

**CONSERVATION BANK ENABLING INSTRUMENT
RAMONA GRASSLANDS CONSERVATION BANK**

Table of Contents

RECITALS	1
AGREEMENT	2
Section I: Purpose and Authorities	2
A. Purpose.....	2
B. Authorities.....	2
Section II: Definitions.....	3
Section III: Stipulations	6
A. Baseline Condition.....	6
B. Disclaimer	6
C. Exhibits	6
Section IV: Bank Evaluation.....	8
A. Bank Site Assessment by the CBRT.....	8
B. Bank Sponsor’s Responsibilities.....	8
C. Phase I Environmental Site Assessment.....	8
D. Phases (Construction)	8
E. Permits	8
F. Property Assessment and Warranty	9
Section V: Bank Establishment Date.....	9
Section VI: Financial Assurances	9
A. Interim Management Security.....	9
B. Endowment Fund.....	9
Section VII: Covered Habitat Credit Release.....	11
Section VIII: Operation of the Bank.....	11
A. Service Area.....	11
B. Transfer of Credits	12
C. Interim and Long-term Management and Monitoring	13
D. Bank Closure Plan.....	13
E. Financial Operations	14
F. Remedial Action Plan	16
Section IX: Reporting.....	17
A. Annual Inflation Adjustments to Endowment Fund Report	17
B. Annual Report.....	17
C. Monitoring Report	18
D. Credit Transfer Reporting.....	18
E. Reporting Compliance Measures.....	18
Section X: Responsibilities of the Bank Sponsor and Property Owner.....	19
Section XI: Responsibilities of the CBRT	20
A. CBRT Oversight	20
B. CBRT Review.....	21

C. Compliance Inspections	21
Section XII: Other Provisions.....	21
A. Force Majeure	21
B. Dispute Resolution.....	21
C. Conveyance of Bank Property or Other Interests	22
D. Modification and Termination of the CBEI.....	23
E. Default.....	24
F. Controlling Language	24
G. Entire Agreement	25
H. Reasonableness and Good Faith	25
I. Successors and Assigns.....	25
J. Partial Invalidity.....	25
K. Notices	26
L. Counterparts.....	27
M. No Third Party Beneficiaries	27
N. Availability of Funds	27
O. No Partnerships.....	28
P. Governing Law	28
Section XIII: Execution	29

Appendix 1 –Required Exhibits

1. “Exhibit A” - Bank Location Maps
 - A-1. Regional Location Map
 - A-2. Project Location Map
 - A-3. Regional Context/Land Ownership Map
2. “Exhibit B” – Service Area Map and Description
 - B-1. Service Area Map
 - B-2. Service Area Narrative Description
3. “Exhibit C” - Bank Management and Operation Documents
 - C-1. Interim Management Security Analysis and Schedule
 - C-2. Endowment Fund Analysis and Schedule (PAR)
 - C-3. Endowment Agreement
 - C-4. Conservation Easement Monitoring Endowment Agreement
 - C-5. Long-term Management Plan
 - C-6. Bank Closure Plan
4. “Exhibit D” - Real Estate Records and Assurances
 - D-1. Title Report, Legal Description, and Parcel Maps
 - D-2. Subordination Agreement (Kearny Parcel)
 - D-3. Property Assessment and Warranty
 - D-4. Plat Maps
 - D-5. Approved-as-to-form Conservation Easement Deed
 - D-6. Title Insurance
5. “Exhibit E” - Bank Crediting and Credit Transfers
 - E-1. Credit Evaluation and Credit Table
 - E-2. Credit Purchase Agreements and Payment Receipt Template
 - E-3. Credit Transfer and Endowment Payment Ledger Template
6. “Exhibit F” - Phase I Environmental Site Assessment
7. “Exhibit G” - Biological Resources Survey
8. “Exhibit H” – Cultural, Historical, Archeological, and Native American Resources (“Cultural Resources”)

CONSERVATION BANK ENABLING INSTRUMENT RAMONA GRASSLANDS CONSERVATION BANK

This Conservation Bank Enabling Instrument (“CBEI”), dated this **4th day of August, 2014**, is made by and between Judd RR Investments, LLC and Kearny PCCP Otay 311, LLC (collectively “Bank Sponsor” and “Property Owner”), and the Carlsbad Fish and Wildlife Office of the U.S. Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife, Region 5 (“CDFW”). The USFWS and CDFW comprise and are referred to jointly as the Conservation Bank Review Team (“CBRT”). The Bank Sponsor, Property Owner, and the CBRT are hereinafter referred to jointly as the “Parties.” This CBEI sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Ramona Grasslands Conservation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsor is responsible for establishing and operating the Bank.
- B. The Property Owner is the owner of real property containing approximately 210.43 acres (the “Property”), located at the confluence of Highland Valley Road and Rangeland Road, County of San Diego, State of California, designated Assessor’s Parcel No(s). 277-121-05-00, 277-121-08-00, 277-111-09-00 and 277-050-32-00. The Property is generally shown on the Bank Location Maps (**Exhibits A**) and legally described in the Real Estate Records and Assurances (**Exhibit D**) attached hereto.
- C. Judd RR Investments, LLC and Kearny PCCP Otay 311, LLC, as Bank Sponsor and Property Owner 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 Conservation Easement (**Exhibit D-5**) 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. CDFW 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. USFWS, an agency within the U.S. Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the U.S. pursuant to the federal Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f), *et seq.*, and other provisions of federal law.
- F. The CBRT 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 CBEI 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 CBEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank. The Parties have determined the establishment of this Bank will provide compensation, conservation, and protection for Covered Species and Covered Habitat types and any additional species and habitat types the Parties determine will be adequately conserved as a result of the implementation of this CBEI. The Bank shall preserve, restore, create, and/or enhance and then manage and maintain Covered Species and Covered Habitat in accordance with this CBEI 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. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
- b. Endangered Species Act (16 U.S.C. § 1531 *et seq.*) (“ESA”), particularly including impacts to federally listed threatened or endangered species under § 7 and 10 of ESA and/or occupied habitat;
- c. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*); and
- d. Guidance for the Establishment, Use and Operation of Conservation Banks (U.S. Department of Interior Memorandum, dated May 2, 2003).

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. Conservation of Wildlife Resources (Fish and Game Code § 1800 *et seq.*).
- e. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600 *et seq.*)
- f. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly; and
- g. 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 Wildlife.

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this CBEI 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 CBRT in discussion with the Bank Sponsor and/or the Property Owner, as appropriate, based upon Bank annual report results and CBRT 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 Sponsor nor the Property Owner has control.
4. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit D-5** attached hereto.
5. “Covered Habitat” means habitat of concern or habitat upon which the Covered Species depend for their continued viability that the CBRT determines will be adequately conserved as a result of implementation of this CBEI. Covered Habitat Credits are identified in **Exhibit E-1**.
6. “Covered Species” means the species for which the Bank has been established as acknowledged in **Exhibit E-1**.
7. “Credits” are units of measure representing the accrual, attainment, or protection of the Covered Habitat on the Bank Property. One Credit is equivalent to 1 acre, or, for vernal

pools, 1.0 Credit is equal to 0.1 acre of vernal pool basin and 0.9 acre of non-native grassland watershed/buffer, unless written agreement is obtained from the Wildlife Agencies, or as otherwise defined in **Exhibit E-1**.

8. “Credit Release” means an action by the CBRT to make specified Credits available for Transfer pursuant to this CBEI.
9. “Credit Release Fee” is a fee to pay for all or a portion of the CDFW’s bank implementation and compliance costs.
10. “Endowment Agreement” means the document attached as **Exhibit C-3** and shall include any mitigation agreement with the meaning of California Government Code 65965(f)(1), that is the agreement establishing the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Amount in an Endowment Fund.
11. “Endowment Amount” is the amount, determined in **Exhibit C-2** that is required to be provided, in accordance with Section VI.B., by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund.
12. “Endowment Deposit” is the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Fund, held in trust, and administered in strict accordance with the Government Code Sections 65965-65968, Probate Code sections 18501-18510, and the Endowment Agreement.
13. “Endowment Fund” is a sum of money in a long-term stewardship account, held in trust in a fund designated by the Endowment Agreement. The Endowment Fund is to be maintained and managed in perpetuity in strict accordance with government Code Sections 65965-65968, Probate Code sections 18501-18510, the CBEI, and the Endowment Agreement 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. The term “Endowment Fund” as used in this CBEI shall comprise the Endowment Amount and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto,
14. “Endowment Holder” means either CDFW or another entity qualified to hold the Endowment Fund pursuant to Government Code sections 65965-65968.
15. “Grantee” means the entity accepting fee or easement of certain real property within the Bank.
16. “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 Sponsor nor the Property Owner has 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.

17. “HCP” means a Habitat Conservation Plan prepared pursuant to § 10(a)(2)(A) of the ESA (16 U.S.C. § 1539(a)(2)(A)).
18. “Interim Management Period” means the period from the Bank Establishment Date and three years past full funding of the Endowment Fund.
19. “Interim Management Security” is the financial assurance specified in Section VI and **Exhibit C-1**, to be provided by the Bank Sponsor to guarantee the implementation of the Long-term Management Plan during the Interim Management Period.
20. “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.
21. “Long-term Management Plan” means the document attached as **Exhibit C-5** that will be implemented during the Interim and Long-term Management Periods and is intended to ensure the Bank Property is managed, monitored and maintained in perpetuity to conserve the Covered Species and Covered Habitat.
22. “NCCP” is a Natural Community Conservation Plan created pursuant to Fish and Game Code § 2800, *et seq.*
23. “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.

24. “Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
25. “Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owner and attached as **Exhibit D-3**.
26. “Property Owner” means the owner(s) of fee simple title to the Bank Property.
27. “Remedial Action” means any corrective measures which the Bank Sponsor or Property Owner is required to take to ameliorate any injury or adverse impact to the Bank Property as preserved.
28. “RIBITS” means the Regulatory In-lieu Fee and Bank Information Tracking System.
29. “Service Area” means the geographic area(s) within which impacts to Covered Species or Covered Habitat that occur may be mitigated or compensated through Credits from the Bank.
30. “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, signed by the lien holder and attached as **Exhibit D-2**.
31. “Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsor.
32. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Bank Sponsor or Property Owner 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.

Section III: Stipulations

A. Baseline Condition

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

B. Disclaimer

This CBEI does not in any manner limit the legal authorities or responsibilities of the CBRT, or of any CBRT 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 CBEI:

1. “Exhibit A” - Bank Location Maps
 - A-1 Regional Location Map
 - A-2 Project Location Map
 - A-3 Regional Context/Land Ownership Map
2. “Exhibit B” - Service Area Map and Description
 - B-1 Service Area Map
 - B-2 Service Area Narrative Description
3. “Exhibit C” - Bank Management and Operation Documents
 - C-1 Interim Management Security Analysis and Schedule
 - C-2 Endowment Fund Analysis and Schedule (PAR)
 - C-3 Endowment Agreement
 - C-4 Conservation Easement Monitoring Endowment Agreement
 - C-5 Long-Term Management Plan
 - C-6 Bank Closure Plan
4. “Exhibit D” - Real Estate Records and Assurances
 - D-1 Title Report, Legal Description, and Parcel Maps
 - D-2 Subordination Agreement (Kearny Parcel)
 - D-3 Property Assessment and Warranty
 - D-4 Plat Maps
 - D-5 Approved-as-to-form Conservation Easement Deed
 - D-6 Title Insurance
5. “Exhibit E” - Bank Crediting and Credit Transfers
 - E-1 Credit Evaluation and Credit Table
 - E-2 Credit Purchase Agreement and Payment Receipt Template
 - E-3 Credit Transfer and Endowment Payment Ledger Template

6. “Exhibit F” - Phase I Environmental Site Assessment
7. “Exhibit G” - Biological Resources Survey
8. “Exhibit H” - Cultural, Historical, Archeological, and Native American Resources (“Cultural Resources”)

Section IV: Bank Evaluation

A. Bank Site Assessment by the CBRT

Representatives of the CBRT have inspected and evaluated the Bank’s Covered Species and Covered Habitats and have agreed upon the assignment of Credits set forth in **Exhibit E-1**.

B. Bank Sponsor’s Responsibilities

The Bank Sponsor or Property Owner agrees to perform all necessary work, in accordance with the provisions of this CBEI, to monitor, and maintain the Covered Species and Covered Habitats on the Bank Property.

C. Phase I Environmental Site Assessment

Bank Sponsor or Property Owner has 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 Bank Sponsor and Property Owner represent and warrant to the CBRT that all appropriate assessment, clean-up, remedial or removal action has been completed.

D. Phases (Construction)

The Bank is proposed to be implemented in a single phase. The Bank Sponsor may propose a Subsequent Phase to the CBRT for vernal pool restoration by submitting a written request to the CBRT to amend the CBEI to include that Subsequent Phase. Subsequent Phases will need to comply with requirements in effect on the date of submission of the complete documentation for the proposed Subsequent Phase. Establishment of each Subsequent Phase must be approved as an amendment of the CBEI or developed as a new bank, as determined by the CBRT.

E. Permits

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

F. Property Assessment and Warranty

Property Owner shall notify the CBRT of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit D-3**) discovered subsequent to Property Owner's signing of this CBEI. The CBRT 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 CBRT in effect at the time of notice to the CBRT.

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:

- A. The CBEI has been fully executed by all of the Parties;
- B. The Conservation Easement has been accepted by a Grantee approved by the CBRT and recorded in the Official Records of the county in which the Bank Property is located; and,
- C. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI.

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

Section VI: Financial Assurances

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

A. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to CDFW Interim Management Security in the amount specified in **Exhibit C-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Long-term Management Plan during the first year of the Interim Management Period, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit C-1**). 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 real funds held in escrow. The Bank Sponsor shall ensure that the full amount of the Interim Management Security shall remain available in accordance with Section VIII.E.1.a. until the end of the Interim Management Period.

B. 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-2**). 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 shall be held in trust in a designated long-term stewardship account, and shall be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-65968, Probate Code sections 18501-18510, the CBEI, and the Endowment Agreement (Exhibit C-3). The Bank Sponsor shall fund the Endowment Amount through Endowment Deposits according to the schedule below and consistent with Section VII. The Endowment Amount shall be funded as follows:
 - a. A minimum of 15% of the Endowment Amount shall be funded prior to the second Covered Habitat Preservation Credit Release;
 - b. A minimum of 40% of the Endowment Amount shall be funded prior to the third Covered Habitat Preservation Credit Release;
 - c. A minimum of 70% of the Endowment Amount shall be funded prior to the fourth Covered Habitat Preservation Credit Release;
 - d. 100% of the Endowment Amount shall be funded prior to the fifth Covered Habitat Preservation Credit Release.
3. Until the Endowment is fully funded, the amount of the Endowment Principal shall be adjusted by the Bank Sponsor annually, on January 2 of each year following the Bank Establishment Date (each such date is referred to as an "Adjustment Date"), by a percentage equal to the percentage increase, if any, in the California Consumer Price Index, All Items (1982-1984 = 100), for All Urban Consumers for California (the "CPI"), published by the California Department of Industrial Relations, Division of Labor Statistics and Research. Adjustment of the Endowment Principal is the percentage increase of the CPI published most immediately preceding the Adjustment Date, as compared to the CPI published most immediately preceding the date of this CBEI. The adjustment shall be applied to the amount of the initial Endowment Principal.
4. Bank Sponsor shall notify each member of the CBRT of each Endowment Deposit made, within 30 days of such deposit.
5. A separate Endowment Amount shall be deposited into the Ramona Grasslands Conservation Bank Conservation Easement Monitoring Endowment Account, held and administered by the San Dieguito River Valley Regional Open Space Park Joint Powers Authority (JPA), for the purpose of funding the JPA's monitoring of the status of the bank properties for conformance to the requirements of the Bank Conservation Easements held by the JPA and preparation of annual monitoring reports for the Conservation Easements. The establishment and administration of the account shall be governed by a separate

Ramona Grasslands Conservation Bank Conservation Easement Monitoring
Endowment Agreement between the JPA and the Bank Sponsor (**Exhibit C-4**).

Section VII: Covered Habitat Credit Release

Each Credit Release must be approved in writing by the CBRT.

Credits for Covered Habitat shall be determined and released as described in this Section VII and the Credit Table (**Exhibit E-1**). Anticipated Credits have been assigned to the Bank based upon Credit methodologies developed by the CBRT.

Upon the Bank Sponsor's submittal of all documentation required under this CBEI, and approval by the appropriate CBRT agencies, the CBRT will release Credits for Covered Habitat as described below. The actual number of Credits released shall be determined by CDFW and/or USFWS as appropriate in consultation with each other based upon funding of the Endowment Amount in accordance with Section VI.B. Upon each Credit Release, the appropriate CBRT 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.B.2.a.
 3. 15% of the total anticipated Preservation Credits upon funding the Endowment Fund according to Section VI.B.2.b.
 4. 15% of the total anticipated Preservation Credits upon funding the Endowment Fund according to Section VI.B.2.c.
 5. The remaining Preservation Credits upon full funding of the Endowment Fund according to Section VI.B.2.d.
- B. The Bank Sponsor shall pay to CDFW the Credit Release Fee. This sum shall be payable to CDFW and may be paid in installments which shall be due following each Credit release and no later than the due date for submission of the Bank's annual report covering the period in which the associated Credit release occurs. The Credit Release Fee shall be paid in full by the Bank Closure Date.
- C. The CDFW may require the Bank to cease selling Credits and may stop Credit Releases until the fees payable under this Section VII are paid in full. The CDFW shall assess, and the Bank Sponsor shall pay to CDFW upon demand, a penalty of 10 percent of the amount of fees due under this section if the Bank Sponsor fails to remit the amount payable when due.

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 Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum non-native grassland Credit unit that may be Transferred is 0.1 Credit. The minimum vernal pool Credit unit that may be Transferred is 1.0 Credit consisting of 0.1 acre of vernal pool basin and 0.9 acre of non-native grassland watershed/buffer, unless written agreement is obtained from the Wildlife Agencies.
2. In no case shall the number of Credits of 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 CBRT.
3. No use of the Bank credits can occur until the USFWS and CDFW have authorized the use. Authorization of the Bank credits is determined on a case-by-case basis to ensure the use is appropriate to compensate for the impacts of the specific project to which the credits are proposed to be applied. Mitigation or compensation requirements for individual projects' impacts may or may not be compatible with the use of conservation banks, generally, or any particular conservation bank, specifically.
4. Bank Sponsor shall notify all members of the CBRT upon any Credit Transfer in accordance with Section IX.D. of this CBEI. Upon Transfer of Credits, the Bank Sponsor shall enter the Credit Transfer into RIBITS.
5. If the Bank Property is damaged after the Bank Establishment Date and such damage is not caused by an Unlawful Act, Catastrophic Event or Force Majeure Event, and such damage materially impairs habitat values on such damaged Bank Property, then the CBRT may, at its discretion, direct Bank Sponsor 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 Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the CBRT.
6. If any member(s) of the CBRT approve(s) an NCCP and/or HCP covering 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 Sponsor, the remaining Credits for Covered Habitat may be reallocated at the discretion of the CBRT to conform to the habitat categories in the approved NCCP or HCP, as applicable.
7. Credit modifications due to expansion, restoration or other means that have been approved in writing by the CBRT, shall be set forth in an amendment to this CBEI 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**.
9. This CBEI applies only to those Credits assigned by agencies that are signatory to this CBEI and set forth in **Exhibit E-1**. Any proposed use of the Bank Property not specifically established by this CBEI and not prohibited by the Conservation Easement shall be submitted to the CBRT and Grantee for review and may only proceed upon a written determination by the CBRT and Grantee that such proposed use would not conflict with the approved use of the Bank Property or terms and conditions of the Conservation Easement.

C. Interim and Long-term Management and Monitoring

1. Interim Management and Monitoring

Bank Sponsor shall be responsible for conducting management and monitoring activities during the Interim Management Period and according to the elements contained in the Long-term Management Plan (**Exhibit C-5**).

2. Long-term Management and Monitoring

Once the Endowment Fund has been fully funded, the Property Owner shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owner shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this CBEI, the Conservation Easement, and the Long-term Management Plan. Such activities shall be funded through the Endowment Fund according to Section VIII.E.2.b. Property Owner and the CBRT 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 Owner shall be responsible for submitting annual reports to each member of the CBRT in accordance with Section IX.B of this CBEI. The Property Owner shall upload annual reports into RIBITS. Notwithstanding the above, the Property Owner with the consent of CBRT, may transfer the Bank Property and assign its obligations for long-term management to an entity approved by CBRT.

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 (see **Exhibit C-6**):
 - a. Either:
 - 1) The last authorized Credit has been Transferred; or

- 2) The Bank Sponsor requests bank closure by written notice to the CBRT, and the CBRT provides written approval of the closure; and
- b. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Fund plus an amount sufficient to manage the Bank Property pursuant to the Long-term Management Plan for a period of 3 years after full funding of the Endowment Fund, such amount to be approved by CBRT.

E. Financial Operations

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

1. Interim Management Security

- a. CDFW, as the holder of the security, shall be entitled to draw upon the Interim Management Security, with prior coordination with the CBRT, if any Transfer of Credits has been made and the CDFW determines that during any 12-month period the Bank Sponsor has not performed all tasks as required under the Long-term Management Plan.
- b. In the event that the Interim Management Security is drawn upon pursuant to this section during the Interim Management Period, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in **Exhibit C-1** within 90 days after written notice from CDFW.
- c. Provided that the Bank Property has been managed in accordance with the Long-term Management Plan, the Interim Management Security shall be cancelled or the monies returned to the Bank Sponsor by CDFW at the end of the Interim Management Period.

2. Endowment Fund

- a. Endowment Fund Deposits
 - 1) The Endowment Deposits the Endowment Holder receives are to be deposited into a fund held in trust and designated in the Endowment Agreement.
- b. Endowment Fund Management
 - 1) The Endowment Amount should not decrease in value through expenditure or investment strategy. The Endowment Amount is intended to increase in value to keep up with inflation. Therefore a portion of the interest and earnings on the Endowment Fund balance shall be reinvested into the Endowment Fund as required to adjust the Endowment Amount using the same CPI adjustment formula as set forth in Section VI.B.3. After the Endowment Amount is fully funded, even if interest earnings are insufficient to increase the Endowment Fund to keep up with inflation, no additional Endowment monies will be required from the Property Owner or the Bank Sponsor.

- 2) Interest earnings beyond those necessary to provide for Endowment Fund growth commensurate with inflation will be made available by the Endowment Holder to the Property Owner to fund annual long-term management of the Bank Property in accordance with the terms of this CBEI, the Endowment Agreement, and the Long-term Management Plan.
- 3) In accordance with the Endowment Agreement, any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Amount is adjusted for inflation that exceed the anticipated annual long-term management expenses of the Bank Property shall be retained in the Endowment Fund and may be made available to fund unexpected expenses and Adaptive Management needs.
- 4) 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-2**), the Bank Sponsor or Property Owner shall consult with the CBRT to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the CBRT, the Bank Sponsor or Property Owner shall submit the resulting proposal in writing to the CBRT within 60 days after completion of its consultation with the CBRT. Upon written approval of the CBRT, the Bank Sponsor or Property Owner shall implement the approved management measures and tasks. Should sufficient funding become available from the Endowment Fund revenues to fund the originally anticipated annual long-term management costs, the original Long-term Management Plan shall be restored in full force and effect. In no event shall Bank Sponsor or Property Owner be obligated to contribute amounts greater than the Endowment Amount shown in Exhibit C-2.

3. Financial Records and Auditing

The Bank Sponsor 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 CBRT, no more frequently than annually, the Bank Sponsor and/or Property Owner, 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 CBRT 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 CBEI. Bank Sponsor and Property Owner agree to maintain such records for possible audit for a minimum of 3 years after Bank Closure, or 3 years after the date of performance, whichever is later. Bank Sponsor and Property Owner 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 Sponsor and Property Owner 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 CBEI.

F. Remedial Action Plan

Prior to Bank closure, if any Party discovers any injury or adverse impact to the Bank Property as preserved not caused by a Catastrophic Event, Unlawful Act or Force Majeure Event, the Party making the discovery shall notify the other Parties. The CBRT may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.B. 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 CBRT, the Bank Sponsor shall develop a Remedial Action plan and submit it to the CBRT 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 Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the CBRT. In the event the Bank Sponsor fails to submit a Remedial Action plan to the CBRT in accordance with this section, the CBRT will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the CBRT members deems necessary. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the CBRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate 2 years after the date that the CBRT approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the CBRT deemed necessary, then the holder of the Performance Security may draw upon that security to undertake Remedial Action on the Bank Property.
2. If the CBRT 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 CBEI), then the CBRT shall notify the Bank Sponsor. Upon the CBRT giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The CBRT will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

On February 15th of each year following the Bank Establishment Date and until the Endowment Amount is fully funded, the Bank Sponsor shall report to the CBRT, in hard copy and in editable electronic format, the following values:

1. The adjusted Endowment Amount, determined in accordance with Section VI.B.3; and
2. The resulting adjusted Endowment Deposit amounts.

B. Annual Report

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

1. Long-term Management

The annual report shall contain an itemized account of the management tasks and Remedial Actions conducted during the reporting period in accordance with the 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;
- c. The total dollar amount expended for management tasks conducted during the reporting period;
- d. A description of management and maintenance activities proposed for the next year;
- e. The overall condition of the Bank Property, including documenting the status of the Bank;
- f. Observations from the General Biological Inspections;
- g. A grazing monitoring report;
- h. A conservation easement monitoring report (to be prepared by the easement holder); and
- i. Proposed work plan and budget for next year.

Annual reports will include the Monitoring Report (see IX.C.) in years that Monitoring Reports are required.

2. Transfer of Credits

The annual report shall include an updated Credit Transfer and Endowment Payment 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 provide Endowment Fund data, deposits, disbursements, Credit Release Fee payment status, annual Consumer Price Index (CPI) adjustments to principal, interest earned, annual expenses (as accrued) and reimbursements, and the running balance.

C. Monitoring Report

The monitoring report will be completed in accordance with the long-term monitoring requirements as detailed in the Long-term Management Plan. All surveys and data are a required component of the monitoring report as appendices. The monitoring reports shall include procedures, results and a discussion of, at a minimum:

1. Vernal pool floristic and fairy shrimp monitoring;
2. Upland vegetation monitoring;
3. Invasive species monitoring, including species mapping; and
4. Covered Species monitoring.

D. Credit Transfer Reporting

Within 10 working days of the Transfer of each and every Credit, the Bank Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the CBRT:

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

E. Reporting Compliance Measures

The Bank Sponsor or Property Owner, as appropriate, shall submit all reports as outlined in A-D of this section. Failure to submit complete reports in a timely manner shall result in the Bank being subject to the CBRT suspending all credit sales or decreasing the number of available credits.

1. Extension requests

Requests to extend report deadlines shall be submitted to the CBRT no later than 30 days prior to the original deadline. The CBRT will have 15 calendar days to approve or deny the extension request.

2. Reports not received by the CBRT in a timely manner:

Missing reports will result in automatic credit suspension beginning at 0800 hours on the 30th day that the report is late, given that there has been no approved extension request. The suspension will be lifted within 5 days after the report has been received by the CBRT.

3. Incomplete reports:

The CBRT will have 30 days to notify the Bank Sponsor that the report is incomplete, in which the Bank Sponsor or Property Owner will be given a new deadline for complying with the requirements set forth in this CBEI and its attachments. This deadline is at the discretion of the CBRT based on the amount of time it should reasonably take to complete the report. The CBRT may:

- a. Temporarily decrease the number of available credits until the report has been properly submitted, and
- b. Automatically suspend all credit sales beginning at 0800 hours on the day after the new deadline has passed, given the report has not been received by the CBRT, and there has been no approved extension request.
- c. Full release of all available credits will be granted within 5 days after the report has been received by the CBRT.

If the Bank Sponsor or Property Owner have not been notified of incompleteness as of 0800 hours on the 45th day past the report due date, the report shall be deemed complete.

Section X: Responsibilities of the Bank Sponsor and Property Owner

- A. Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owner each hereby agrees and covenants that:
1. If the entity proposed to hold the Conservation Easement is not a CBRT agency, Bank Sponsor and Property Owner shall, prior to the execution of the Conservation Easement at **Exhibit D-5** hereof, provide the CBRT 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 Sponsor 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 Sponsor or Property Owner 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”).
 4. Property Owner 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 CBRT, and Property Owner 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 CBRT. With concurrence of the Wildlife Agencies, a Subordination Agreement has been executed for the Bank Property and is attached as **Exhibit D-2**.
 5. Bank Sponsor or Property Owner 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 CBEI and its Exhibits.
 6. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with this CBEI and its Exhibits.
 7. Property Owner shall allow, or otherwise provide for, access to the Bank Property by Bank Sponsor, Grantee, the CBRT agencies and third parties, as described in the Conservation Easement.
 8. The Property Owner shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this CBEI.
- B. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this CBEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this CBEI or extensions for the performance of the requirements of this CBEI.
- C. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsor or Property Owner must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the CBRT

A. CBRT Oversight

The CBRT agrees to provide appropriate oversight in carrying out provisions of this CBEI.

B. CBRT Review

The CBRT will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 45 days from the date of complete submittal. If the CBRT 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 Sponsor or Property Owner.

C. Compliance Inspections

The CBRT shall conduct compliance inspections as necessary for any purpose determined by the CBRT as necessary to assess compliance with this CBEI.

Section XII: Other Provisions

A. Force Majeure

1. Neither the Bank Sponsor nor the Property Owner shall be responsible for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for Force Majeure to apply, the Bank Sponsor and Property Owner 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 Sponsor, Property Owner, and any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owner, 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 Sponsor and Property Owner shall notify the CBRT within 24 hours of becoming aware of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsor, Property Owner, and the CBRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsor and Property Owner 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 CBEI, 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 Owner 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 CBEI must be made in accordance with this CBEI and the Conservation Easement, and shall be subject to written concurrence by the CBRT and Bank Sponsor. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owner's obligations pursuant to this CBEI and the Conservation Easement. From and after the date of any transfer by Property Owner of its interest in the Bank Property, the transferor shall have no further obligations hereunder and all references to Property Owner in this CBEI shall thereafter refer to such transferee, except that the transferor's liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owner's interest in the Bank Property made without the prior written concurrence of the CBRT may, at the discretion of the CBRT, result in the termination of this CBEI according to Section XII.D.3.c.
3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that Bank Sponsor is in full compliance with all requirements of this CBEI (including all financial assurance requirements), and subject to the prior written approval of the CBRT. If any of the financial assurances required under this CBEI are not completely funded at the time the Bank Sponsor requests CBRT approval of a sale or conveyance, then the CBRT shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsor shall provide to each member of the CBRT a written agreement signed by the replacement Bank Sponsor in which the Bank Sponsor assigns to the replacement Bank Sponsor, and

the replacement Bank Sponsor assumes and agrees to perform all of the responsibilities and obligations of the Bank Sponsor under the CBEI. From and after the date of any transfer by the Bank Sponsor, the Bank Sponsor shall have no further obligations hereunder and all references to Bank Sponsor in this CBEI shall thereafter refer to such transferee, except that the transferor's liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any such sale or conveyance made without the prior written concurrence of the CBRT may, at the discretion of the CBRT, result in the termination of this CBEI according to Section XII.D.3.c.

D. Modification and Termination of the CBEI

1. Amendment and Modification

This CBEI, 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 CBEI.

2. Pursuant to FGC 1798.6 (a), any person seeking to amend any CDFW bank shall submit to the CDFW the appropriate Review Fee, a complete bank amendment package containing each of the original bank agreement package documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment.

3. Termination

- a. The Bank Sponsor and Property Owner may jointly withdraw the entire Bank Property and terminate this CBEI at any time prior to any Credit Transfer, provided that Covered 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 CBEI 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 CBRT may terminate this CBEI if the Bank Sponsor or Property Owner sells or conveys the Bank or the Bank Property without the prior written concurrence of the CBRT, as required by Section XII.C.
- d. The CDFW and USFWS may each terminate its participation in this CBEI upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:
 - 1) Bank Sponsor or Property Owner has breached one or more covenants, terms or conditions set forth herein;

- 2) Bank Sponsor or Property Owner, as applicable, has received notice of such breach from the terminating CBRT Agency in accordance with Section XII.B., if applicable, and Section XII.K.; and
 - 3) Bank Sponsor or Property Owner, 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 CBRT agency, but cannot reasonably be cured within such 30 day period, the terminating CBRT agency shall not terminate this CBEI so long as Bank Sponsor or Property Owner has commenced the cure of such breach and is diligently pursuing such cure to completion.
- e. If any member of the CBRT so requests, the member(s) of the CBRT proposing to terminate participation in the CBEI agree to meet with the other CBRT 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 CBRT member(s) not later than 15 calendar days from receipt of the notice of termination.
 - f. Termination by one member of the CBRT of its involvement in this CBEI shall not terminate or affect the relationship between the remaining members of the CBRT, toward each other or the Bank Sponsor or Property Owner, under this CBEI. Remaining Credits authorized under the authority of the withdrawing agency will no longer be available for Transfer.
 - g. Nothing in this Section XII.D.3 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the CDFW and USFWS in the event of a threatened or actual breach of this CBEI.

E. Default

The Bank Sponsor and/or Property Owner shall be in default if that Party fails to observe or perform any obligations or responsibilities required of it by this CBEI. In the event the Bank Sponsor and/or Property Owner realize(s) it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsor and/or Property Owner is in default, the Parties may elect to either pursue informal dispute resolution consistent with Section XII.B or may cause the holder to draw upon and expend the appropriate financial security as necessary to continue Bank development, management, or operation, as provided in Section VI and VIII.E. In the event the informal dispute resolution process is invoked, the CBRT 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 CBEI or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this CBEI 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 CBEI conflicts with specific language in any document that is incorporated into this CBEI by reference, the specific language within the CBEI shall be controlling. The captions and headings of this CBEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This CBEI, and all exhibits, appendices, schedules and agreements referred to in this CBEI, constitute the final, complete and exclusive statement of the terms of the agreement between and among the CBRT and the Bank Sponsor and Property Owner 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 CBEI, 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 CBEI, whenever this CBEI requires Bank Sponsor, Property Owner, or the CBRT 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 Bank Sponsor, Property Owner, or the CBRT 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 CBEI 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 CBEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this CBEI 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 CBEI 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 CBEI 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 5 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 Sponsor:

Judd RR Investments, LLC
400 South Sierra Avenue, Suite 100
Solana Beach, CA 92075
Telephone: (858) 847-9322
Fax: (858) 847-9324

Kearny PCCP Otay 311, LLC
530 B Street
Suite 1800
San Diego, CA 92101
Telephone: (619) 702-8130
Fax: (619) 702-7812

Property Owner:

Judd RR Investments, LLC
400 South Sierra Avenue, Suite 100
Solana Beach, CA 92075
Telephone: (858) 847-9322
Fax: (858) 847-9324

Kearny PCCP Otay 311, LLC
530 B Street
Suite 1800
San Diego, CA 92101
Telephone: (619) 702-8130

Fax: (619) 702-7812

CBRT Members:

U.S. Fish and Wildlife Service
2177 Salk Ave., Suite 250
Carlsbad, CA 92008
Attn: Field Supervisor
Telephone: (760) 431-9440
Fax: (760) 431-5901

California Department of Fish and Wildlife
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager
Telephone: (858) 467-4210
Fax No. (858) 467-4239

California Department of Fish and Wildlife
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief
Telephone: 916-653-4875
Fax: 916-653-2588

L. Counterparts

This CBEI 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 CBEI 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 CBEI. The duties, obligations and responsibilities of the Parties to this CBEI with respect to third parties shall remain as otherwise provided by law in the event this CBEI had never been executed.

N. Availability of Funds

Implementation of this CBEI by the CBRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this CBEI 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 CBRT is required under this CBEI 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 CBEI shall not make or be deemed to make any Party to this CBEI an agent for or the partner or joint venturer of any other Party.

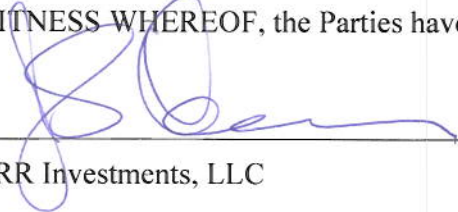
P. Governing Law

This CBEI shall be governed by and construed in accordance with the Federal Endangered Species Act, 16 U.S.C. § 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) *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 CBEI. This CBEI shall be deemed executed on the date of the last signature by the Parties.

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

By:  _____ Date 8/11/14

Judd RR Investments, LLC

By: _____ Date _____

Kearny PCCP Otay 311, LLC

By: _____ Date _____

Field Supervisor
Carlsbad Fish and Wildlife Office
U.S. Fish and Wildlife Service

By: _____ Date _____

Regional Manager
Region 5
California Department of Fish and Wildlife

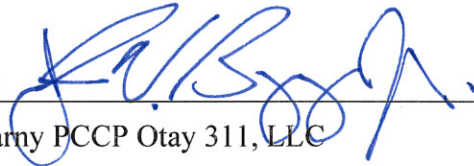
Section XIII: Execution

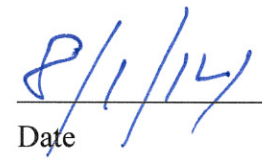
Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this CBEI. This CBEI shall be deemed executed on the date of the last signature by the Parties.

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

By: _____
Judd RR Investments, LLC

_____ Date

By:  _____
Kearny PCCP Otay 311, LLC

 _____
Date

By: _____
Field Supervisor
Carlsbad Fish and Wildlife Office
U.S. Fish and Wildlife Service

_____ Date

By: _____
Regional Manager
Region 5
California Department of Fish and Wildlife

_____ Date

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 CBEI. This CBEI shall be deemed executed on the date of the last signature by the Parties.

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

By: _____
Judd RR Investments, LLC Date

By: _____
Kearny PCCP Otay 311, LLC Date

By: *G. Michael Stewart* 8-4-14
Field Supervisor Date
Carlsbad Fish and Wildlife Office
U.S. Fish and Wildlife Service

By: _____
Regional Manager Date
Region 5
California Department of Fish and Wildlife

