1 and 2)

EXHIBIT D-3

PLAT MAPS

Plat map appears as the last page of the Preliminary Title Report (Exhibit D-1)

EXHIBIT D-4

CONSERVATION EASEMENT DEED

Template Version Date: March 3, 2010

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

State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95814

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
Santa Paula Creek Mitigation Bank**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the ____ day of _____, 20__, by Richard E. Lyons and Laurie Prange Lyons, ("Grantors"), in favor of the State of California ("Grantee"), with reference to the following facts:

RECITALS

A. Grantors are the sole owners in fee simple of certain real property containing approximately 200 acres, located in the City of Santa Paula, County of Ventura, State of California, and designated Assessor's Parcel Number(s) 040-0-020-085 (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for 89 wildlife species that have been observed or detected onsite, including 2 fish, 4 amphibians, 3 (total expected is 9) reptiles, 33 birds, 9 mammals, and 37 invertebrates. An additional 49 species are reported or expected to occur on the property for a total of 141 species. Steelhead trout (*Oncorhynchus mykiss irideus*) occur on the property. In addition to the steelhead trout documented to occur, Santa Paula Creek and its associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other federal and state threatened, endangered or sensitive species. Included among these are the California condor (*Gymnogyps californianus*), foothill yellow-legged frog (*Rana boylei*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), California red-legged frog (*Rana draytonii*), two-striped garter snake (*Thamnophis hammondi*), arroyo chub (*Gila orcuttii*) and southwestern pond turtle (*Emys marmorata pallida*). The Bank Property contains Coastal Sage Scrub

Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland habitats, and restored, created, enhanced and/or preserved jurisdictional waters of the United States. Individually and collectively, these wildlife and habitat values comprise the “Conservation Values” of the Bank Property.

C. The California Department of Fish and Game (“CDFG”) has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFG is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The U.S. Environmental Protection Agency (“USEPA”) and U.S. Army Corps of Engineers (“USACE”) have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

E. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

F. This Conservation Easement is granted pursuant to the Mitigation Bank Enabling Instrument (the “BEI”) by and between Richard E. Lyons, Laurie Prange Lyons (“Bank Sponsors” and “Property Owners”), National Fish and Wildlife Foundation, and South Coast Region CDFG, the Los Angeles District of USACE, USACE File No.SPL-2008-01225-AJS, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Interim Management Plan and Long-Term Management Plan (the “Management Plans”) created under the BEI. CDFG, USACE, and USEPA are together referred to in this Conservation Easement as the “Signatory Agencies.”

A final, approved copy of the BEI and the Management Plans, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantors, or any successor or assign, require an official copy of the BEI or the Management Plans, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The BEI and the Management Plans are incorporated by this reference into this Conservation Easement as if fully set forth herein.

G. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantors hereby voluntarily grants and

convey to Grantee a conservation easement in perpetuity over the Bank Property.

1. **Purposes.**

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural condition as contemplated by the BEI and the Management Plans, and to prevent any use of the Bank Property that will impair or interfere with the Conservation Values of the Bank Property. Grantors intend that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation of native species and their habitats implemented in accordance with the BEI and the Management Plans.

2. **Grantee's Rights.**

To accomplish the purposes of this Conservation Easement, Grantors hereby grant and convey the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Bank Property.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the BEI, and the Management Plans and to implement at Grantee's sole discretion Management Plans activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantors' authorized use and quiet enjoyment of the Bank Property.

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

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Bank Property shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

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

3. **Prohibited Uses.**

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

(a) Unseasonable 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 impair or interfere with 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.

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantors, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plans.

(e) Commercial, industrial, residential, or institutional uses.

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

(g) Construction, reconstruction, erecting 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 extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Management Plans.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease.

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

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other

rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantors, the Bank Property, or the use or activity in question.

Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

- (1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and
- (2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantors' Duties.

Grantors 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 Bank Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantors shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantors under the BEI and the Management Plans.

6. Reserved Rights.

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from Grantors' ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantors of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantors fail to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantors fail to begin the cure within the thirty (30)-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 for any or all of the following: 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 Bank 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; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantors, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Bank Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantors 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 this Conservation Easement.

Grantors agree that Grantee's remedies at law for any violation 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 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 California Civil Code Section 815, *et seq.* 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.

(a) **Costs of Enforcement.**

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantors, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantors.

(b) **Grantee's Discretion.**

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee 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 of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) **Acts Beyond Grantors' Control.**

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantors' control, including, without limitation, fire not caused by Grantors, flood, storm, and earth movement, or any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to

the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) **Enforcement; Standing.**

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by CDFG and the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the BEI or the Management Plans. If at any time in the future Grantors uses, allow the use, or threaten to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) **Notice of Conflict.**

If Grantors receive a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantors to comply consistent with any prior uncured Notice(s) of Violation, Grantors shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantors receive a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantors shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantors shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantors to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantors' ability to claim a conflict.

8. **Access.**

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

9. **Costs and Liabilities.**

Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantors agree that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantors, the public or any third parties from risks relating to conditions on the Bank Property. Grantors remain solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including permits and approvals required from Grantee acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) **Taxes; No Liens.**

Grantors shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantors shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantors for any labor or materials furnished or alleged to have been furnished to or for Grantors at or for use on the Bank Property.

(b) **Hold Harmless.**

(1) Grantors 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") 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: (i) 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 Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantors shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(2) Grantors shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) 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 Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantors shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) **Extinguishment.**

If circumstances arise in the future that render the preservation of Conservation Values, including wetland functions and values, or other 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.

(d) **Condemnation.**

This Conservation Easement is a “wildlife conservation easement” acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3.

10. **Transfer of Conservation Easement or Bank Property.**

(a) **Conservation Easement.**

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantors and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) **Bank Property.**

Grantors agree to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantors divest themselves of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantors agree that the deed or other legal instrument shall also incorporate by reference the BEI, the Management Plans, and any amendment(s) to those documents. Grantors further agree to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantors to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. **Merger.**

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantors, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantors or Grantee desire or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantors: Richard E. Lyons and Laurie Prange Lyons
P.O. Box 4
Ojai CA 93024

To Grantee: California Department of Fish and Game
Habitat Conservation Branch
1416 Ninth Street
Sacramento, CA 95814
Attn: Branch Chief

With a copy to: California Department of Fish and Game
South Coast Region (Region 5)
3883 Ruffin Road
San Diego CA 92123
Attn: Regional Manager

With a copy to: Department of Fish and Game
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel

To USACE: U.S. Army Corps of Engineers
Los Angeles District, Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Attn: Chief, North Coast Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Attn: Director, Water Division

or, to such other address a party or a Signatory Agency shall designate by written notice to Grantors, Grantee and the Signatory Agencies. 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, three (3) days after deposit into the United States mail.

13. **Amendment.**

This Conservation Easement may be amended only by mutual written agreement of Grantors and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. 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 the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantors and the Signatory Agencies.

14. **Additional Provisions.**

(a) **Controlling Law.**

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and 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 California 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, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) **Entire Agreement.**

This document (including its exhibits and the BEI and the Management Plans incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) **No Forfeiture.**

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantors' title in any respect.

(f) **Successors.**

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank 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 Bank Property, except that liability for acts, omissions or breaches 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.**

(1) Grantors represent and warrant that they have 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 Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantors under Section 9 (b), Grantors hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) 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 Grantee's Indemnified Parties by reason of any such Claim, Grantors shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(3) Without limiting the obligations of Grantors under Section 9 (b), Grantors hereby release and agree to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims

arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantors shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, 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 any Third-Party Beneficiaries any of the following:

(A) 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. § 9601, *et seq.*; hereinafter, “CERCLA”); or

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

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

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

(E) Any control over Grantors’ ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) 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. § 6901, *et seq.*; hereinafter, “RCRA”); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, “HTA”); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, “HCL”); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 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.

(6) 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. Grantors represent, warrant and covenant to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantors, their agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) **Warranty.**

Grantors represent and warrant that Grantors are the sole owners of the Bank Property. Grantors also represent and warrant that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantors and attached as an exhibit to the BEI, there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement.

(k) **Additional Interests.**

Grantors shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantors grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) 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 Bank Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantors shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) **Recording.**

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) **Third-Party Beneficiary.**

Grantors and Grantee acknowledge that the USACE and USEPA are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantors including, but not limited to, Grantors' obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) **Funding.**

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the BEI and the Long-term Management Plan.

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

GRANTORS: [*Notarization Required*]

Approved as to form:

BY: _____

NAME: _____

General Counsel
State of California
Department of Fish and Game

TITLE: _____

DATE: _____

BY: _____
General Counsel

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Game, a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the Fish and Game Code.

GRANTEE:

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND GAME

By: _____

Title: _____
Authorized Representative

Date: _____

Legal Description

The North half of the Southwest quarter, South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

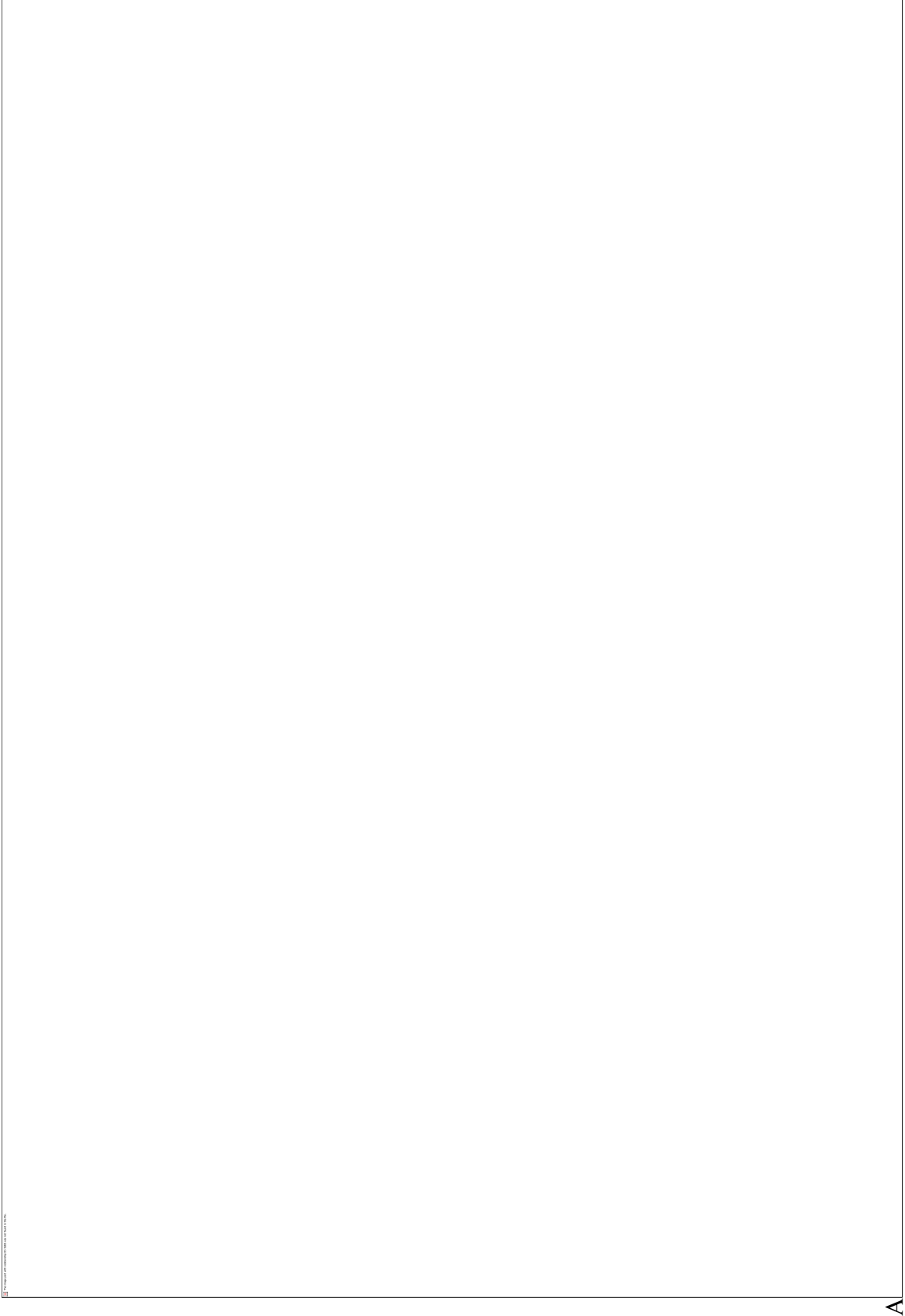


EXHIBIT E-1

CREDIT EVALUATION AND CREDIT TABLE

A botanical survey and a formal delineation of U.S. Army Corps of Engineers (USACE) jurisdictional Waters of the U.S. were conducted by David Magney Environmental Consulting dated March 10, 2009. A quantitative Wetland Functional Analysis was also conducted by David Magney Environmental Consulting dated March 10, 2009 using the Hydrogeomorphic Assessment Model to assess the functionality of the riverine and riparian wetland functions. Based on the results of these studies, and consultation with the IRT, a determination was made as to the amount of Credits.

The USACE determined there were 33.64 acres of jurisdictional Waters of the U.S. In addition, the USACE determined there were 90.65 acres of buffer area, comprised of a 300-foot-wide buffer around the mainstem of Santa Paula Creek and a 100-foot-wide buffer around the tributaries of Santa Paula Creek on the Bank Property.

The Bank Property totals 200 acres. An undeveloped US Forest Service trail easement (16-feet wide) exists on the Bank Property (see map) which consists of 1.78 acres of habitat within the habitat designated as jurisdictional Waters of the U.S. Therefore, the net total area designated as Bank Credits is based on 198.22 acres.

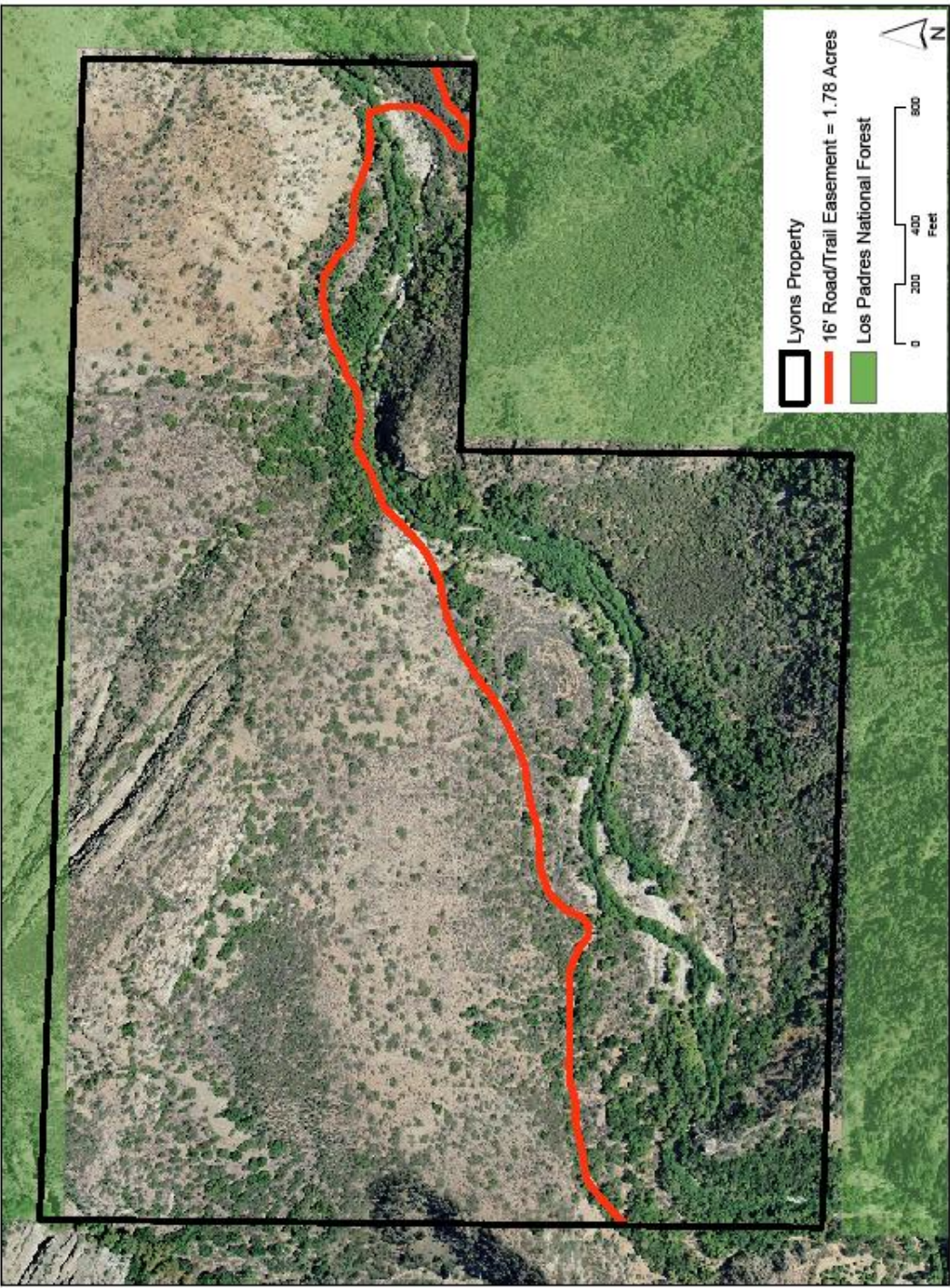
These 198.22 acres are unspecified by location and divided into the following two Credit¹ categories:

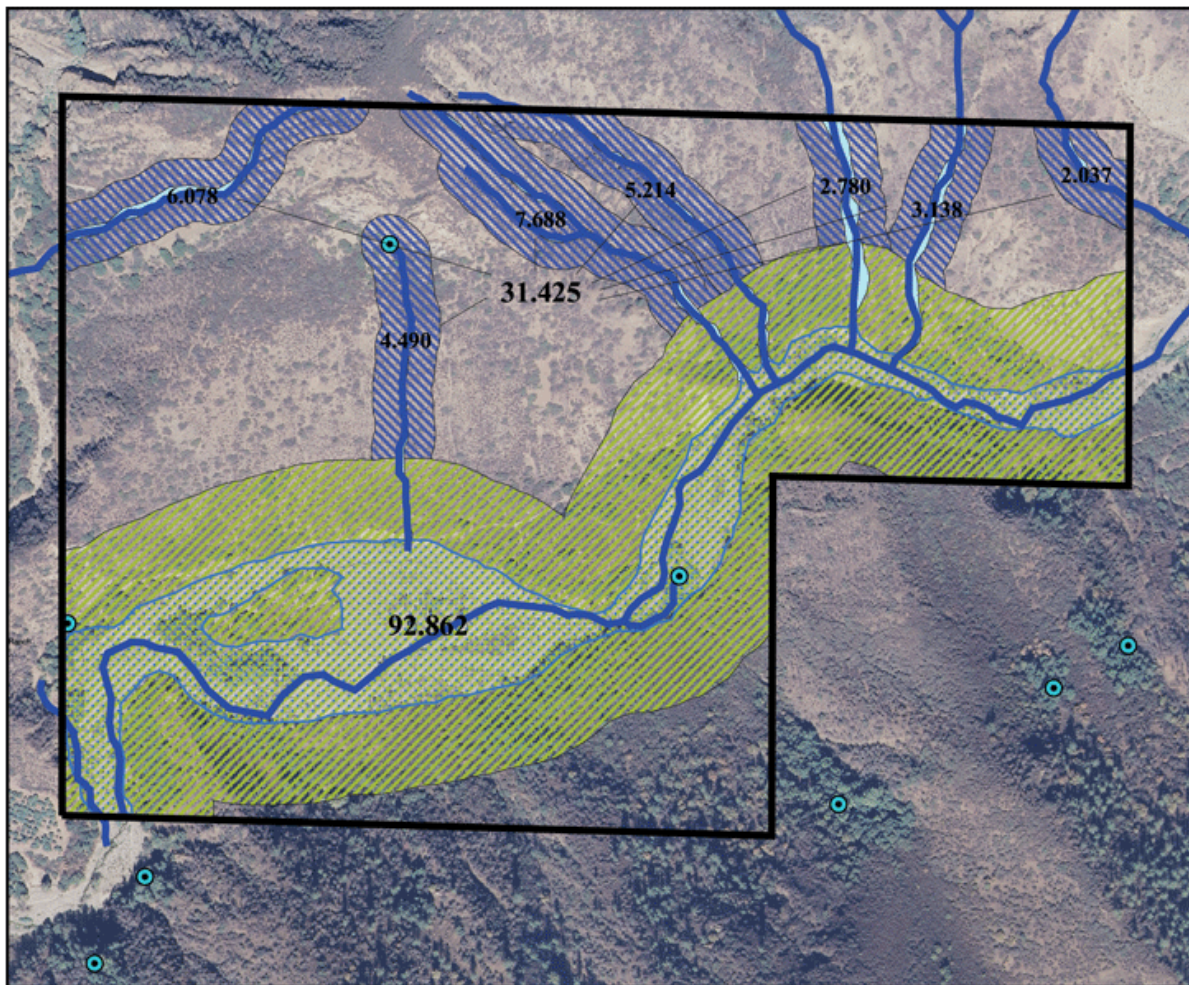
Waters of the U.S. Preservation Credits, including the wetland and buffer areas, and CDFG Covered Habitat Preservation Credits = 124.29

The CDFG Covered Habitats are: coastal sage scrub, floodplain scrub, chaparral, riparian woodland, and upland woodland. The corresponding California Wildlife Habitat Relationships categories are: COW, CRC, CSC, DRI, MRI, VRI, and/or MCH.

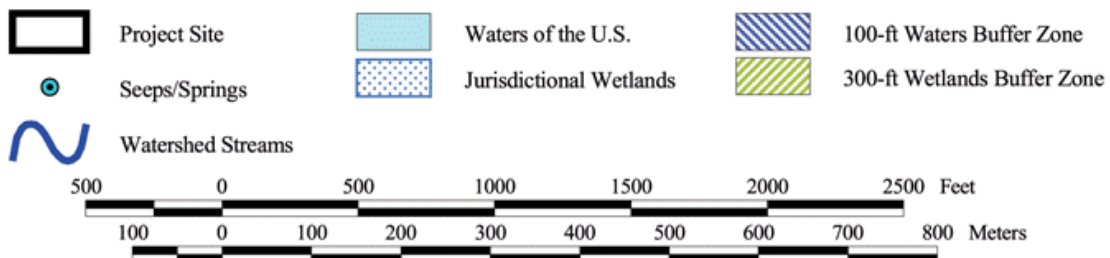
Additional CDFG Covered Habitat Preservation Credits = 73.93

¹ No creation (establishment) Credits for Waters of the U.S. and Covered Habitat are available through the Bank.





Lyons - Santa Paula Canyon Legend



Map created by:
 David Magney Environmental Consulting
 P.O. Box 1346, Ojai, CA 93024-1346
 805/646-6045 - www.magney.org
 Date: 4 March 2009

Map Base: Color aerial photograph through CIRGIS - September 2007

Data Sources: Ventura County, DMEC. Datum: NAD 83. Projection: State Plane, Calif. Zone V, feet S

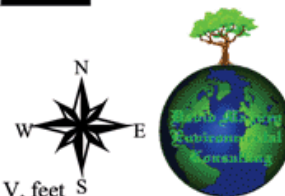


EXHIBIT E-2

CREDIT PURCHASE AGREEMENT AND PAYMENT RECEIPT TEMPLATES

AGREEMENT FOR SALE OF MITIGATION CREDITS

B. Corps File No. _____
DFG Tracking No. _____

This Agreement is entered into this ___ day of _____, 20____, by and between _____ (Bank Sponsors) and _____ (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Sponsors have developed the _____ Bank ("Bank") located in _____ County, California; and

C. The Bank was approved by the U.S. Army Corps of engineers (Corps), U.S. Environmental Protection Agency (EPA), and California Department of Fish and Game (CDFG) (jointly referred to as "Resource Agencies") on *[bank establishment date]*, and is currently in good standing with these agencies; and

D. The Bank has received approval from the Resource Agencies to offer _____ Credits for sale as compensation for the loss of _____ *[enter species or habitats to be impacted by the project, e.g., listed vernal pool crustaceans]*, and seeks to compensate for the loss of _____ *[enter species/habitat affected, e.g., vernal pool habitat]* by purchasing Credits from Bank; and

E. Project Applicant is seeking to implement the project described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact _____ *[enter species or habitats to be impacted by the project, e.g., listed vernal pool crustaceans]*, and seek to compensate for the loss of _____ *[enter species/ habitat affected, e.g., vernal pool habitat]* by purchasing Credits from Bank; and

F. Project Applicant has been authorized by the Corps, File No. _____, and CDFG, Tracking # _____ to purchase from the Bank _____ *[enter number of credits and credit type]* Credits upon confirmation by the Bank Sponsors of credit availability/ adequate balance of Credits remaining for sale; and

G. Project Applicant desires to purchase from Bank and Bank Sponsors desire to sell to Project Applicant _____ *[enter number of credits and credit type]* Credits;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank Sponsors hereby sell to Project Applicant and Project Applicant hereby purchases from Bank Sponsors _____ *[enter number of credits and credit type]* Credits for the purchase price of \$_____. The Bank Sponsors will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The purchase price for said Credits shall be paid by cashier's check or, at the option of Bank Sponsors, wire transfer of funds according to written instructions by Bank Sponsors to Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Credits sold, or the Bank. Pursuant to the Bank Enabling Instrument and any amendments thereto, Bank Sponsors shall monitor and make reports to the appropriate agency or agencies on the status of any Credits sold to Project Applicant. Bank Sponsors agree to assume responsibility for satisfying any and all compensatory mitigation requirements of Corps file no. _____ [and/or] CDFG Tracking no. _____ for which Credits were Transferred to Project Applicant pursuant to this agreement .

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant must exercise his/her/its right to purchase the Credits within 30 days of the date of this Agreement. After the 30 day period this Agreement will be considered null and void.

6. Upon purchase of the Credits specified in paragraph D above, the Bank Sponsors shall submit to the Parties listed in the Notices section of the Bank Enabling Instrument, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and updated ledger. The updated Credit Transfer Ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; Corps File Number (if applicable), vi) CDFG Permit or CEQA Clearinghouse Number (if applicable); Total Number of Credits Released; vii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The Credit Transfer Ledger should include all sales data from Bank Establishment Date to the present.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Bank Sponsors

By: _____ Date: _____

By: _____ Date: _____

Project Applicant:

(Enter Name of Project Applicant)

By: _____ Date: _____

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

[Name of Project (Corps and Service File No's. _____;
DFG Permit No. _____).] _____ County, California.

EXHIBIT "B"

Bill of Sale

In consideration of \$_____, receipt of which is hereby acknowledged, the Bank Sponsors of the Santa Paula Creek Mitigation Bank (the "Bank") do hereby sell to _____, Waters of the U.S Preservation Credits totaling _____ and/or Covered Habitat Preservation Credits totaling _____ for the _____ project (Permit No. _____/CDFG Tracking No. _____).

The Bank Sponsors represent and warrant that the Credits specified above are available for Transfer.

The Bank Sponsors covenant and agree with the buyer to warrant and defend the sale of the Credits hereinbefore described against all and every person or persons whomsoever lawfully claiming or to claim the same. Additional information on the purchaser, project and payment is provided in Attachment A.

Bank Sponsors
Santa Paula Creek Mitigation Bank

By: _____ Date: _____
Richard E. Lyons

By: _____ Date: _____
Laurie Prange Lyons

Attachment A

PURCHASER'S INFORMATION

Name:

Address:

Telephone:

Contact:

PROJECT INFORMATION

Project Description:

USACE File Number:

CDFG Tracking Number:

Habitat Affected:

Credits Required:

Payment Amount:

Project Location:

County:

PAYMENT INFORMATION

Payee:

Payer:

Amount Paid:

Method of Payment:

Signature:

Name:

Title:

Date:

EXHIBIT E-3

CREDIT TRANSFER LEDGER TEMPLATE

A Credit Transfer Ledger will be maintained using an electronic Excel spreadsheet. The layout is provided below. The requirements of the ledger may be amended at the discretion of the IRT.

The Credit Transfer Ledger shall include, at a minimum, the following information:

1. Bank Name
2. Total number of each type of Bank Credit
3. Initial Credit purchaser's name, address, and phone number
4. Project Applicant name, address, and phone number
5. Project Name
6. Agency project file numbers and number of Credits required to be purchased
7. Date of Credit Transfer
8. Status of Sale (sale complete or incomplete)
9. Type(s) and Number of Credit(s) sold or obligated
10. Balance of each type of Credit remaining

Santa Paula Creek Mitigation Bank

[illegible]

EXHIBIT F
PHASE I ENVIRONMENTAL SITE ASSESSMENT

EXHIBIT G

BIOLOGICAL RESOURCES SURVEYS

Exhibit G-1

Biological Resources Summary

Some 209 vascular plant taxa are documented to occur on the Bank Property. Of the 209 vascular plant taxa, 178 (85.2%) are native and the remaining 31 (14.8%) are introduced naturalized species. The vascular plant flora of the property appears to be in better condition than what would normally be expected at similarly sized areas elsewhere in the region and in California. The pristine nature of the property has resulted in a slightly higher ratio of native plant species than typically found for the flora of California (~70% native) or Ventura County (80% native) as a whole (see **Exhibit G-1**).

Palustrine and Riverine habitats provide numerous important wildlife resources for a number of wildlife, including invertebrates (aquatic and terrestrial), fish, amphibians, reptiles, birds, and mammals. This is particularly true when intact upland plant communities occur adjacent to them. The structure of the riparian community, in addition to the relatively high plant structural diversity, provides habitat necessary for foraging, nesting, and cover for many species. In addition, streams such as Santa Paula Creek are important sources of water for a variety of upland wildlife species.

Riparian zones along rivers and streams are also used as migration corridors by various species of wildlife including small and large mammals, birds, and reptiles. These migration corridors often connect habitat patches, and allow for physical and genetic exchange between animal populations. Wildlife can use riparian zones for cover while traveling across otherwise open areas. Numerous species of wildlife are known to occur within Santa Paula Creek, frequenting the Palustrine and Riverine System habitats on a seasonal basis and regularly using resources provided by the creek.

Searches of the California Department of Fish and Game's (CDFG) California Natural Diversity Data Base RareFind3 for the Santa Paula Peak Quadrangle and the surround eight quadrangles (Ojai, Saticoy, Santa Paula, Lion Canyon, Topa Topa Mountain, Devils Heart Peak, Fillmore and Moorpark) revealed 20 special-status wildlife species that are known to occur and are tracked within the vicinity of these quadrangles and the Bank Property (**Exhibit G-2**)

Eighty-nine (89) wildlife species have been observed or detected onsite, including 2 fish, 4 amphibians, 3 (total expected is 9) reptiles, 33 birds, 9 mammals, and 37 invertebrates. An additional 49 species are reported or expected to occur on the property for a total of 141 species.

Recent (2007-08) streamside surveys and electro-shocking efforts conducted by Stillwater Scientists (**Exhibit G-3**) indicate that larger than expected numbers of steelhead trout

(*Oncorhynchus mykiss*) occur on the Bank Property and elsewhere in upper Santa Paula (and Sisar) Creek.

In addition to the endangered steelhead trout documented to occur, Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other threatened, endangered or sensitive species. Included in these are the California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle (**Exhibit G-2**).

It is believed that the existing stream gradient (2-3%+) is a little too steep to provide optimal breeding habitat for the arroyo toad (*Bufo californicus*) within the parcel, although there may be an opportunity to establish this endangered species should an appropriate segment of the system re-establish a gradient less than 2%. This species historically occurred along Santa Paula Creek. Suitable habitat is present to justify the Bank as a possible future reintroduction site for California red-legged frogs.

The Bank Property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. The Bank Property's vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

Specifically the Bank Property's habitats are classified as the following:

- **Coastal Sage Scrub**
 - *Eriogonum fasciculatum* Alliance
 - *Eriogonum fasciculatum-Salvia apiana-Hesperoyucca whipplei* Association
 - *Eriogonum fasciculatum-Salvia apiana* Association
 - *Lotus scoparius* Alliance
 - *Lotus scoparius-Eriogonum fasciculatum -Salvia apiana* Association
 - *Lotus scoparius-Malosma laurina* Association
 - *Salvia apiana* Alliance
 - *Salvia apiana* Association
 - *Salvia apiana-Malosma laurina* Association
- **Floodplain Scrub**
 - *Lepidospartum squamatum* Alliance
- **Chaparral**
 - *Ceanothus megacarpus* Alliance
 - *Ceanothus megacarpus-Cercocarpus betuloides* Association
 - *Ceanothus megacarpus-Heteromeles salicifolia-Malosma laurina* Association
 - *Cercocarpus betuloides* Alliance
 - *Cercocarpus betuloides* Association
 - *Cercocarpus betuloides/Polypodium californicum* Association
 - *Cercocarpus betuloides-Malosma laurina* Association
 - *Cercocarpus betuloides-Malosma laurina-Heteromeles salicifolia* Association
 - *Cercocarpus betuloides-Salvia apiana* Association
 - *Fraxinus dipetala* Alliance

- *Fraxinus dipetala* Association
 - *Fraxinus dipetala-Juglans californica* Association
- *Heteromeles salicifolia* Alliance
 - *Heteromeles salicifolia-Ceanothus oliganthus* Association
 -
- **Riparian Woodland**
 - *Alnus rhombifolia* Alliance
 - *Alnus rhombifolia-Acer macrophyllum-Umbellularia californica* (Seep) Association
 - *Alnus rhombifolia-Platanus racemosa* Association
 - *Alnus rhombifolia-Quercus agrifolia-Platanus racemosa-Populus* spp. Association
 - *Quercus agrifolia* (Riparian) Alliance
 - *Quercus agrifolia* (Riparian) Association
 - *Quercus agrifolia-Umbellularia californica* (Seep) Association
- **Upland Woodland**
 - *Pseudotsuga macrocarpa* Alliance
 - *Pseudotsuga macrocarpa* Association
 - *Pseudotsuga macrocarpa/Cercocarpus betuloides* Association

The predominant wetland habitat type onsite is classified within the Palustrine System, according to the U.S. Fish and Wildlife Service (USFWS) *Classification of Wetlands and Deepwater Habitats of the United States* (see, Cowardin *et al.* 1979). The Palustrine system includes all nontidal wetlands dominated by trees, shrubs, persistent emergents, emergent mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean-derived salts is below 0.5. (**Exhibit G-4, Exhibit G-5**).

The Palustrine System is bounded by upland or by any of the other four systems (including Riverine, Lacustrine, Marine, and Estuarine). Palustrine Mixed Broad-leaved Forested Wetland is characterized by woody vegetation that is at least six meters tall (trees). It is dominated by riparian species with large (broad) leaves (as opposed to coniferous or needle-like leaves), and is co-dominated by both evergreen and winter-deciduous (falling during the winter season) plant species.

Technical reports on the biological resources of the Bank Property are provided as **Exhibits G-1 thru G-5**.

Exhibit G-2

DMEC. 2007. Botanical resources of the Lyons property, Santa Paula Canyon, Ventura, California. Unpubl. Report. Prepared by David Magney Environmental Consulting, Ojai, CA. 26 pp.

Exhibit G-3

Thelander, C. G. and M. Freel. 2007. Review of special-status fish and wildlife resources of Santa Paula Creek, Ventura County, California. Unpubl. Report. Prepared by BioResource Consultants, Inc., Ojai, CA. 10 pp.

Exhibit G-4

Stillwater Sciences. 2007. Santa Paula Creek watershed planning project: steelhead habitat and population assessment. Prepared for California Fish and Game and the Santa Paula Creek Fish Ladder Joint Powers Authority.

Exhibit G-5

DMEC. 2009. Wetland Functional Assessment of the Lyons Property Mitigation Bank Project, Santa Paula Canyon, California. 10 March 2009. (PN 08-0152.) Ojai, California. Prepared for BioResource Consultants, Inc., Ojai, CA on behalf of Richard Lyons and Laurie Prange Lyons, Ojai, California. Unpubl. Report. 75 pp, plus appendices

Exhibit G-6

DMEC. 2008. Delineation of Jurisdictional Wetlands of the Lyons Property, Santa Paula Canyon, Ventura County, California (APN 040-0-020-085). 12 November 2008. (PN 08-0181.). 36 pp. Prepared for U.S. Army Corps of Engineers, Regulatory Branch, Ventura, California, on behalf of Richard Lyons and Laurie Prange Lyons, Ojai, California.

EXHIBIT H

WATERS OF THE US JURISDICTIONAL DETERMINATION AND DELINEATION

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

District Office	Los Angeles District	File/ORM #	SPL-2008-1225-AJS	PJD Date:	Jun 10, 2011
State	CA	City/County	near Santa Paula, Ventura County	Name/ Address of Person Requesting PJD	Richard Lyons P.O. Box 4 Ojai, CA 93024
Nearest Waterbody:	Santa Paula Creek				
Location: TRS, Lat/Long or UTM:	34.444586 deg lat -119.071319 deg long				
Identify (Estimate) Amount of Waters in the Review Area:			Name of Any Water Bodies on the Site Identified as Section 10 Waters:		
Non-Wetland Waters:			Tidal: n/a		
Stream Flow:			Non-Tidal: n/a		
linear ft width 5.0 acres Ephemeral					
Wetlands: 28.64 acre(s) Cowardin Class: Riverine			<input type="checkbox"/> Office (Desk) Determination <input checked="" type="checkbox"/> Field Determination: Date of Field Trip: Dec 11, 2008		

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: November 2008 delineation report
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps
- ☐ Corps navigable waters' study: _____
- ☐ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data.
 - ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite quad name: Santa Paula Peak 7.5 minute quad
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: _____
- ☐ National wetlands inventory map(s). Cite name: _____
- ☐ State/Local wetland inventory map(s): _____
- ☐ FEMA/FIRM maps: _____
- ☐ 100-year Floodplain Elevation is: _____
- ☒ Photographs: ☒ Aerial (Name & Date): Sept 2004, Sept 2007
- ☐ Other (Name & Date): See delineation and HGM reports
- ☐ Previous determination(s). File no. and date of response letter: _____
- ☒ Other information (please specify): HGM functional assessment dated _____

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office File/ORM # PJD Date:
State City/County Person Requesting PJD

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
1	34.444586	-119.071319	Riverine	5.0 ac	Non-Section 10 non-wetland
2	34.444586	-119.071319	Riverine	28.64 ac	Non-Section 10 wetland

Notes:

Site 1 comprises the ephemeral tributaries to Santa Paula Creek within the property. Site 2 is the main stem channel of Santa Paula Creek



DEPARTMENT OF THE ARMY

Corps of Engineers, Los Angeles District
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

May 4, 2010

REPLY TO
ATTENTION OF:

Regulatory Division

Richard Lyons
P.O. Box 4
Ojai, California 93024

Dear Mr. Lyons:

Enclosed please find copies of the comments received to our public notice for the proposed Santa Paula Creek Mitigation Bank. We have also completed our initial evaluation of the proposed bank in accordance with 33 CFR Part 332.8 (d)(5) of the Corps mitigation guidelines.

In completing our initial evaluation, the Corps considered these comments, in addition to considering input from other members of the Interagency Review Team (IRT) provided during previous IRT meetings. We have concluded that the proposed mitigation bank does have the potential to provide appropriate compensatory mitigation credits for projects obtaining Department of the Army (DA) permits pursuant to Section 404 of the Clean Water Act. This determination is based on the following considerations:

- The site supports high quality wetland/riparian habitat at the interface between the undeveloped lands of the Los Padres National Forest and developed lands (agricultural/institutional) downstream and would facilitate the long-term preservation of aquatic resources within an urbanizing watershed (Santa Clara River).
- Based on a detailed functional assessment the site supports up to 124.29 preservation credits.
- The site supports designated critical habitat for the endangered southern steelhead trout (*Oncorhynchus mykiss*) and would be available to provide credits for projects that affect steelhead trout and/or its critical habitat.
- There is a need for mitigation banks and in-lieu fee programs within the Santa Clara River watershed to provide credits for projects issued DA permits.
- Establishment of the Santa Paula Creek Mitigation Bank is consistent with the Corps' 2008 mitigation rule.

With the completion of the prospectus and public review, the next step is to develop the draft banking instrument. The California Bank Enabling Instrument (BEI) template should be

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available at our website: www.spl.usace.army.mil/regulatory. If you have any questions, please contact me at 805-585-2147 or via e-mail at Antal.J.Szijj@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read 'Antal Szijj', with a stylized flourish at the end.

Antal Szijj
Senior Project Manager
North Coast Branch

cf: Carl Thelander

EXHIBIT I

Cultural Resources Records Search