

FIRST AMENDMENT TO
BYRON BURROWING OWL CONSERVATION BANK AGREEMENT

This FIRST AMENDMENT TO BYRON BURROWING OWL CONSERVATION BANK AGREEMENT (First Amendment) is made with reference to the Agreement dated as of March 9, 2000, by and between the CALIFORNIA DEPARTMENT OF FISH AND GAME and WILDLANDS, INC. (Original Agreement).

1. Bank Name. The name of the Byron Burrowing Owl Conservation Bank is hereby amended to "Brushy Creek Conservation Bank."

2. Other Terms and Conditions. Except as herein modified, all other terms and conditions of the Original Agreement remain in full force and effect.

Dated: 4/12/00

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: B.W. Fll

Title: REGIONAL MANAGER, CCR

Dated: 4-6-00

WILDLANDS, INC.

By: Greg Polgany

Title: Planning Director

Name changed via 1st Amendment to ^{Brushy} Creek Conservation Bank.

~~BYRON BURROWING OWL~~
CONSERVATION BANK AGREEMENT

4/17 Copies of amendment
to Lyn Pitts
Richard Jackson
Greg DeYoung

3/10 routed copies of
agreement to Lyn Pitts
and Richard Jackson

3/22 Caitlin Bean
cc:
to

March 7, 2000

BYRON BURROWING OWL
CONSERVATION BANK AGREEMENT

THIS BYRON BURROWING OWL CONSERVATION BANK AGREEMENT (the "Agreement") is made and entered into this 9th day of March, 2000 between WILDLANDS, INC. ("Bank Developer") and the California Department of Fish and Game ("CDFG"). Bank Developer and the CDFG are referred to jointly as the "Parties". The purpose of this Agreement is to establish the terms and conditions for a Conservation Bank on certain real property to be known as the Byron Burrowing Owl Conservation Bank.

R E C I T A L S

A. Bank Developer is the owner of 120 acres of real property located in the County of Contra Costa, California and more completely described in Exhibit A (Site vicinity map, site location map, and legal description) and illustrated in Exhibit B (legal parcel map) attached hereto ("Property").

B. Under the California Endangered Species Act, California Fish and Game Code § 2050 et seq. ("CESA"), California Fish and Game Code § 1802, and other State laws, CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. CDFG is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code Section 1802.

C. Bank Developer is a wildlife habitat development company, incorporated in the State of California. The Bank Developer has as its primary purpose the restoration and management of land in an environmentally and biologically beneficial manner consistent with state and federal environmental laws.

D. Establishment of the Byron Burrowing Owl Conservation Bank Agreement represents an excellent opportunity to implement the ongoing biological resource planning efforts in the region by conserving highly valuable resources at the site. The Byron Burrowing Owl Conservation Bank will provide for the permanent protection of burrowing owls and the habitat upon which they depend.

E. It is anticipated that construction and development activity within the counties of Alameda, Contra Costa, and Santa Clara ("Service Area" Exhibit C), will necessitate the mitigation of impacts to burrowing owl habitat through the preservation of off-site lands which possess comparable habitat values.

F. The Property supports annual grassland, habitat for burrowing owl. In addition, a variety of other native vegetation communities occur on the site including, vernal pools and swales, alkali wetlands, and intermittent drainages. A complete description of the biological resources that occur on the property is provided in Exhibit D (Biological Resource Survey and Management Report).

G. The California Department of Fish and Game has determined that the Byron Burrowing Owl Conservation Bank lands are generally suitable to mitigate for impacts to habitat for burrowing owl (*Athene cunicularia*) within the Service Area. Other rare endemic and/or listed species may not have similar or comparable habitat requirements and use of the Conservation Bank may not be appropriate to mitigate for impacts to those species. Use of the Byron Burrowing Owl Conservation Bank to mitigate for impacts to wildlife and plants and the vegetation communities on which they depend shall be governed by Section 2 of this Agreement.

H. On the terms and conditions hereinafter provided, the parties hereto desire to establish a Conservation Bank with respect to the Property (referred to as the "Byron Burrowing Owl Conservation Bank", or, alternatively, the "Conservation Bank") in order to provide for the permanent conservation of the Property, the use of such land as mitigation as provided in Recitals D, E, F, and G above, and the sale of Conservation Bank credits by Bank Developer to third party purchasers ("Credit Purchasers") in need of such mitigation.

I. The parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Byron Burrowing Owl Conservation Bank will be established and implemented.

DEFINITIONS

1. "Agreement" means this document.
2. "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency.
3. "CEQA" means the California Environmental Quality Act (California Public Resources Code

Sections 21000 et seq.; guidelines for implementation at California Public Resources Code Sections 15000 et seq.), including all regulations promulgated pursuant to that Act.

4. "CESA" means the California Endangered Species Act (California Fish and Game Code Sections 2050 et seq.), including all regulations promulgated pursuant to that Act.

5. "Conservation Credit" means a mitigation credit, one acre of habitat equals one conservation credit.

6. "Conservation Easement" means a recorded conservation easement established to conserve biological resources, and which imposes certain habitat management obligations for the Conservation Bank lands.

7. "Covered Species" means: (i) burrowing owl (*Athene cunicularia*) within the Service Area; (ii) those additional species, if any, within the Service Area(s) which the CDFG determines will be adequately conserved as a result of the implementation of a Bank Restoration Plan, and (iii) those species within the Service Area(s) which, in the future, become listed as threatened or endangered under either the federal or the state Endangered Species Acts, and which the CDFG determines will be adequately conserved by the Conservation Bank.

8. "Endowment Deposit" means the sum of \$900 per Credit deposited into the Endowment Fund for purposes of perpetually endowing the management of the Conservation Bank lands for the benefit of biological resources.

9. "Endowment Fund" means an investment fund maintained by a designated party approved by the CDFG as a non-wasting endowment to be used exclusively for the management of the Conservation Bank lands in accordance with the Management Plan and the Conservation Easement.

10. "ESA" means the federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.), including all regulations promulgated pursuant to that Act.

11. "Management Plan" means the management plan that will be prepared for the Conservation Bank lands.

12. "Habitat Conservation Plan" and "HCP" mean conservation plans prepared pursuant to Section 10(a)(2)(A) of the ESA (16 U.S.C. Section 1539(a)(2)(A)).

13. "NCCP Plan" means a plan developed in accordance with the NCCP Act which provides comprehensive management and conservation of multiple wildlife species, and which identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.

14. "Service Area" means the geographic area within which impacts that occur may be mitigated through use of conservation credits at the Byron Burrowing Owl Conservation Bank consistent with the Agreement.

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:

1. Establishment of the Byron Burrowing Owl Conservation Bank

(a) The Byron Burrowing Owl Conservation Bank shall be deemed established when a conservation easement covering the Property for conservation purposes in accordance with Section 3 below is recorded. Upon establishment of the Bank and in exchange for Bank Developer's commitment to permanently manage the Bank for conservation purposes, Bank Developer shall be entitled to receive and sell Conservation Credits as provided in Section 4 below.

(b) Nothing contained in this Agreement shall be deemed to require Bank Developer to establish the Bank; provided however, that no Conservation Credits will be acknowledged by the CDFG until such time as the Bank has been established pursuant to Section 3.

2. Conservation Bank Evaluation and Acceptance

Representatives of the CDFG have inspected and generally evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation Credits. As a result of benefits accruing to wildlife resources, including sensitive, endangered and threatened species and their habitats, and upon the establishment of the Conservation Bank for conservation purposes, the CDFG acknowledges and agrees that, as described in Recitals D, E, F and G, and subject to the limitations provided in this Section and Section 4(c) below, the Bank Property possesses biological values which support the Conservation Credits acknowledged in Section 4 below.

(a) Byron Burrowing Owl Conservation Bank credits may serve as mitigation, on a one acre for one credit basis, for adverse biological impacts to land within the Service Area possessing similar or comparable habitat values with the following exceptions:

(1) Impacts to wetlands and wetland dependant species may not be mitigated at the Bank.

(2) Impacts where habitat or species impacted requires like-kind mitigation and that habitat or species is not represented within the Byron Burrowing Owl Conservation Bank.

(b) Ten working days prior to the sale of conservation credits as mitigation for a particular project, CDFG shall be notified of the proposed sale with a description of the project and the number of credits to be sold.

3. Establishment of the Conservation Bank

(a) The Conservation Bank shall be established once a conservation easement covering the Property is recorded by CDFG in accordance with this Section:

(i) Concurrent with the execution of this Agreement, Bank Developer shall deliver to CDFG, the following:

(A) A duly executed and acknowledged Conservation Easement substantially in the form attached hereto as Exhibit E (the "Conservation Easement") and a detailed map of the lands covered by the Conservation Easement; and,

(B) A current title report in the form attached hereto as Exhibit F, and a Level I environmental contaminants survey covering the Conservation Easement area (Exhibit G); and,

(ii) Upon review of the title report and contaminants survey, and written acceptance of the Property by the CDFG, the Conservation Easement shall be recorded as soon as possible by CDFG. CDFG shall provide all parties with copies of the recorded Conservation Easement within 30 days of its recording. All parties shall use reasonable efforts to cooperate in the expeditious recordation of the conveyance documents.

(b) Bank Developer shall pay all fees and recording charges associated with the conveyance of the Conservation Easement on Property.

(c) The conveyance by Bank Developer hereunder shall be subject to any and all existing rights of way, easements, encumbrances, and other matters reflected in Exhibit F attached hereto, and to any other encumbrances consented to pursuant to Section 7(b) below by the CDFG.

4. Conservation Credits

(a) As a result of the benefits accruing to endangered, threatened, and sensitive species and their habitats upon the establishment of the Conservation Bank and Bank Developer's commitment to manage the land for conservation purposes, the Byron Burrowing Owl Conservation Bank shall have an initial total of 118 Conservation Credits which may be used for burrowing owl. In no case shall the credits expended exceed the total number of credits allocated to the Bank (118). The credits shall be established as follows:

(i) Subject to the limitations described in Recital G and Section 2, the CDFG agrees to accept each acre of land within the Conservation Bank as the functional equivalent of one acre of off-site mitigation for adverse biological impacts to burrowing owls and the habitat upon which they depend, caused by development activity (each acre is a "Conservation Credit" and all such acres are "Conservation Credits",) occurring within the Service Area.

(ii) An initial total of 118 credits will be created, acknowledged, and accepted by the CDFG concurrently with the establishment of the Bank through conveyance of a conservation easement on the Property in accordance with Section 3. The Parties acknowledge that this Agreement may be amended in the future to reflect a mutually agreeable procedure to enhance or restore the Property and increase the biological value available for mitigation credit.

(b) Bank Developer shall be entitled to sell Conservation Credits to Credit Purchasers, or apply such Conservation Credits against any mitigation applicable to other properties owned by Bank Developer in the Service Area consistent with Recital G and Section 2 above. The "Agreement for Sale of Conservation Credits" and an "Acknowledgment of Sale of Conservation Credits" (Exhibit J) shall be completed for each sale and a copy shall be provided to CDFG upon the closure of each sale transaction. Subject to Bank Developer's obligations under Section 7 below, Bank Developer shall have the exclusive right to determine the price for any and all Conservation Credits offered for sale or conveyance.

(c) Nothing contained in this Agreement shall be deemed to limit the CDFG's jurisdiction over impacts and applicable mitigation of endangered, threatened, and sensitive species and biological resources, or to restrict the ability of the CDFG to fully discharge its responsibilities under applicable law, including, without limitation, CESA; provided, however, that subject to

Section 2, the CDFG will not object to the use of Conservation Credits for mitigation on a one acre-for-one credit basis.

(d) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 8 below. Once all Conservation Credits have been conveyed, no further Conservation Credits shall be acknowledged by the CDFG.

(e) Upon each conveyance of Conservation Credits by Bank Developer, the requisite Management/Endowment Deposits (as hereinafter defined) shall be deposited in accordance with Section 6 below, and Bank Developer shall deliver to the CDFG a copy of the receipt of such Management/Endowment Deposits executed by the Bank Developer, or other party approved by the CDFG, as provided in Section 6 (the "Endowment Receipt").

(f) Notwithstanding anything to the contrary contained in this Agreement, in the event that the CDFG reasonably determines that portions of the Property have been damaged subsequent to the date of this Agreement, and prior to the official date of transfer of Conservation Easement and: (1) the effect of such activity has been to materially impair the habitat values on such damaged property; and (2) Bank Developer has not reasonably restored habitat value to such damaged area or provided the CDFG with reasonable evidence that habitat value will be restored, then the CDFG may, at its discretion, either reduce the number of Conservation Credits allocated to the Property in question in proportion to such damaged area or, if it determines that the habitat values of the property have been so impaired as to render it unsuitable as a Conservation Bank, terminate this agreement.

(g) If the Wildlife Agencies approve an NCCP/HCP or other habitat conservation plan covering all or any part of the Service Area and that plan uses habitat categories different from those set forth herein, then, at the request of the Bank Developer, the remaining Conservation Credits held by the Bank Developer will be reallocated by the CDFG in accordance with such different habitat categories.

5. Financial Assurance Requirements

During the period of Conservation Credit sales, Property Owner shall also furnish CDFG with security ("Contingency Security") to assure performance of the Bank Developer's maintenance obligations under this Agreement, including without limitation, its obligation to cure its defaults and deficiencies under this Agreement. The Contingency Security shall be provided to CDFG prior to the sale of any Conservation Credits.

- (a) The amount of the contingency shall be in an aggregate amount equal to \$34 per habitat credit transferred.
- (b) The Contingency Security shall be in a form of a certificates of deposit and/or an irrevocable standby letter of credit, subject to CDFG approval.
- (c) The Contingency Security shall be released upon the fifth anniversary date of this Agreement or as soon thereafter as there are no unresolved corrective measures previously requested by CDFG and the Bank is otherwise in conformance with the terms of this Agreement; provided, however, that if remedial actions were required to meet the performance objectives set forth in the Management Plan, then the Contingency Security shall be released upon the third anniversary of the date the last such remedial action was taken.

6. Management/Endowment Deposits

Concurrent with the execution of this Agreement CDFG shall establish a dedicated, interest bearing account, for the deposit of endowment fees collected from the sale or use of each Conservation Credit consistent with this Section 6. The accrued interest and earnings from the Endowment Fund shall be used to fund the permanent management activities of the Bank Developer at the Conservation Bank. Out of the accrued interest \$350 will be allocated annually to fund CDFG monitoring activities at the site. The basis for determining the following management costs and the endowment amount is contained within the Draft Habitat Management Plan Outline, attached to this Agreement as Exhibit H. The Endowment Fund shall be held pursuant to the Declaration of Trust Agreement set forth in Exhibit I attached hereto and incorporated herein.

Concurrent with the sale or use of each Conservation Credit, Bank Developer shall deposit into the Endowment Account, the sum of \$900 for each Conservation Credit so conveyed (the "Endowment Deposits"). Bank Developer shall deliver to CDFG a copy of the receipt of such Endowment Deposits (the "Endowment Receipt"). On each Adjustment Date, the per-Credit Amount of the Endowment Deposits set forth above shall be increased to reflect the applicable CPI adjustment as provided in the subsequent paragraph. All references to "Endowment Deposits" in this Agreement shall refer to the Endowment Deposits as adjusted in accordance with the preceding sentence. The aggregate of all Endowment Deposits shall be referred to hereinafter as the "Endowment Fund," and shall be used to defray the costs of managing the Conservation Bank in accordance with the requirements to be identified in the detailed, site specific Management Plan. The Bank Developer shall manage the property for an Interim

Management Period without use of the endowment funds. This Interim Management Period will either extend through five years after bank establishment or be terminated at an earlier date by the sale of all credits and completion of all Endowment Deposits.

Beginning on January 1, 2001, and upon each one-year anniversary thereafter (each such date, beginning January 1, 2001, is referred to hereinafter as an "Adjustment Date"), the per-Credit amount of the Endowment Deposits set forth above shall be increased by a percentage equal to the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (Base Years 1982-1984 = 100) for the nearest metropolitan region published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI") which is published most immediately preceding the Adjustment Date, as compared to the CPI published most immediately preceding the date of this Agreement (the "CPI Adjustment"). All references to "Endowment Deposits" in this Agreement shall refer to the Endowment Deposits as adjusted in accordance with the preceding sentence.

7. Bank Developer's Covenants

Subject to Section 15 below, Bank Developer hereby agrees and covenants for so long as this Agreement is in effect and has not been terminated pursuant to Section 10 below, that Bank Developer:

- (a) Shall not discharge or release on the Property, or permit others to discharge or release on the Property, any material or substance deemed "hazardous" or "toxic" under any applicable federal, state, or local environmental laws.
- (b) Shall not create any encumbrances to the title of the Property other than those set forth in Exhibit F attached hereto or execute, renew, or extend any liens, licenses or similar interests if the proposed encumbrances, liens, lease, license or similar interest will affect the biological values of property as determined by the CDFG, or execute, renew, or extend any leases, licenses or similar interests covering any lands within the Byron Burrowing Owl Conservation Bank or without the prior written consent of the CDFG.
- (c) Shall not, unless otherwise agreed to in writing by Bank Developer and CDFG, construct any structures or engage in any development activities on or uses of the Property that degrades biological values.
- (d) Shall maintain the biological value of lands to insure the suitability as habitat for wildlife and plant species.

(e) Shall, as to all phased segments, if any, of the Byron Burrowing Owl Conservation Bank which have not been conveyed in accordance with Section 3, maintain the biological values of the lands to ensure their suitability as a Conservation Bank until such time as it is determined that the subject phase will not be incorporated within the Conservation Bank.

8. Database for Conservation Bank Transactions

A database shall be established by the Bank Developer in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG has been notified in writing that all Conservation Credits have been conveyed and the last annual report has been received by the CDFG, Bank Developer (or any successor in interest) shall be responsible for maintaining a database (hereafter the "Ledger") which shall include a numerical accounting of all Conservation Credits sold or used, the balance of Conservation Credits remaining and the total endowment funds received to date, and for each individual sale or use of a Conservation Credit(s), shall state the number of Conservation Credits sold or used, the name, address, and telephone number of the entity purchasing/using the Conservation Credits, the project name for which the Conservation Credits were sold or used, the jurisdiction in which the impacting project occurs, and the prorated endowment amount paid. The Bank Developer shall make the Ledger available to the CDFG upon request. Upon each sale or use of Conservation Credits in accordance with Section 6 above, Bank Developer shall deliver to the CDFG an updated accounting of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits (see Exhibit J). This information shall be sent to the CDFG within thirty (30) days of each purchase/use of Conservation Credits. Bank Developer shall, on or before February 15th of each year, deliver to the CDFG a report covering the prior calendar year that contains all of the information described above. Until such time as the CDFG has been notified in writing that all Conservation Credits have been conveyed and the final annual report has been received by the CDFG, Bank Developer (or any successor in interest) shall be responsible for maintaining a numerical accounting of Conservation Credits sold/used and the Credit balance remaining.

9. Management of Conservation Bank Property

Bank Developer shall manage the property as provided in this Section 9.

(a) Bank Developer, or its successors or assigns, shall oversee, manage, and maintain the Conservation Bank lands in perpetuity to preserve its habitat and conservation values in accordance with the terms of this Agreement and the Conservation Easement and the

prescriptions identified in Draft Management Plan Outline (Exhibit H). Bank Developer's management obligations shall include using reasonable efforts to prevent third party use of the Property in a manner not permitted under this Agreement or the Conservation Easement. No later than six (6) months from the effective date of this Agreement, Bank Developer shall, in consultation with the CDFG, prepare a detailed site specific Habitat Management Plan for the Property. The Management Plan shall provide for the implementation of the specific management measures and tasks identified in Exhibit H and shall prioritize the importance of the various measures and tasks. The Management Plan shall be subject to the approval of the CDFG, which approval shall not be withheld unreasonably. Once the Management Plan has been approved by the CDFG, Bank Developer shall implement the Plan in accordance with the terms of the Conservation Easement and this Agreement. Bank Developer and CDFG shall meet and confer from time to time, upon the request of any one of them, to revise the Management Plan to better preserve the habitat and conservation values of the Property. Prior to development of the Management Plan, Bank Developer shall manage the property consistent with the purposes of this Agreement and the Conservation Easement to preserve the habitat and conservation values of the Property.

(b) Bank Developer shall have the right to restrict public access to the Property. Representatives of the CDFG shall have a right to enter the Property at any time and guests of the CDFG may enter with twenty-four (24) hour notice to Bank Developer.

(c) CDFG shall hold and manage the Endowment Account in trust for the purposes specified in this Agreement. CDFG shall have all the rights and responsibilities of a trustee in the management and investment of Endowment Account funds. The Endowment Account shall remain as a permanent capital endowment for so long as Bank Developer owns or manages the property. Bank Developer may use funds from the Endowment Account to pay any costs and expenses reasonably incurred in the Management of the Property including, without limitation, property taxes, contracts, and equipment.

(d) Bank Developer shall maintain an accounting of all funds received and expended for the management of the Property using accepted accounting methods. Bank Developer's accounting shall be audited annually, and the accounting and the results of the audits shall be made available to the public.

(e) Bank Developer shall provide to the CDFG an annual Accounting and Property Management Report. The Accounting and Management Report shall include the following:

- (i) An accounting of funds received and expended in the management of the Property during the previous year;
- (ii) A general description of the status of the biological resources on the Property;
- (iii) The results of any biological monitoring or studies conducted on the Property;
- (iv) A description of all management actions taken on the property, including any grazing that may take place to manage vegetation;
- (v) A description of any problems encountered in managing the property; and
- (vi) A description of management actions that Bank Developer will undertake, in accordance with the Management Plan, in the coming year.

(f) Wildlands, Inc.'s obligation to manage the Property pursuant to this Agreement shall be subject to available funding from the Endowment Account after the Interim Management Period (Section 6), during which Wildlands, Inc. will be responsible to manage the property.

10. Term of Agreement; Termination Rights

(a) Bank Developer shall have the right to convey or transfer the Property prior to establishment of the Bank in accordance with Section 3 above. In the event that such transfer is made without the prior written concurrence of the CDFG, such transfer shall result in the termination of this Agreement.

(b) Once the Bank has been established, no conveyance or assignment of any portion of, or interest in, the Bank lands shall be made without the prior written concurrence of the CDFG, which concurrence shall require that the successor or assign assume all of Bank Developer's management and other obligations under this Agreement and the Conservation Easement arising after such conveyance or assignment and have sufficient financial capacity to carry out any unfunded obligations under Section 6, in which event, such concurrence shall not be unreasonably withheld or delayed. As a condition of granting such concurrence, CDFG may require, in their sole discretion, that the transferee (i) deposit a letter of credit for the amount of the Endowment remaining unfunded as of the date of such transfer; or (ii) deposit other

substantially equivalent security for such transferee's obligation to deliver Management/Endowment Deposits as required in Section 6 above.

(c) The CDFG may elect to terminate this Agreement on the condition that each of the following has occurred: (i) the Bank Developer has breached one or more of the covenants set forth in Section 7 above; (ii) the Bank Developer has received written notice of such breach from the CDFG; and (iii) the Bank Developer has failed to cure such breach within 30 days after such notice; provided, however, in the event such breach is curable, in the judgement of the CDFG, but cannot reasonably be cured within such 30 day period, the CDFG shall not have the right to terminate this Agreement so long as the Bank Developer has commenced the cure of such breach and is diligently pursuing such cure to completion. Nothing in this Subsection (c) is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) and at law available to the CDFG in the event of a threatened or actual breach of this Agreement by Bank Developer, except that no party shall be liable in damages to another party for breach of this agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, once Property has been conveyed in accordance with Section 3 above, (i) Bank Developer shall be entitled to the CDFG acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) Bank Developer shall remain liable for the delivery of the Endowment Deposits, as provided in Section 6 above.

(e) This Agreement shall end upon the filing of the final annual report to the CDFG described in Section 8 (filed after all Credits have been applied to development projects), provided that the Endowment Fund obligations described in Section 6, the management obligations described in this Agreement and the obligations under the Conservation Easement shall continue in perpetuity as a covenant running with the land.

11. Cooperation

The CDFG agrees to reasonably cooperate with Bank Developer in the implementation of this Agreement. Such cooperation by the CDFG shall include, without limitation:

(a) Confirming to prospective Credit Purchasers that Conservation Credits are available to offset wildlife mitigation as provided in Sections 2 and 4 above.

(b) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 6 above.

(c) Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.

(d) Acknowledging that the Byron Burrowing Owl Conservation Bank is a Conservation Bank "approved" by the CDFG; including the Byron Burrowing Owl Conservation Bank on a list to be maintained by the CDFG of all such approved Conservation Banks; and making such lists available to prospective Credit Purchasers at such time as the need for such Credit Purchaser's wildlife mitigation is disclosed to the CDFG.

(e) Agreement by the Parties to meet annually, if requested, following the delivery of the annual report provided by Bank Developer to the CDFG to coordinate the Ledger and the Endowment Fund.

12. Entire Agreement

This Agreement and its related Exhibits contain the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by any Party, or to any employee, officer, or agent of any Party, which is not contained in this Agreement shall be binding or valid.

13. Interpretation and Headings

The language in all parts of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any Party. Headings of the paragraphs of this Agreement are for the purposes of convenience only and the words contained in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

14. Modification

This Agreement is not subject to modification except in a writing signed by all Parties and any attempted modification not in compliance with this requirement shall be void. The Parties shall use their good faith efforts to complete such modifications within ninety (90) days after the initial request is made for a modification by the requesting Party.

15. Notices

All notices, demands, or requests from one Party to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing and shall be effective at the time of personal delivery, facsimile transmission, or mailing.

Property Owner: Wildlands, Inc.
5910 Auburn Blvd., Ste. 17
Citrus Heights, CA 95621
(916) 331-8810
Attn: Steve Morgan
Fax No. (916) 331-8755

CDFG: Legal Office
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
(916) 654-3821
Fax No. (916) 654-3805

with a copy to:

Regional Manager
California Department of Fish and Game
P.O. Box 47
Yountville, CA. 94599
(707) 944-5525
Attn: Mr. Carl Wilcox
Fax No. (707) 944-5525

16. Successors and Assigns

This Agreement 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 consistent with Section 9(a). Bank Developer may only assign its rights and obligations under this Agreement with the prior written approval of CDFG, which approval shall not be unreasonably withheld.

17. Exhibits

All Exhibits referred to in this Agreement are attached to this Agreement and are incorporated herein by this reference.

18. Attorneys' Fees

If any action at law or equity including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs.

19. No Partnerships

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

20. State and Federal Appropriations

The duty of the CDFG to carry out its obligations under this Agreement shall be subject to the availability of state and federal appropriated funds.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

Executed this 9th day of MARCH, 2000.

IN WITNESS HEREOF, the Parties hereto have executed and delivered this Conservation Bank Agreement as of the date first set forth above.

CDFG:

Bank Developer:

THE CALIFORNIA DEPARTMENT
OF FISH AND GAME

WILDLANDS, INC.

By: [Signature]

By: [Signature]

Title: Deputy Regional Manager

Title: Planning Director,
Vice President

3-8-00

EXHIBITS

- Exhibit A - General location map and legal description of Bank Property
- Exhibit B - Legal parcel map of Bank Property
- Exhibit C - Service Area
- Exhibit D - Biological Resource Survey and Management Report
- Exhibit E - Conservation Easement
- Exhibit F - Title Report
- Exhibit G - Level I environmental contaminants survey
- Exhibit H -Draft Habitat Management Plan Outline
- Exhibit I - Declaration of Trust
- Exhibit J - Conservation Credit Purchase Agreement and an Acknowledgment of Sale of Conservation Credit