

Memorandum

To : Brian Hunter, Regional Manager
Central Coast Region

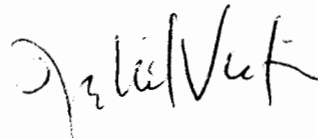
Date : February 7, 2000

From : Department of Fish and Game

Subject : Byron Conservation Bank

I have enclosed for your review and signature the final Byron Conservation Bank Implementation Agreement (Agreement). This Agreement has been reviewed and approved by the Legal Office.

Please sign the Agreement, return the original Agreement and all exhibits to the Legal Office, and keep a copy for the Region. Let me know if you have any questions.



Juliet Virtue
Staff Counsel

JLV/jlv

Enclosure

2-8-00

BH
 signed
 returned
 to Judy
 2/9

**CESA MOU (Section 2081/2090)
 TRACKING SURNAME COVER SHEET**

Applicant: Dept. of General Services Tracking # 1802-1999-035-3
 (From ESD - HQ)

Project Name: Byron Conservation Bank
 (From CESA MOU title page)

REGION (To be completed by Region originating CESA MOU - Please PRINT full names)

<u>Carl Wilcox</u>	<u>(707) 944-5525</u>
DFG Representative (Lead Contact)	Telephone
<u>Environmental Program Manager</u>	<u>(707) 944-5563</u>
<u>P. O. Box 47, Yountville, CA 94599</u>	Fax
Address	

Initials	ES Functional Staff or other reviewer	Date Forwarded
<u>CW</u>	<u>Carl Wilcox</u>	<u>1-11-00</u>
Initials	Environmental Services Supervisor	Date Forwarded
<u>BA</u>	<u>Brian Ant</u>	<u>1-11-00</u>
Initials	Regional Manager	Date Forwarded

(ALL INFORMATION ABOVE THIS LINE MUST BE COMPLETED PRIOR TO SUBMISSION TO HQ)

HEADQUARTERS

<u>CB</u>	<u>Carl Bean</u>	<u>1/11/00</u>
Initials	ESD Reviewer	Date Forwarded
<u>GP</u>	<u>Gaut Presley</u>	<u>1/11/00</u>
Initials	ESD Supervisor	Date Forwarded
<u>SM</u>	<u>Supervisor for Susan Cochran</u>	<u>1/11/00</u>
Initials	Division Chief(s)	Date Forwarded
<u>JV</u>	<u>John Venter</u>	<u>1/27/00</u>
Initials	DFG Staff Counsel	Date Forwarded
<u>AS</u>	<u>AS</u>	<u>2/6/00</u>
Initials	General Counsel	Date Forwarded

CESA MOU - INITIALS
 FORM 1/94 LAD

Please inform lead contact of all packet movements at time of forwarding.

BYRON CONSERVATION BANK
IMPLEMENTATION AGREEMENT

(Tracking No. 1802-1999-035-3)

THIS BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, ____ by and between the California Department of General Services (DGS) and the California Department of Fish and Game ("CDFG"), hereinafter collectively known 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 Conservation Bank. Both parties are agencies and/or departments of the State of California.

RECITALS

A. The parties have previously entered into a Mitigation Agreement (MA), dated April 6, 1998 (Exhibit A) (Tracking No. 1802-1997-072-3), to provide for the conveyance to CDFG of 19.5 acres of land to mitigate adverse impacts to the western burrowing owl caused by developments at the Agnews Development Center West Campus Site (Agnews West Campus) in Santa Clara, California. DGS has acquired approximately 140 acres of real property ("Property") located in the County of Alameda, California (Exhibit B), and more completely described in Exhibit C attached hereto. The Property was acquired to meet DGS's obligations under the MA. The amount of acreage acquired exceeds the obligations of DGS under the MA.

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 § 1802.

C. The Property supports habitat that is suitable for wildlife species including, western burrowing owl (*Speotyto cuniculara*) a state Species-of-Special-Concern; California tiger salamander (*Ambystoma californiense*) ("CTS") a state Species-of-Special-Concern and candidate for federal listing; California red-legged frog (*Rana aurora draytonii*) a federally listed Threatened species and state Species-of-Special-Concern; San Joaquin kit fox (*Vulpes macrotis mutica*) a federally listed Endangered and state listed Threatened species; and, western pond turtle (*Clemmys marmorata*) a state Species-of-Special-Concern, referred to collectively as the "special status species" (Exhibit J, Habitat Map).

D. It is anticipated that construction and development activity in the South Bay cities of Santa Clara, San Jose and surrounding communities (a large proportion of which is referred to as the "Credit Area", and further defined in Section 4 of this Agreement), will necessitate the mitigation of impacts to endangered, threatened species, and Species-of-Special Concern and biologically sensitive habitats through the preservation of off-site lands that possess corresponding habitat values. Mitigation of said impacts may require completion of mitigation agreements between project proponents and CDFG. In addition, CDFG is completing negotiations on mitigation agreements for the western burrowing owl in the Credit Area and may enter into other mitigation agreements for other species identified in paragraph C above in the Credit Area.

E. On the terms and conditions hereinafter provided, the parties hereto desire to establish a conservation bank with respect to a portion of the Property (Credit Area Map, Exhibit K) (referred to as the "Byron Conservation Bank", or alternatively, the "Conservation Bank") in order to provide for the long term conservation for special status species that occur on the Property.

F. CDFG has determined that the Byron Conservation Bank lands are generally suitable to mitigate for impacts to the species identified in Recital C above. Certain rare endemic and/or listed species may not have similar or comparable habitat requirements and the use of the Conservation Bank may not be appropriate to mitigate for impacts to those species. Use of the Byron Conservation Bank to mitigate for impacts to wildlife and the vegetation communities on which they depend shall be governed by Section 4 of this Agreement.

G. The parties desire to enter in to this Agreement to set forth the terms and conditions pursuant to which the Byron 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. "Covered Species" means those species that occur on the Property including western burrowing owl, California tiger salamander, California red-legged frog, San Joaquin kit fox, and western pond turtle.
7. "Credit Area" means the geographic area within which impacts that occur may be mitigated through use of conservation credits on the Byron Conservation Bank consistent with the Agreement.
8. "Endowment Deposit" means the sum of \$1000 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.

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

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)) and each Subarea Plan approved by the Wildlife Agencies.

13. "Management Plan" means the management plan prepared for the Conservation Bank lands.

14. "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

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 Bryon Conservation Bank

Establishment of the Conservation Bank will be accomplished by a dedication of the Property to CDFG on behalf of DGS through a Transfer of Control and Possession (TCP) document (Exhibit D). Upon CDFG's acceptance of the TCP, DGS shall be entitled to receive Conservation Credits as provided (and defined) in Section 4 below.

2. Conservation Bank Evaluation and Acceptance.

Representatives of the CDFG have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation Credits. CDFG has also reviewed the "Burrowing Owl Habitat Assessment" and the "California Red-legged Frog, California Tiger Salamander, and Western Pond Turtle Surveys" prepared for DGS by Biosearch Wildlife Surveys, dated November 18, 1998 and July 21, 1999 respectively (Exhibit E.) On the basis of such inspection and evaluation, the CDFG acknowledges and agrees that the Property possesses biological values which support the Conservation Credits acknowledged in Section 4 below.

3. Conveyance.

Dedication for conservation purposes shall begin substantially concurrently with the execution of this Agreement, under the terms and conditions as follows:

- (A) CDFG has received and accepted the following documentation, in part required under the parties MA:

- (a) A preliminary title report covering the entire property; (Exhibit F)
 - (b) A phase/level I hazardous waste, environmental report; (Exhibit G)
 - (c) Copies of biologist reports and assessments prepared on behalf of DGS; (Exhibit E)
- (B) Within 30 days from the effective date of this agreement, DGS shall deliver to CDFG the following:
 - (a) A final policy of Title Insurance showing the vesting of fee title with the State of California subject to existing easements, rights of way, and encumbrances as previously accepted by CDFG, including a non-recorded interest of a month to month cattle grazing tenant;
 - (b) A fully executed TCP and supplemental documents, where required, to transfer control and possession to CDFG;
 - (c) Payment of \$10,000, for DGS's habitat preservation obligations under the MA, for deposit into an appropriate fund as designated by CDFG to provide an endowment for the long-term management of the Property as required by the MA. Additional funding for long-term management of the Property will be provided as described in Section 5 below ;
 - (d) Payment of \$3,000 to reimburse CDFG for reasonable expenses incurred to review, approve, and implement this Agreement and TCP as required by the MA.
 - (e) Payment of a check in the amount of \$10,000 to fund initial protection and enhancement measures conducted on the Conservation Bank property by CDFG. This money shall be used for any fencing, trash clean-up, dam repair, owl breeding habitat creation, or any necessary habitat restoration activity identified in the Management Plan as a initial start-up requirement. Any unobligated funds shall be returned to DGS upon completion of all items and terms of MA (refer to page 3 item 4 of the MA)
- (C) No later than 120 days from the effective date of this agreement DGS shall, in consultation with CDFG, prepare a Management Plan ("Plan") for the Property. The Plan shall describe the specific management actions to be taken to maintain the site as habitat for special status species. The Plan shall provide for the implementation of the specific management measures and tasks including those identified in the biologists' reports named above and provided in Exhibit E. The Plan shall also

prioritize the importance of the various measures and tasks. Adaptive management measures shall be included in the Plan. The Plan shall be subject to the approval of CDFG, which approval shall not be withheld unreasonably.

- (D) CDFG shall accept the existing warehouse/utility building located at the southeast corner of the Property, and further agrees to co-operate with third parties to make the building, along with all or portions of the entire Property, available to be used for educational purposes for the study, improvement, protection and enhancement of the species and habitat as listed herein. Allowable uses shall be further identified in the Management Plan.
- (E) Within 60 days of receipt of the TCP from DGS and subject to the approval of the Fish and Game Commission and/or Wildlife Conservation Board, the Director of CDFG shall execute a certification of the acceptance of the Property. Upon execution, the Property shall be deemed as dedicated and transferred and 19.5 acres (credits) shall be retired from the total Credits available as set forth in Section 4 for mitigation of the western burrowing owl as required under the parties April 6, 1998, Agnews West Campus MA.

Remaining Credits on the Property shall accrue to DGS to be used at its own discretion for mitigation or habitat preservation needs for the special status species including but not limited to the sale of Credits to other third parties for these purposes.

- (F) Upon all of the following: (i) the acceptance of the property by CDFG as stated in Section 3 (E); (ii) deposit of the \$13,000 to be paid pursuant to Section 3(B)(c)(d) for the benefit of CDFG; (iii) as required in Section 3(B)(e), submittal of a check from DGS in the amount of \$10,000 to fund initial protection and enhancement measures identified in the Management Plan; and (iv) submittal of the approved Management Plan pursuant to Section 3(C) above, the parties AGREE that notwithstanding obligations as set forth herein, all obligations of the parties under the April 6, 1998 MA have been met and satisfied.

4. Conservation Credits

As a result of the benefits accruing to Endangered, Threatened, and Species of Special Concern, upon the establishment of the Conservation Bank and the dedication of land for conservation purposes, Conservation Credits shall be established as follows:

- (A) The Credit Area for the Byron Conservation Bank includes all land within a 40-mile radius of the Property boundary including those areas within the current city limits of the cities of San Jose and Santa Clara. In the event CDFG agrees to or has agreed to a larger geographic area with other third parties for acquiring mitigation properties for the species identified in Recital C above, then such larger geographic area shall

govern for projects which may use the Byron Conservation Bank. Projects outside the Credit Area may be eligible to participate in the Conservation Bank at CDFG's sole discretion. Projects within the Credit Area that impact the species or habitat types found at the Conservation Bank site, shall be eligible to participate in the Conservation Bank ("Eligible Projects") upon CDFG's approval, which approval shall not be withheld unreasonably. CDFG shall determine whether to approve a project as an Eligible Project by comparing the type and quality of habitat for the special status species on the project site (i.e., impact site) to the type and quality of habitat for the special status species present on the Conservation Bank.

- (B) CDFG agrees to accept each acre of land within the Conservation Bank as an equivalent of one acre of affected special status species mitigation (each acre to equal one "Conservation Credit"). A total of 139.2 credits are available at the Conservation Bank with the apportionment of credits among the species as follows:

Western Burrowing Owl	132.3 credits
California Tiger Salamander	136.9 credits
California Red legged Frog	63.4 credits
Western Pond Turtle	139.2 credit
San Joaquin Kit Fox	139.2 credits

In no event shall the total available Credits on the Conservation Bank exceed 139.2 Credits. Credits may be used among the special status species group but no one Credit shall be used for more than one species. Sale of Credits for impacts to the federally listed Threatened red-legged frog and Endangered San Joaquin kit fox will be subject to review and approval by the U.S. Fish and Wildlife Service.

- (C) DGS shall be entitled to sell or use Conservation Credits for Eligible Projects, including Eligible Projects on properties owned by DGS or controlled by other State agencies. Subject to DGS's obligations under Section 5 below, DGS shall have the exclusive right to determine the price for any and all Conservation Credits offered for sale or conveyance.
- (D) Nothing contained in this Agreement shall be deemed to limit the CDFG's authority under CESA, or any other law, to protect and conserve special status species; provided however, that except as provided in Section 4(A) above, the CDFG will not withhold its consent for Eligible Projects to use Conservation Credits as mitigation on a one acre-for-one credit basis for special status species mitigation.
- (E) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6 below. Conservation Credits will be sold through a Conservation Credit Purchase Agreement in the form substantially the same as shown in Exhibit H attached. When Conservation Credits are sold, DGS will issue to the purchaser

an Acknowledgement of Conservation Credits (Exhibit I) which will be submitted to the CDFG to document that the purchaser has intended to satisfy their mitigation obligations through the purchase of Conservation Credits at the Byron Conservation Bank. Upon receipt of the Acknowledgment, CDFG will confirm in writing that the purchaser has fulfilled their mitigation obligations for which purchase of Byron Conservation Bank credits apply. As part of such acknowledgment by CDFG, any security held by CDFG, to assure performance of such mitigation will be released assuming that all other mitigation obligations of the purchaser, if any, have been satisfied. After all the Conservation Credits have been conveyed, no further Conservation Credits shall be acknowledged by CDFG.

- (F) Upon each conveyance or use of Conservation Credits by DGS, the requisite Management/Endowment Deposits shall be delivered to CDFG in accordance with Section 5 below. Additionally, DGS shall deliver to each CDFG and the USFWS (when applicable), a copy of the receipt of such Management/Endowment Deposits executed by DGS.
- (G) Notwithstanding anything to the contrary in this Agreement, in the event that CDFG reasonably determines that portions of the Property have been damaged subsequent to the date of this Agreement, and prior to acceptance by CDFG of the TCP and: (1) the effect of such activity has been to materially impair the habitat values on such damaged property; (2) and DGS has not reasonably restored habitat value to such damaged property, then CDFG may, at its discretion, either reduce the number of Conservation Credits allocated to the property or, if they determine that the habitat values of the Property have been impaired so as to render it unsuitable as a Conservation Bank, terminate this Agreement.

5. Endowment

An endowment will be established through the sale of Credits to provide for the costs of managing and maintaining the Conservation Bank site in perpetuity, including but not limited to maintenance expenses, management costs, monitoring and property enhancements (initial or otherwise). With respect to the conveyance to each Conservation Credit, DGS or the acquirer or purchaser (Purchaser) of such Credits shall deposit with the CDFG at the time of conveyance, the sum of \$1,000.00 for each Conservation Credit so conveyed. The total amount of the endowment to be funded, including DGS's initial deposit of \$10,000 for the "long term management" of the Property under their MA (Clause 5, Page 3) with the Department, will be no greater than \$130,000, One Hundred and Thirty Thousand Dollars, (excluding interest thereon) after the sale or conveyance of all Credits available have been completed. The endowment fund is intended to generate interest at a rate, which would cover the CDFG's annual management and monitoring costs, and to allow the endowment fund pursuant to this clause.

CDFG shall deposit the endowment fund principal in a special deposit account

established pursuant to the California Government Code section 16370, and the principal shall not be drawn upon unless CDFG finds such expenditure is essential to protect the biological values and qualities of the Conservation Bank site. Management activities shall include but shall not be limited to, costs of attorneys, reasonable administrative overhead, habitat enhancement, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat values in perpetuity.

6. Database for Conservation Bank Transactions

A database shall be established in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG had been notified in writing that all Conservation Credits have been conveyed, DGS (or any successor in interest) shall be responsible for maintaining a numerical accounting ("Ledger") of the Credits sold or conveyed during any calendar year. Concurrent with the delivery of any Endowment Deposits in accordance with Section 5 above, DGS shall deliver to CDFG (or its manager-assignee) an updated database of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. The database maintained by DGS shall include the number of Conservation Credits sold or conveyed, the name of the entity receiving the Conservation Credits, a description of the project for which the Conservation Credits were purchased, the location of the project, the date of sale or conveyance, the total number of Credits sold or conveyed and the total number of Credits remaining. The DGS shall provide the database to CDFG within thirty days of each Credit transaction and upon written request. Additionally, DGS shall deliver to CDFG, on or before December 31 of each year, a report covering the prior calendar year that contains all the information described above.

7. Term of Agreement; Termination Rights

- (A) Unless sooner terminated by mutual written agreement of CDFG and DGS, this Agreement shall terminate on the earlier to occur of: (i) the filing of the final annual report to CDFG indicating all credits have been sold, provided that the Endowment Fund obligations have been met, an approved Management Plan has been provided, and the TCP has been delivered, or (ii) the date 30 years from the date of this Agreement.
- (B) Notwithstanding anything to the contrary contained in this Agreement, once a Conservation Bank has been dedicated in accordance with Section 3 above, (i) DGS shall be entitled to CDFG's acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) DGS shall remain liable for the delivery of the Endowment Deposits where required in connection with the conveyance of any such Conservation Credits, as provided in Section 5 above.

8. Cooperation

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

- (A) Confirming in writing to DGS prospective Credit Purchasers that Conservation Credits are available to offset special status species impacts described above.
- (B) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 5 above.
- (C) Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.
- (D) Acknowledging that the Byron Conservation Bank is a conservation bank approved" by the CDFG; including the placing of the Byron Conservation Bank on a list to be maintained by the Resource Agencies 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 special status species mitigation is disclosed to the CDFG.
- (E) Compliance with co-operation requirements as defined in section 3(D) herein above.
- (F) At DGS's request, provide copies of all MA's covering the special status species identified in recital C above within the Credit Area. CDFG will work with DGS to assure that DGS is aware of entities within the Credit area, with current or pending MA's for the species.

9. Entire Agreement

This Agreement, its related Exhibits, and the Management Plan (once it is prepared) 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.

10. 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.

11. Modification

This Agreement is not subject to modification except in 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.

12. Notices

All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile transmission, or mailing to:

DGS: Department of General Services
Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q St. Suite 6000
Sacramento, California 95814

ATTN: Larry M. Buczyk, Senior Real Estate Officer

(Phone) (916) 323-5528
(Fax No.) (916) 327-9654

CDFG: Regional Manager
Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

ATTN: Carl Wilcox, Environmental Program Manager
(Phone) (707) 944-5525
(Fax No.) (707) 944-5563

With a copy to: General Counsel
California Department of Fish and Game
1416 9th Street, 13th Floor
Sacramento, CA 95814

(Phone) (916) 654-3821
(Fax No.) (916) 654-3805

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept Facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

13. Exhibits

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

14. Assignment

Any sale or assignment of this Agreement or any of the rights or obligations hereunder is void absent the written consent of both CDFG and DGS; provided, however, that no consent shall be required for assignment of pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of DGS; or (b) as security for a debt under the provision of any mortgage, deed or trust, indenture, bank credit agreement, or similar instrument.

15. Further Actions

From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties.

16. Disclaimer

DGS understands and recognizes that this Agreement does not constitute or imply that the Conservation Bank or Conservation Credits fulfill requirements of state or federal laws or regulations beyond the authority or jurisdiction of CDFG and does not create an entitlement to proceed in any Eligible Project.

17. Effective Date

This Agreement shall be immediately effective upon the date the last party executes the agreement on behalf of CDFG and DGS.

Executed by the last party this 9 day of Feb 2010
~~1999~~

CDFG:

BY: 

Brian Hunter, Regional Manager
Central Coast Region
CALIFORNIA DEPARTMENT
OF FISH AND GAME

DGS:

BY: 

J. Frank Davidson, Assistant Chief
Asset Planning and Enhancement Branch
CALIFORNIA DEPARTMENT OF
GENERAL SERVICES



EXHIBITS

- Exhibit A - Mitigation Agreement, April 6, 1998
- Exhibit B - General location map and Assessor's Plat Map of Bank Property
- Exhibit C - Legal description of Bank Property
- Exhibit D - Transfer of Control and Possession
- Exhibit E - Biological Assessments Dated November 18, 1998 and July 21, 1999
- Exhibit F - Title Report
- Exhibit G - Level I Environmental Contaminants Survey
- Exhibit H - Conservation Credit Purchase Agreement
- Exhibit I - Conservation Credit Purchase Acknowledgment
- Exhibit J - Habitat Map
- Exhibit K- Credit Area

MITIGATION AGREEMENT

between the

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

and the

CALIFORNIA DEPARTMENT OF FISH AND GAME

This Mitigation Agreement ("Agreement") is made and entered into by and between the California Department of General Services ("DGS") and the California Department of Fish and Game ("DFG"), collectively "the Parties."

The purpose of this Agreement is to mitigate adverse impacts to the Western burrowing owl (*Speotyto cuniculara*) caused by the development of the Agnews Developmental Center West Campus site ("Agnews West Campus") in Santa Clara, California. Western burrowing owl ("Ow.") is a State designated Species of Special Concern.

RECITALS

A. WHEREAS, DGS proposes a General Plan Amendment to provide for the development of a one million square foot research and development campus, as well as approximately 150,000 square feet of commercial space and 2000 units of housing and public amenities, on a 331 acre site northeast of the intersection of Montague Expressway and Lafayette Street within the City of Santa Clara ("project").

B. WHEREAS approximately 158 acres of the site has been identified as burrowing owl habitat;

C. WHEREAS the Parties intend the mitigation measures set forth in this Agreement to offset impacts to Owls and Owl habitat on the site;

D. WHEREAS, DFG is trustee for the fish and wildlife resources of the State of California and has jurisdiction over the conservation and protection of fish, wildlife, and native plants, and the habitat necessary for biologically sustainable populations thereof pursuant to California Fish and Game Code Section 1802;

E. WHEREAS, the eventual development of the entire site will result in permanent impacts to 158 acres of Owl habitat on the project site;

F. WHEREAS the eventual development of the entire site will avoid take of individual Owls consistent with Fish and Game Code Sections 3503, 3503.5, 3513 and 3800;

G. WHEREAS, DFG desires, consistent with the policies of California Fish and Game Code Section 1802, that there is permanent protection for Owls and their habitat to assure the conservation, restoration, and long-term survival of this species; and

H. WHEREAS, DGS agrees to undertake the mitigation measures set forth in this Agreement to offset the adverse impacts to Owls caused by the eventual development of the entire site;

NOW THEREFORE, the Parties agree as follows:

1. At least thirty (30) days before initiating ground disturbing activities, excluding work at the Martinson Day Care site, DGS shall designate a representative responsible for communications with DFG and for overseeing compliance with this Agreement and will notify DFG in writing of that designation.
2. DGS shall notify DFG fourteen (14) days before initiating ground disturbing activities.
3. DGS agrees to fund the acquisition and preservation of 19.5 acres of suitable Owl habitat ("habitat management lands" or "HM lands") and to transfer to DFG either fee title to the HM lands or a conservation easement acceptable to DFG. The amount of HM land required is based on existing conditions of the project site at this time. Currently, three (3) burrowing owls reside on the site. DFG guidelines recommend that 6.5 acres of Owl habitat be set aside for every burrowing owl pair or single Owl impacted by development. DFG and DGS shall work cooperatively to identify and preserve the HM land. The fee title of the HM lands or a conservation easement may be transferred to a non-profit corporation or public entity under terms approved by DFG. DGS agrees to obtain DFG's approval of the HM lands for their biological suitability prior to any transfer.
 - a. The HM lands must have existing Owl habitat throughout the site or must be made suitable for Owls through appropriate management methods. DGS agrees to demonstrate that the HM lands are suitable for Owl mitigation by providing survey information which shows Owl habitat distribution throughout the site. The total acreage of HM lands protected through this Agreement may be larger than the 19.5 acres required, because if there are areas on the HM lands that are not suitable for Owl foraging or nesting, these areas will not count towards the mitigation requirement. Any HM lands protected for the purposes of this Agreement must include areas on-site where Owls can breed successfully. If foraging habitat exists on the HM lands and the only potential nesting burrows are located outside of the HM lands boundary, DFG and DGS

will ensure that breeding habitat is created, through the placement of artificial burrows, on the HM lands. DGS agrees to provide DFG a recent preliminary title report and Level I environmental report for the HM lands. All documents conveying HM lands and all conditions of title are subject to the approval of DFG, DGS and, if applicable, the Fish and Game Commission.

b. DGS agrees to acquire and preserve the HM lands within 24 months of the Parties' execution of this Agreement unless the entitlements for development of the entire site are not obtained within a year from the date of execution of this agreement, in which case DGS will be provided a mutually agreed upon extension. This deadline for the acquisition and preservation of HM lands, including any extension agreed to by the Parties, is hereafter referred to as the "Acquisition Deadline". This requirement will mitigate impacts to Owls caused by grading and development activities on the Agnews West Campus.

c. If DGS fails to complete the acquisition and preservation of the HM lands by the Acquisition Deadline or fails to complete other duties identified in this Agreement within the time periods specified, DFG, at its option, may demand that DGS cure its breach forthwith. If DGS has failed to complete the acquisition and transfer duties detailed in this Agreement within the time periods specified, DFG's remedies include, but are not limited to, drawing upon the security to complete the required acquisition, protection and enhancement of HM lands.

4. Initial protection and enhancement measures on the HM lands, which may include fencing, trash clean-up, Owl breeding habitat creation, and any necessary habitat restoration, may be required. These activities shall be the responsibility of DGS. Alternatively, DGS may fund DFG's initial protection and enhancement activities on the HM lands by providing to DFG a check in the amount of \$10,000. Any unobligated funds shall be returned to DGS upon completion of all items and conditions of this Agreement.

5. DGS agrees to provide DFG with a check in the amount of \$10,000 to establish an endowment for the long-term management of the HM lands. DGS shall transfer these funds to DFG upon DFG's approval of the biological suitability, exceptions and conditions of title, and acquisition by DFG, or DGS, or an agent approved by DFG of HM Lands as provided herein. Such funding shall be used as principal for a permanent capital endowment. Interest from this amount shall be available for operations, management and protection of the HM lands acquired pursuant to this Agreement. Operation, management and protection activities may include reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM lands. Money received by DFG pursuant to this provision shall be deposited in a special account established pursuant to Government Code Section 16370. DFG may pool the endowment with other endowments for the operation, management and protection of HM lands for local populations of the Owl.

6. DGS agrees to reimburse DFG for reasonable expenses incurred as a result of the approval and implementation of this Agreement, including costs of title and documentation re-

view, expenses incurred from other state agency reviews and overhead. The Parties estimate that this Agreement will create an additional cost to DFG of up to \$3,000.00.

7. DGS may proceed with activities that adversely affect Owls before fully performing its duties and obligations in this Agreement if DGS secures its performance by depositing the sums described below ("Security") prior to modification of Owl habitat on the project site (except for work to the Martinson Day Care Center site) and within 15 business days after the close of escrow with Sun Microsystems. The Security shall designate DFG as beneficiary and shall be in an amount sufficient to fund the performance of DGS' unperformed duty or obligation, as such costs are estimated below. If DGS has not fulfilled its obligations under this agreement by the Acquisition Deadline, DGS shall pay DFG the estimated cost of performing any unperformed obligation as set forth below. In the event that DGS does not pay such a sum to DFG after 10 days' written notice of such an amount being due, DFG may draw on any Security provided pursuant to this Agreement and use such funds to acquire, protect, enhance and manage HM lands. DGS agrees to secure its performance of duties outlined in this Agreement with Security in the amount of \$257,000, including (1) \$10,000 for initial protection and enhancement of the HM lands (2) \$237,000 for the acquisition and preservation of habitat lands (19.5 acres multiplied by \$12,154 per acre), and (3) \$10,000 for the ongoing preservation and management of such habitat lands (19.5 acres multiplied by \$513 per acre).
8. The parties estimate that DGS's costs for the acquisition and transfer of suitable HM lands will be \$237,000 (\$12,154/acre). Notwithstanding the above estimate, in the event that acquisition costs exceed the projected amount, DGS shall provide such additional funding by using its best efforts to obtain an appropriation and authorization to make such payment through the State's normal budget process. Additionally, DFG and DGS may agree to modify this Agreement to provide for alternate effective Owl mitigation measures acceptable to DFG. In the event that acquisition costs are less than estimated, DGS's funding obligations shall be reduced to actual acquisition costs. Upon timely request and upon presentation of documentary evidence of full compliance with the terms and the conditions of this Agreement, DFG shall effectuate a cancellation of the Security.
9. DFG, its designee or successor shall hold title to and protect all HM lands conveyed in fee title under this Agreement solely for the purposes of conservation, protection, restoration, and enhancement of Owls. This covenant shall run with the land and no use of such land shall be permitted by DFG or any subsequent title holder or assignee which is in conflict with the stated conservation purposes of this Agreement. DFG, its designee or successor may allow some wetland creation and/or limited grazing on the HM lands if said uses do not conflict in any way with the conservation goals for Owls.
10. DFG, its designee or successor shall record on each deed a statement that the HM lands described in the deed of record have been conveyed to DFG, its designee or successor for purposes of conservation, protection, restoration and enhancement of Owls. Such statement shall be substantially as provided in Exhibit 1.

11. In the event DGS defaults on any of its material obligations under this Agreement, DFG shall have all rights with respect to any security and all remedies available at law or in equity, including specific performance injunction, and without limitation all rights of a secured party pursuant to the California Uniform Commercial Code.

12. All notices and other communications required or permitted under this Agreement shall be in writing and addressed to the parties at the following addresses, or at substitute addresses subsequently provided to any of the parties:

DGS Mr. Ron Small, Staff Counsel
 Office of Legal Services
 Department of General Services
 1325 J Street, #1911
 Sacramento, CA 95814

DFG General Counsel
 Legal Affairs Division
 Department of Fish and Game
 1416 Ninth Street, Twelfth Floor
 Sacramento, CA 95814
 (916) 654-3821

and: Mr. Carl Wilcox
 Region 3
 California Department of Fish and Game
 P.O. Box 47
 Yountville, CA 94599
 (707) 944-5525

13. Any sale or assignment of this Agreement or any of the rights or obligations thereunder is void absent the written consent of the Parties; provided, however, that no consent shall be required for assignment or pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of the DGS; or (b) as security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument.

14. This Agreement comprises the entire agreement and understanding between the Parties concerning the eventual development of the entire Agnews West Campus. In the event that the City of Santa Clara, or any other public entity with jurisdiction, requires additional mitigation for the loss of Owl habitat than is provided for in this Agreement, then DGS will have the right to cancel this Agreement and DFG shall return any unexpended portion of the Security it is holding, or an amount proportionate to the on-site Owl habitat not yet affected by development, whichever

amount is less. This Agreement supersedes all prior and contemporaneous agreements, representation or understandings, whether oral or written.

15. This Agreement shall be governed by the laws of the State of California. Actual or threatened breach of this Agreement may be prohibited or restrained by a court of competent jurisdiction.

16. This Agreement is solely for the benefit of the People of the State of California, by and through DFG, or its designated representative and DGS.

17. From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties. In any action requiring the agreement or approval of either of the Parties, such agreement or approval shall not be unreasonably denied or withheld.

18. This Agreement shall terminate upon completion of all terms and conditions. In the event this Agreement terminates by law or judicial action prior to the full performance of the management duties and obligations, title to any Security provided by DGS shall inure DFG by operation of law on the date of the termination.

19. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties hereto with respect to the eventual development of the entire Agnews West Campus site and to provide for the conservation of Owl and the mitigation and compensatory measures required in connection with the loss of Owl habitat in the course of otherwise lawful use of lands on the site. Accordingly, no further mitigation or compensation for the conservation of Owl habitat will be required of DGS for impacts within the Agnews West Campus site. However, during the grading and/or construction activities on the site, all precautions will be taken to avoid potential take of burrowing owls. No construction activities will be allowed within 250 feet of any active nest burrow during the nesting season (February to August).

20. This Agreement shall be immediately effective upon execution by the Parties

21. This Agreement includes and incorporates the following:

EXHIBIT 1, CERTIFICATE OF PUBLIC PURPOSE

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT TO BE IN EFFECT AS OF THE DATE LAST WRITTEN BELOW:

DEPARTMENT OF GENERAL SERVICES:

By: Eugene C. Spindler Date: 4/2/98
Mr. Eugene Spindler, Deputy Director, Real Estate Services Division

CALIFORNIA DEPARTMENT OF FISH AND GAME:

By: Brian Hunter Date: 4-6-98
Mr. Brian Hunter, Regional Manager, Region 3

APPROVED AS TO LEGAL FORM:

Ann S. Malcolm
Ann S. Malcolm, Acting General Counsel

EXHIBIT 1

CERTIFICATE OF PUBLIC PURPOSE

This is to certify that the interest in real property conveyed by the deed or grant of the following property

_____, dated _____, from _____, to the California Department of Fish and Game (the "Department"), grantee, a governmental agency (under section 27281 of the Government Code), is hereby accepted by the undersigned officer on behalf of the Department, pursuant to authority conferred upon him by resolution of the _____ on _____.

The public purpose of this real property conveyance and the recordation hereof is being accomplished pursuant to the terms and conditions of the Mitigation Agreement ("Agreement") entered into on _____, by and between the Department of General Services and the Department.

The Agreement, among other terms and conditions not relevant here, provides at paragraph 9:

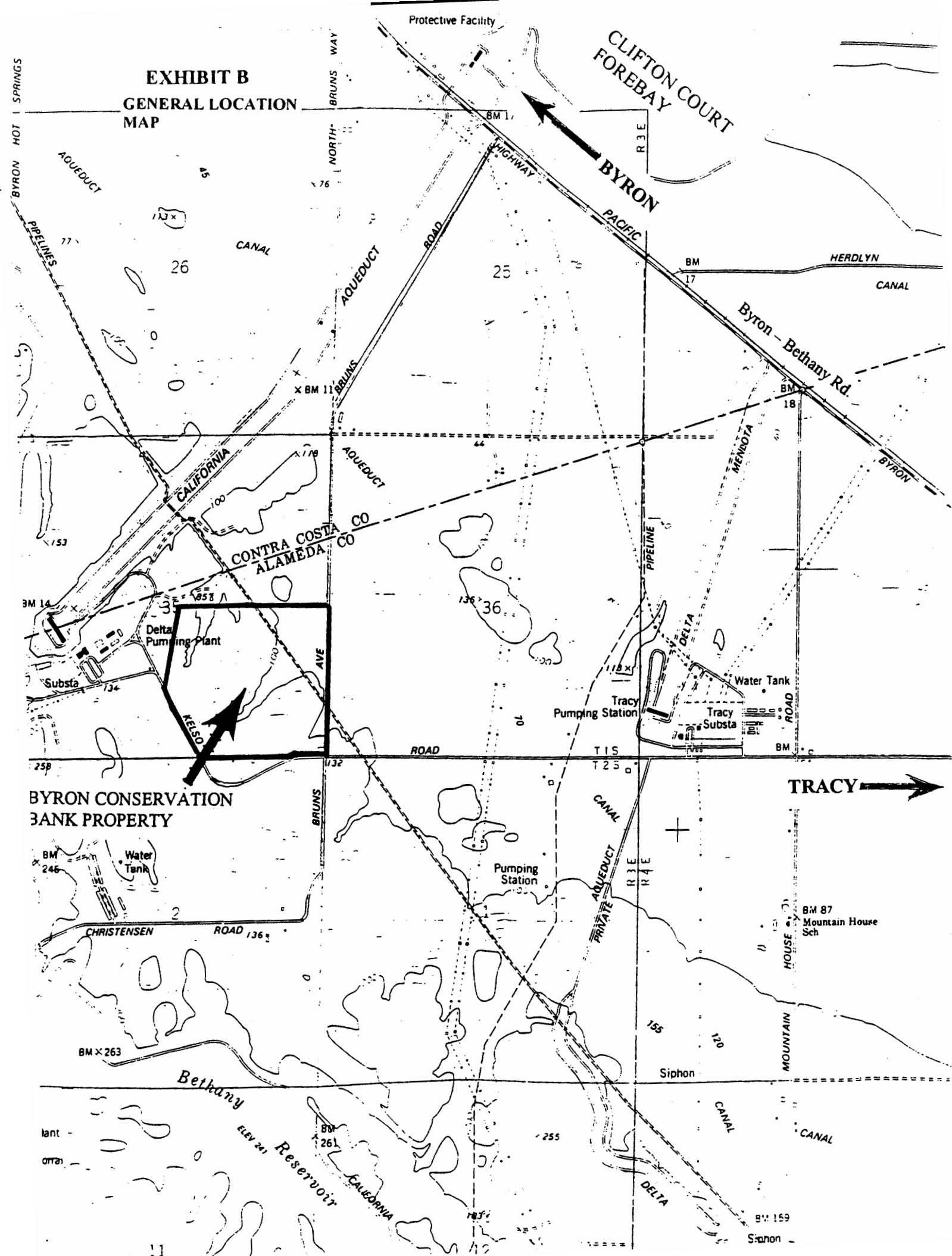
"DFG, its designee or successor shall hold title to and protect all HM lands conveyed in fee title under this Agreement solely for the purposes of conservation, protection, restoration, and enhancement of Owls. This covenant shall run with the land and no use of such land shall be permitted by DFG or any subsequent title holder or assignee which is in conflict with the stated conservation purposes of this Agreement. DFG, its designee or successor may allow some wetland creation and/or limited grazing on the HM lands if said uses do not conflict in any way with the conservation goals for Owls."

A copy of this Agreement in its entirety may be obtained by interested parties by sending a request to the Director of the Department at the address below.

DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA
1416 Ninth Street
Sacramento, California 95814

By: _____
Title: _____
Authorized Representative
Date: _____

EXHIBIT B
GENERAL LOCATION
MAP



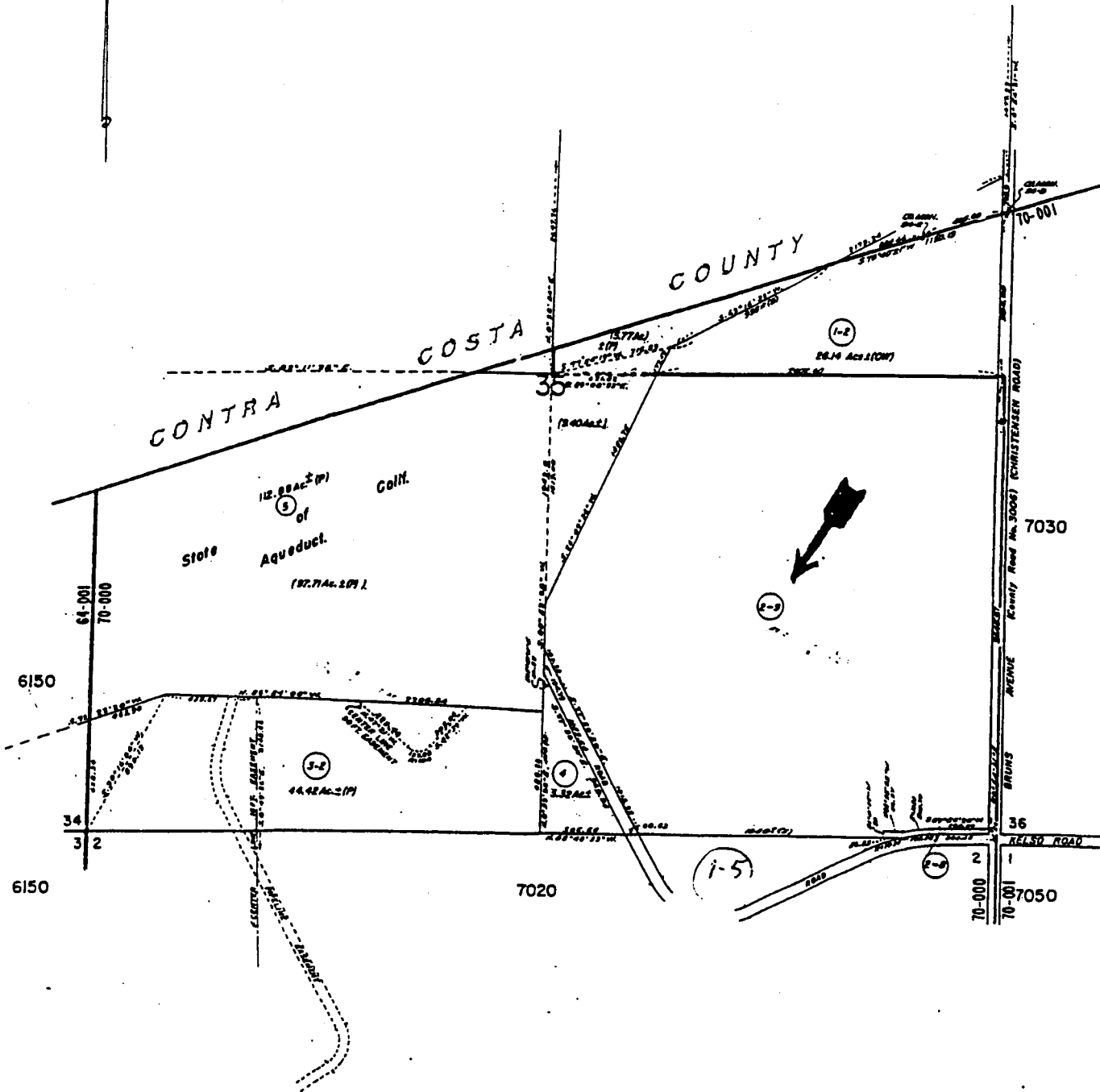
ASSESSOR'S MAP 99B

EXHIBIT B

7010

Scale: 1" = 500'

T.1S., R.3E. (Portion Section 35)



NOTICE

THIS MAP MAY OR MAY NOT BE A SURVEY OF THE LAND DE PICTED HEREON. IT IS NOT TO BE RELIED UPON FOR ANY PURPOSE OTHER THAN ORIENTATING ONE'S SELF AS TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS OF INTEREST. FIRST AMERICAN TITLE COMPANY ASSUMES NO LIABILITY FOR LOSS OR DAMAGE RESULTING FROM RELIANCE THEREON

LEGAL DESCRIPTION

EXHIBIT C

REAL PROPERTY in the City of Mountain House School, County of Alameda, State of California, described as follows:

The Southeast quarter of Section 35, in Township 1 South, in Range 3 East of the Mount Diablo Base and Meridian, according to the United States Public Survey thereof.

Excepting therefrom: Those portions thereof described in the deed from Arden Hans Christensen, a single man, to State of California, dated November 8, 1963, recorded May 20, 1964, on Reel 1207, Image 941, Series No. AW-80211, Alameda County Records.

Also excepting therefrom that portion thereof described in the Deed from Arden H. Christensen to Franklin D. Beck and D'Ette G. Beck, dated January 21, 1972, recorded February 1, 1972, Series No. 72-13886, Reel 3051, Image 958, Alameda County Records.

Also excepting therefrom: All oil, gas, casinghead gasoline and other hydrocarbons and mineral substances below a point 500 feet below the surface of the land, hereinabove described together with the right to take, remove, mine, pass through and dispose of all oil, gas, casinghead gasoline and other hydrocarbons and mineral substances but without any right whatsoever to enter upon the surface of said land, as reserved in the Deed from Ida B. Hayes Christensen, a widow, recorded June 30, 1988, Series No. 88-157279.

A.P. No.: 099B-7010-002-09

EXHIBIT D (6 PAGES)

AGREEMENT FOR THE TRANSFER OF CONTROL AND POSSESSION OF STATE OWNED REAL PROPERTY

BY THIS AGREEMENT, made and entered into this day of , by and between the Department of General Services (TRANSFEROR) and the Department of Fish and Game (TRANSFeree), hereinafter collectively referred to as "The Parties";

WITNESSETH

WHEREAS, TRANSFEROR by Grant Deed dated August 3, 1999 and recorded as document number 99316425 in Official Records of Alameda (shown as attached Exhibit "1") acquired real property (the property) on behalf of the State of California and thereby has control and possession of the property;

WHEREAS, The Parties have previously entered into agreements known as the "Mitigation Agreement" dated April 6, 1998 and the "Byron Conservation Bank Implementation Agreement" dated _____, to provide for transfer of the property to the TRANSFeree;

WHEREAS, The Parties desire to transfer the property to be used solely for the following purpose in accordance with the conditions as specified herein as follows:

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE DEPARTMENT OF FISH AND GAME, ITS DESIGNEE OR SUCCESSOR SHALL HOLD TITLE TO AND PROTECT THE LANDS TRANSFERRED HEREIN SOLELY FOR THE PURPOSES OF CONSERVATION, PROTECTION, RESTORATION AND ENHANCEMENT OF WILDLIFE SPECIES KNOWN AS: (1) THE WESTERN BURROWING OWL; (2) THE CALIFORNIA TIGER SALAMANDER; (3) THE CALIFORNIA RED-LEGGED FROG; (4) THE WESTERN POND TURTLE; (5) THE SAN JOAQUIN KIT FOX.

THIS COVENANT SHALL RUN WITH THE LAND AND NO USE OF SUCH LAND SHALL BE PERMITTED BY THE DEPARTMENT OF FISH AND GAME OR ANY SUBSEQUENT TITLE HOLDER OR ASSIGNEE WHICH IS IN CONFLICT WITH THE STATED CONSERVATION PURPOSES HEREIN DESCRIBED. THE DEPARTMENT OF FISH AND GAME, ITS DESIGNEE OR SUCCESSOR MAY ALLOW SOME WETLAND CREATION AND OR LIMITED GRAZING ON THE PROPERTY IF SAID USES DO NOT CONFLICT IN ANY WAY WITH THE CONSERVATION GOALS FOR THE NAMED SPECIES.

THE PURPOSES, USES AND CONDITIONS AS DESCRIBED HEREIN ABOVE SHALL BE APPLICABLE TO THE ENTIRE PROPERTY WITH THE EXCEPTION OF AN EXISTING BUILDING/STRUCTURE INCLUDING APPROXIMATELY 1 ACRE OF SURROUNDING LAND LOCATED AT THE SOUTH EAST CORNER OF THE PROPERTY AND SHOWN ON THE ATTACHED EXHIBIT "2" PLAT MAP.

WHEREAS, upon acceptance of this Transfer to TRANSFeree, it is the intention of the TRANSFEROR to record in the official records of the County of Alameda a Memorandum of Agreement to make this transfer and the uses and conditions specified herein a matter of public record;

NOW THEREFORE, in consideration of the foregoing, TRANSFEROR hereby transfers unto TRANSFEREE and TRANSFEREE accepts the control and possession of the property described as follows and as depicted on the attached Exhibit "2" plat map:

REAL PROPERTY in the City of Mountain House School, County of Alameda, State of California described as follows:

The Southeast quarter of Section 35, in Township 1 South, in Range 3 East of the Mount Diablo Base and Meridian, according to the United States Public Survey thereof.

Excepting therefrom: Those portions thereof described in the deed from Arden Hans Christensen, a single man, to the State of California, dated November 8, 1963, recorded May 20, 1964, on Reel 1207, Image 941, Series No. AW-80211, Alameda County Records.

Also excepting therefrom that portion thereof described in the Deed from Arden Christensen to Franklin D. Beck and D'Ette G. Beck, dated January 21, 1972, recorded February 1, 1972, Series No. 72-13886, Reel 3051, Image 958, Alameda County Records.

Also excepting therefrom: All oil, gas, casinghead gasoline and other hydrocarbons and mineral substances below a point 500 feet below the surface of the land, hereinabove described together with the right to take, remove, mine, pass through and dispose of all oil, gas, casinghead gasoline and other hydrocarbons and mineral substances but without any right whatsoever to enter upon the surface of said land, as reserved in the Deed from Ida B. Hayes Christensen, a widow, recorded June 30, 1988, Series No. 88-157279.

A.P. No. : 099B-7010-002-09

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have executed this agreement the day and year first above written.

TRANSFEROR:

DEPARTMENT OF GENERAL SERVICES

BY: _____
J. Frank Davidson

ASSISTANT CHIEF ASSET. PLANNING AND ENHANCEMENT BRANCH
REAL ESTATE SERVICES DIVISION

TRANSFEREE:

DEPARTMENT OF FISH AND GAME

BY: _____
Brian Hunter
REGIONAL MANAGER

First American Title Guaranty Company
Order No. SP851408
Escrow No. 515923

WHEN RECORDED MAIL TO:
State of California
Department of General Services
1102 Q Street, Suite 6000
Sacramento, Ca. 95814-6511
Attn: Larry M. Buczyk

PATRICK O. CONNELL CLERK-RECORDER
13.00
99316425 08:30am 08/18/99
004 890170 38 27 000065
A03 3 7.00 6.00 0.00 0.00 0.00 0.00 0.00
0.00

EXHIBIT "1"

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The undersigned grantor(s) declare(s):

CITY TRANSFER TAX \$

DOCUMENTARY TRANSFER TAX \$

SURVEY MONUMENT FEE \$

Computed on the consideration or value of property conveyed; OR

Computed on the consideration or value less liens or encumbrance
remaining at time of sale.

APN 099B-7010-002-09

GRANT DEED

STATE OF CALIFORNIA -
OFFICIAL BUSINESS

Document entitled to free
recording pursuant to Government
Code Section 6103.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Selwyn D.J. Vos and Loretta Soderlund Vos, husband and wife,

hereby GRANT(S) to

State of California,

the real property in the City of
County of

Mountain House School,
Alameda

, State of California, described as

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

Dated August 3, 1999

STATE OF CALIFORNIA)
COUNTY OF Contra Costa)ss.

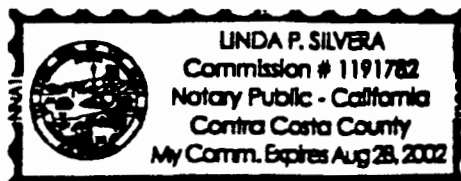
On August 3, 1999
before me, Linda P. Silvera, personally
appeared Selwyn D.J. Vos and Loretta
Soderlund Vos

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Selwyn D.J. Vos
Selwyn D.J. Vos
Loretta Soderlund Vos
Loretta Soderlund Vos



My Comm. Expires Aug. 28, 2002

LEGAL DESCRIPTION

REAL PROPERTY in the City of Mountain House School, County of Alameda, State of California, described as follows:

The Southeast quarter of Section 35, in Township 1 South, in Range 3 East of the Mount Diablo Base and Meridian, according to the United States Public Survey thereof.

Excepting therefrom: Those portions thereof described in the deed from Arden Hans Christensen, a single man, to State of California, dated November 8, 1963, recorded May 20, 1964, on Reel 1207, Image 941, Series No. AW-80211, Alameda County Records.

Also excepting therefrom that portion thereof described in the Deed from Arden H. Christensen to Franklin D. Beck and D'Ette G. Beck, dated January 21, 1972, recorded February 1, 1972, Series No. 72-13886, Reel 3051, Image 958, Alameda County Records.

Also excepting therefrom: All oil, gas, casinghead gasoline and other hydrocarbons and mineral substances below a point 500 feet below the surface of the land, hereinabove described together with the right to take, remove, mine, pass through and dispose of all oil, gas, casinghead gasoline and other hydrocarbons and mineral substances but without any right whatsoever to enter upon the surface of said land, as reserved in the Deed from Ida B. Hayes Christensen, a widow, recorded June 30, 1988, Series No. 88-157279.

A.P. No.: 099B-7010-002-09

EXHIBIT A

AGENCY: Department of General Services

PROJECT: Agnews Mitigation Acquisition

PARCEL: DGS 9860; PROJECT MF 037

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated August 3, 1999 from Selwyn D.J. Vos and Loretta Soderlund Vos to the State of California pursuant to Government Code Section 11011.21(c), is hereby accepted by the undersigned officer on behalf of the State of California and the grantee consents to the recordation thereof by its duly authorized officer.

STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES

Dated: August 16, 1999

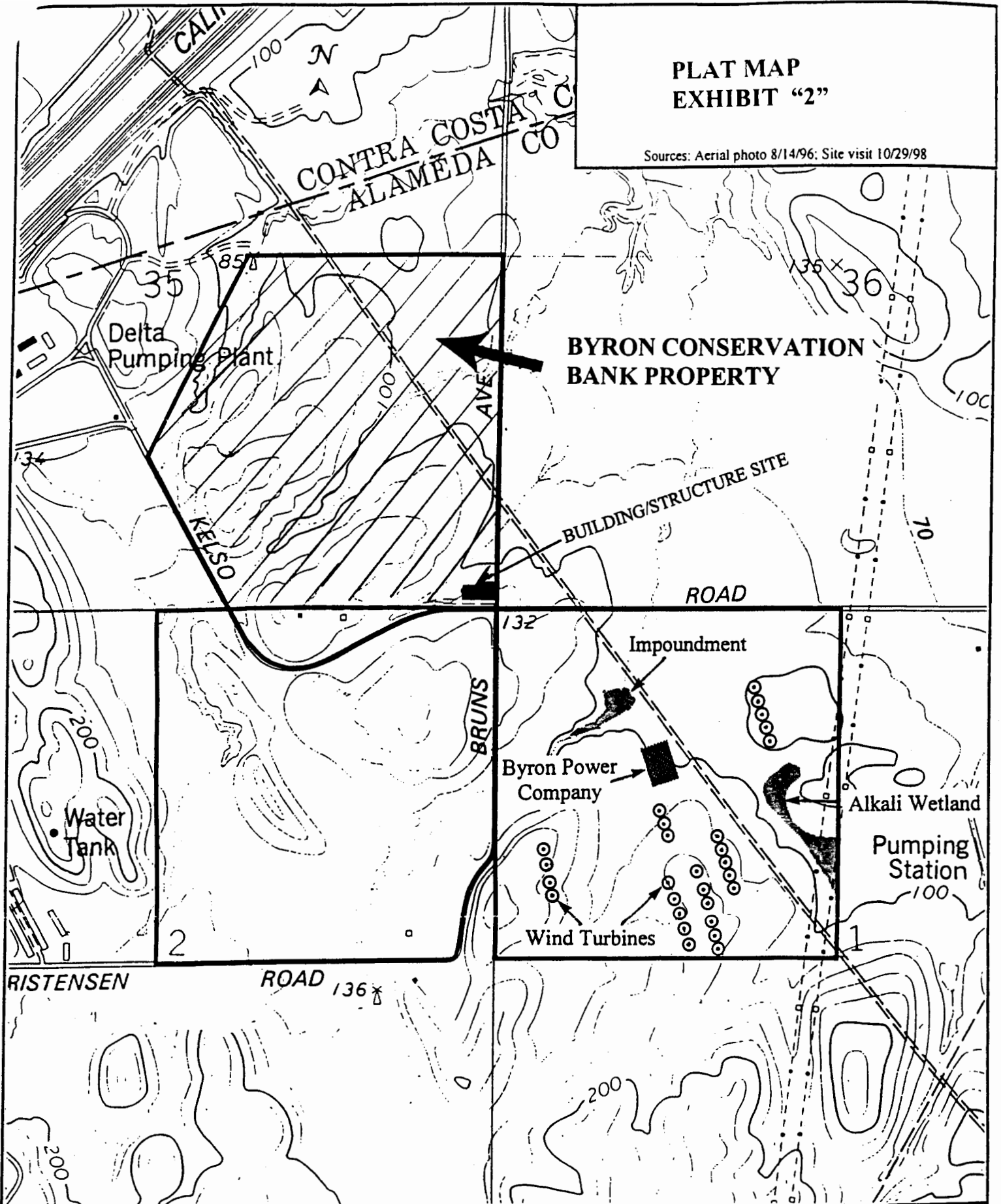
By: 

J. Frank Davidson
Assistant Chief

Department of General Services
Real Estate Services Division
Asset Planning and Enhancement

PLAT MAP EXHIBIT "2"

Sources: Aerial photo 8/14/96; Site visit 10/29/98



Burrowing Owl Habitat
Assessment - APN: Alameda Co. 099B
-7020-1-8; -7010-002-07; -7010-002-09

Biosearch Wildlife Surveys
P.O. Box 8043
Santa Cruz, CA 95060

0 1/4 1/2
Scale in Miles

Source: Clifton Court Forebay USGS 7.5' Series Quadrangle



MEMORANDUM

Date: December 14, 1999

To: Caitlin Bean, ~~Carl Wilcox~~
Department of Fish and Game

From: Department of General Services – Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q Street, Suite 6000, Sacramento, CA 95814-6280

Subject: CORRECTIONS TO CAITLIN BEAN'S 12/10/99 VERSION OF
BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT

Attached is a copy for each of you of the 12/10/99 version of the Agreement and Exhibits H and I which Caitlin and I discussed last Friday. Please note the changes I have made in yellow. These were discussed with Caitlin over the phone last Friday.

I've also attached a copy of all the Exhibit attachments.

As Caitlin and I discussed, we may have to address additional payment by DGS if the biologist identifies (hopefully this week) any necessary initial or start-up enhancement costs.

I sent you an E-mail but because of our different Word Processing programs I don't know if you received a legible copy – that is why I have provided the attached paper copies for your review.

Please let me know if the agreement and attached exhibits are acceptable. Any hopefully, if they are, tell me how I can send original copies to you for signatures.

LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

12/10/99 version

BYRON CONSERVATION BANK
IMPLEMENTATION AGREEMENT

(Tracking No. 1802-1999-035-3)

THIS BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 1999 by and between the California Department of General Services (DGS) and the California Department of Fish and Game ("CDFG"), hereinafter collectively known 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 Conservation Bank. Both parties are agencies and/or departments of the State of California.

RECITALS

A. The parties have previously entered into a Mitigation Agreement (MA), dated April 6, 1998 (Exhibit A) (Tracking No. 1802-1997-072-3), to provide for the conveyance to CDFG of 19.5 acres of land to mitigate adverse impacts to the western burrowing owl caused by developments at the Agnews Development Center West Campus Site (Agnews West Campus) in Santa Clara, California. DGS has acquired approximately 140 acres of real property ("Property") located in the County of Alameda, California (Exhibit B), and more completely described in Exhibit C attached hereto. The Property was acquired to meet DGS's obligations under the MA. The amount of acreage acquired exceeds the obligations of DGS under the MA.

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 § 1802.

C. The Property supports habitat that is suitable for wildlife species including, western burrowing owl (*Speotyto cuniculara*) a state Species-of-Special-Concern; California tiger salamander (*Ambystoma californiense*) ("CTS") a state Species-of-Special-Concern and candidate for federal listing; California red-legged frog (*Rana aurora draytonii*) a federally listed Threatened species and state Species-of-Special-Concern; San Joaquin kit fox (*Vulpes macrotis mutica*) a federally listed Endangered and state listed Threatened species; and, western pond turtle (*Clemmys marmorata*) a state Species-of-Special-Concern, referred to collectively as the "special status species" (Exhibit J, *added* Habitat Map). *deleted (***)*

D. It is anticipated that construction and development activity in the South Bay cities of Santa Clara, San Jose and surrounding communities (a large proportion of which is referred to as the "Credit Area", and further defined in Section 4 of this Agreement), will necessitate the mitigation of impacts to endangered, threatened species, and Species-of-Special Concern and biologically sensitive habitats through the preservation of off-site lands that possess corresponding habitat values. Mitigation of said impacts may require completion of mitigation agreements between project proponents and CDFG. In addition, CDFG is completing negotiations on mitigation agreements for the western burrowing owl in the Credit Area and may enter into other mitigation agreements for other species identified in paragraph C above in the Credit Area.

E. On the terms and conditions hereinafter provided, the parties hereto desire to establish a *added* conservation bank with respect to a portion of the Property (Credit Area Map, Exhibit K) (referred to as the "Byron Conservation Bank", or alternatively, the "Conservation Bank") in order to provide for the long term conservation for special status species that occur on the Property.

F. CDFG has determined that the Bryon Conservation Bank lands are generally suitable to mitigate for impacts to the species identified in Recital D above. Certain rare endemic and/or listed species may not have similar or comparable habitat requirements and the use of the Conservation Bank may not be appropriate to mitigate for impacts to those species. Use of the Bryon Conservation Bank to mitigate for impacts to wildlife and the vegetation communities on which they depend shall be governed by Section 4 of this Agreement.

G. The parties desire to enter in to this Agreement to set forth the terms and conditions pursuant to which the Bryon 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. "Covered Species" means those species that occur on the Property including western burrowing owl, California tiger salamander, California red-legged frog, San Joaquin kit fox, and western pond turtle.
7. "Credit Area" means the geographic area within which impacts that occur may be mitigated through use of conservation credits on the Bryon Conservation Bank consistent with the Agreement.
8. "Endowment Deposit" means the sum of \$1000 per Credit deposited into the Endowment Fund for purposes of perpetually endowing the management of the Conservation Bank lands for the benefit

*deleted
and the Conservation
Easement.*

of biological resources.

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

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

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)) and each Subarea Plan approved by the Wildlife Agencies.

13. "Management Plan" means the management plan prepared for the Conservation Bank lands.

14. "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

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 Bryon Conservation Bank

Establishment of the Conservation Bank will be accomplished by a dedication of the Property to CDFG on behalf of DGS through a Transfer of Control and Possession (TCP) document (Exhibit D). Upon CDFG's acceptance of the TCP, DGS shall be entitled to receive Conservation Credits as provided (and defined) in Section 4 below.

2. Conservation Bank Evaluation and Acceptance.

Representatives of the CDFG have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation Credits. CDFG has also reviewed the "Burrowing Owl Habitat Assessment" and the "California Red-legged Frog, California Tiger Salamander, and Western Pond Turtle Surveys" prepared for DGS by Biosearch Wildlife Surveys, dated November 18, 1998 and July 21, 1999 respectively (Exhibit E.) On the basis of such inspection and evaluation, the CDFG acknowledges and agrees that the Property possesses biological values which support the Conservation Credits acknowledged in Section 4 below.

3. Conveyance.

Dedication for conservation purposes shall begin substantially concurrently with the execution of this Agreement, under the terms and conditions as follows:

- (A) CDFG has received and accepted the following documentation, in part required under the parties MA:

- added Exhibit references*
- (a) A preliminary title report covering the entire property; (Exhibit F)
 - (b) A phase/level I hazardous waste, environmental report; (Exhibit G)
 - (c) Copies of biologist reports and assessments prepared on behalf of DGS; (Exhibit E)
- (B) Within 30 days from the effective date of this agreement, DGS shall deliver CDFG the following:
- (a) A final policy of Title Insurance showing the vesting of fee title with the State of California subject to existing easements, rights of way, and encumbrances as previously accepted by CDFG, including a non-recorded interest of a month to month cattle grazing tenant;
 - (b) A fully executed TCP and supplemental documents, where required, to transfer control and possession to CDFG;
 - (c) Payment of \$10,000, for DGS's habitat preservation obligations under the MA, for deposit into an appropriate fund as designated by CDFG to provide an endowment for the long-term management of the Property as required by the MA. Additional funding for long-term management of the Property will be provided as described in Section 5 below ;
 - (d) Payment of \$3,000 to reimburse CDFG for reasonable expenses incurred to review, approve, and implement this Agreement and TCP as required by the MA.
- (C) No later than 120 days from the effective date of this agreement DGS shall, in consultation with CDFG, prepare a Management Plan ("Plan") for the Property. The Plan shall describe the specific management actions to be taken to maintain the site as habitat for special status species. The Plan shall provide for the implementation of the specific management measures and tasks including those identified in the biologists' reports named above and provided in Exhibit E. The Plan shall also prioritize the importance of the various measures and tasks. Adaptive management measures shall be included in the Plan. The Plan shall be subject to the approval of CDFG, which approval shall not be withheld unreasonably.
- (D) CDFG shall accept the existing warehouse/utility building located at the southeast corner of the Property, and further agrees to co-operate with third parties to make the building, along with all or portions of the entire Property, available to be used for educational purposes for the study, improvement, protection and enhancement of the species and habitat as listed herein. Allowable uses shall be further identified

in the Management Plan.

- (E) Within 60 days of receipt of the TCP from DGS and subject to the approval of the Fish and Game Commission of Wildlife Conservation Board, the Director of CDFG shall execute a certification of the acceptance of the Property. Upon execution, the Property shall be deemed as dedicated and transferred and 19.5 acres (credits) shall be retired from the total Credits available as set forth in Section 4 for mitigation of the western burrowing owl as required under the parties April 6, 1998, Agnews West Campus MA.

Remaining Credits on the Property shall accrue to DGS to be used at its own discretion for mitigation or habitat preservation needs for the special status species including but not limited to the sale of Credits to other third parties for these purposes.

- (F) Upon the above acceptance by CDFG and upon receipt or notice that the \$13,000 to be paid pursuant to Section 3 (B) herein above have been deposited for the benefit of CDFG, the parties agree that notwithstanding obligations as set forth herein, all obligations of the parties under the, April 6, 1998, MA have been met and satisfied. *deleted or replaced with a* *deleted funds & replaced with \$13,000*

4. Conservation Credits

As a result of the benefits accruing to Endangered, Threatened, and Species of Special Concern, upon the establishment of the Conservation Bank and the dedication of land for conservation purposes, Conservation Credits shall be established as follows:

- (A) The Credit Area for the Byron Conservation Bank includes all land within a 40-mile radius of the Property boundary including those areas within the current city limits of the cities of San Jose and Santa Clara. In the event CDFG agrees to or has agreed to a larger geographic area with other third parties for acquiring mitigation properties for the species identified in Recital C above, then such larger geographic area shall govern for projects which may use the Byron Conservation Bank. Projects outside the Credit Area may be eligible to participate in the Conservation Bank at CDFG's sole discretion. Projects within the Credit Area that impact the species or habitat types found at the Conservation Bank site, shall be eligible to participate in the Conservation Bank ("Eligible Projects") upon CDFG's approval, which approval shall not be withheld unreasonably. CDFG shall determine whether to approve a project as an Eligible Project by comparing the type and quality of habitat for the special status species on the project site (i.e., impact site) to the type and quality of habitat for the special status species present on the Conservation Bank.
- (B) CDFG agrees to accept each acre of land within the Conservation Bank as an equivalent of one acre of affected special status species mitigation (each acre to equal one "Conservation Credit"). A total of 139.2 credits are available at the

Conservation Bank with the apportionment of credits among the species as follows:

Western Burrowing Owl	132.3 credits
California Tiger Salamander	136.9 credits
California Red legged Frog	63.4 credits
Western Pond Turtle	139.2 credit
San Joaquin Kit Fox	139.2 credits

*Moved for correct
alignment*

In no event shall the total available Credits on the Conservation Bank exceed 139.2 Credits. Credits may be used among the special status species group but no one Credit shall be used for more than one species. Sale of Credits for impacts to the federally listed Threatened red-legged frog and Endangered San Joaquin kit fox will be subject to review and approval by the U.S. Fish and Wildlife Service.

- (C) DGS shall be entitled to sell or use Conservation Credits for Eligible Projects, including Eligible Projects on properties owned by DGS or controlled by other State agencies. Subject to DGS's obligations under Section 5 below, DGS shall have the exclusive right to determine the price for any and all Conservation Credits offered for sale or conveyance.
- (D) Nothing contained in this Agreement shall be deemed to limit the CDFG's authority under CESA, or any other law, to protect and conserve special status species; provided however, that except as provided in Section 4(A) above, the CDFG will not withhold its consent for Eligible Projects to use Conservation Credits as mitigation on a one acre-for-one credit basis for special status species mitigation.
- (E) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6 below. Conservation Credits will be sold through a Conservation Credit Purchase Agreement in the form substantially the same as shown in Exhibit H attached. When Conservation Credits are sold, DGS will issue to the purchaser an Acknowledgement of Conservation Credits (Exhibit I) which will be submitted to the CDFG to document that the purchaser has intended to satisfy their mitigation obligations through the purchase of Conservation Credits at the Byron Conservation Bank. Upon receipt of the Acknowledgment, CDFG will confirm in writing that the purchaser has fulfilled their mitigation obligations for which purchase of Byron Conservation Bank credits apply. As part of such acknowledgment by CDFG, any security held by CDFG, to assure performance of such mitigation will be released assuming that all other mitigation obligations of the purchaser, if any, have been satisfied. After all the Conservation Credits have been conveyed, no further Conservation Credits shall be acknowledged by CDFG.
- (F) Upon each conveyance or use of Conservation Credits by DGS, the requisite Management/Endowment Deposits shall be delivered to CDFG in accordance with

added

*replaced
has satisfied*

Section 5 below. Additionally, DGS shall deliver to each CDFG and the USFWS (when applicable), a copy of the receipt of such Management/Endowment Deposits executed by DGS.

- (G) Notwithstanding anything to the contrary in this Agreement, in the event that CDFG reasonably determines that portions of the Property have been damaged subsequent to the date of this Agreement, and prior to acceptance by CDFG of the TCP and: (1) the effect of such activity has been to materially impair the habitat values on such damaged property; (2) and DGS has not reasonably restored habitat value to such damaged property, then CDFG may, at its discretion, either reduce the number of Conservation Credits allocated to the property or, if they determine that the habitat values of the Property have been impaired so as to render it unsuitable as a Conservation Bank, terminate this Agreement.

5. Endowment

An endowment will be established through the sale of Credits to provide for the costs of managing and maintaining the Conservation Bank site in perpetuity, including but not limited to maintenance expenses, management costs, monitoring and property enhancements (initial or otherwise). With respect to the conveyance to each Conservation Credit, DGS or the acquirer or purchaser (Purchaser) of such Credits shall deposit with the CDFG at the time of conveyance, the sum of \$1,000.00 for each Conservation Credit so conveyed. The total amount of the endowment to be funded, including DGS's initial deposit of \$10,000 for the "long term management" of the Property under their MA (Clause 5, Page 3) with the Department, will be no greater than \$130,000, One Hundred and Thirty Thousand Dollars, (excluding interest thereon) after the sale or conveyance of all Credits available have been completed. The endowment fund is intended to generate interest at a rate, which would cover the CDFG's annual management and monitoring costs, and to allow the endowment fund pursuant to this clause.

CDFG shall deposit the endowment fund principal in a special deposit account established pursuant to the California Government Code section 16370, and the principal shall not be drawn upon unless CDFG finds such expenditure is essential to protect the biological values and qualities of the Conservation Bank site. Management activities shall include but shall not be limited to, costs of attorneys, reasonable administrative overhead, habitat enhancement, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat values in perpetuity.

6. Database for Conservation Bank Transactions

A database shall be established in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG had been notified in writing that all Conservation Credits have been conveyed, DGS (or any successor in interest) shall be responsible for maintaining a numerical accounting ("Ledger") of the Credits sold or conveyed during any

calendar year. Concurrent with the delivery of any Endowment Deposits in accordance with Section 5 above, DGS shall deliver to CDFG (or its manager-assignee) an updated database of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. The database maintained by DGS shall include the number of Conservation Credits sold or conveyed, the name of the entity receiving the Conservation Credits, a description of the project for which the Conservation Credits were purchased, the location of the project, the date of sale or conveyance, the total number of Credits sold or conveyed and the total number of Credits remaining. The DGS shall provide the database to CDFG within thirty days of each Credit transaction and upon written request. Additionally, DGS shall deliver to CDFG, on or before December 31 of each year, a report covering the prior calendar year that contains all the information described above.

7. Term of Agreement; Termination Rights

- (A) Unless sooner terminated by mutual written agreement of CDFG and DGS, this Agreement shall terminate on the earlier to occur of: (i) the filing of the final annual report to CDFG indicating all credits have been sold, provided that the Endowment Fund obligations have been met, an approved Management Plan has been provided, and the TCP has been delivered, or (ii) the date 30 years from the date of this Agreement.
- (B) Notwithstanding anything to the contrary contained in this Agreement, once a Conservation Bank has been dedicated in accordance with Section 3 above, (i) DGS shall be entitled to CDFG's acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) DGS shall remain liable for the delivery of the Endowment Deposits where required in connection with the conveyance of any such Conservation Credits, as provided in Section 5 above.

8. Cooperation

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

- (A) Confirming in writing to DGS prospective Credit Purchasers that Conservation Credits are available to offset special status species impacts described above.
- (B) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 5 above.
- (C) Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.
- (D) Acknowledging that the Bryon Conservation Bank is a conservation bank

approved” by the CDFG; including the placing of the Bryon Conservation Bank on a list to be maintained by the Resource Agencies 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 special status species mitigation is disclosed to the CDFG.

- (E) Compliance with co-operation requirements as defined in section 3(D) herein above.
- (F) At DGS’s request, provide copies of all MA’s covering the special status species identified in recital C above within the Credit Area. CDFG will work with DGS to assure that DGS is aware of entities within the Credit area, with current or pending MA’s for the species.

9. Entire Agreement

This Agreement, its related Exhibits, and the Management Plan (once it is prepared) 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.

10. 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.

11. Modification

This Agreement is not subject to modification except in 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.

12. Notices

All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile transmission, or mailing to:

DGS: Department of General Services
Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q St. Suite 6000
Sacramento, California 95814

ATTN: Larry M. Buczyk, Senior Real Estate Officer

(Phone) (916) 323-5528
(Fax No.) (916) 327-9654

CDFG: Regional Manager
Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

ATTN: Carl Wilcox, Environmental Program Manager
(Phone) (707) 944-5525
(Fax No.) (707) 944-5563

With a copy to: General Counsel
California Department of Fish and Game
1416 9th Street, 13th Floor
Sacramento, CA 95814

(Phone) (916) 654-3821
(Fax No.) (916) 654-3805

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept Facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

13. Exhibits

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

14. Assignment

Any sale or assignment of this Agreement or any of the rights or obligations hereunder is void absent the written consent of both CDFG and DGS; provided, however, that no consent shall be required for assignment of pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of DGS; or (b) as security for a debt under the provision of any mortgage, deed or trust, indenture, bank credit agreement, or similar instrument.

15. Further Actions

From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties.

16. Disclaimer

DGS understands and recognizes that this Agreement does not constitute or imply that the Conservation Bank or Conservation Credits fulfill requirements of state or federal laws or regulations beyond the authority or jurisdiction of CDFG and does not create an entitlement to proceed in any Eligible Project.

17. Effective Date

This Agreement shall be immediately effective upon the date the last party executes the agreement on behalf of CDFG and DGS.

Executed by the last party this _____ day of _____ 1999

CDFG:

DGS:

BY: _____

BY: _____

Brian Hunter, Regional Manager
Central Coast Region
CALIFORNIA DEPARTMENT
OF FISH AND GAME

J. Frank Davidson, Assistant Chief
Asset Planning and Enhancement Branch
CALIFORNIA DEPARTMENT OF
GENERAL SERVICES

added
AS TO FORM: _____
Ron Small, General Counsel
Department of General Services

replaced parcel map

EXHIBITS

replaced legal description

- Exhibit A - Mitigation Agreement, April 6, 1998
- Exhibit B - General location map and Assessor's Plat Map of Bank Property
- Exhibit C - Legal description of Bank Property
- Exhibit D - Transfer of Control and Possession
- Exhibit E - Biological Assessments Dated November 18, 1998 and July 21, 1999
- Exhibit F - Title Report
- Exhibit G - Level I Environmental Contaminants Survey
- Exhibit H - Conservation Credit Purchase Agreement
- Exhibit I - Conservation Credit Purchase Acknowledgment
- Exhibit J - Habitat Map
- Exhibit K - Credit Area

Added

EXHIBIT H

BYRON CONSERVATION BANK CONSERVATION CREDIT PURCHASE AGREEMENT

RECITALS

This Agreement is made and entered into the _____ day of _____, _____ (Effective Date) between the State of California, Department of General Services (DGS), Seller, and _____ (Purchaser) for the sale and purchase of Conservation Credits held at the Byron Conservation Bank.

Whereas, The State of California, through the Department of General Services (DGS), is the owner/administrator of the Byron Conservation Bank (Conservation Bank) located in the northeastern corner of Alameda County, near the town of Byron (depicted on attached Exhibit A). The Bank was established to provide for mitigation of adverse impacts to habitat of various wildlife species affected by State construction projects within the Credit Area; and,

Whereas, The Land Bank has been authorized by the California Department of Fish and Game (CDFG) pursuant to the Byron Conservation Bank Implementation Agreement, dated _____, and has received approval of CDFG to operate as a Conservation Bank with habitat credits available for sale for the special status species identified below, with available conservation credits on a basis of a 1 acre = 1 unit of conservation credit. A maximum total of 139.2 credits are designated in the Conservation Bank.

Western Burrowing Owl	(<i>Speotyto cuniculara</i>)	132.2 credits
California Tiger Salamander	(<i>Ambystoma californiense</i>)	136.9 credits
California Red legged frog	(<i>Rana aurora draytonii</i>)	63.4 credits
Western Pond Turtle	(<i>Clemmys marmorata</i>)	139.2 credits
San Joaquin Kit Fox	(<i>Vulpes macrotis mutica</i>)	132.2 credits

Whereas, DGS has determined that excess credits will be available at the Land Bank and intends to offer credits for sale to purchasers selected by DGS as providing the greatest benefit to the State of California; and

Whereas, the Project Proponent is seeking to implement the project described on Exhibit B, attached hereto (Project), which would unavoidably and adversely impact habitat thereon, and seeks to compensate for the loss of habitat by purchasing habitat conservation credits from the Bank; and

added
Whereas, the Proponent's proposed project has been authorized by CDFG under Mitigation Agreement (or Permit) Number _____; *deleted*

To purchase from the Bank (amount and species) habitat credits;

Now therefore, the parties agree to arrange for the sale and purchase of Conservation Credits under the terms and conditions set forth herein.

TERMS AND CONDITIONS

Credits to be sold

1. DGS agrees to sell to _____ (Purchaser) _____ units of mitigation credit(s) for the _____ (named species) which is known to occur at the Byron Conservation Bank. Each credit shall equate to one acre of habitat as approved and accepted by CDFG.

Consideration/Sales Price

2. The purchase price shall be based on the amount of \$ _____ per credit unit. The total purchase price to be paid by Purchaser (excluding other fees herein described) is \$ _____, and shall be made by check, draft or money order payable to the STATE OF CALIFORNIA, **DEPARTMENT OF GENERAL SERVICES.**
3. Purchaser agrees to pay an additional sum (endowment fund) to be used for the maintenance and management of the Conservation Bank. This payment shall be \$1,000 per credit unit purchased. A total payment for the endowment fund shall be \$ _____, and shall be made by check, draft or money order payable to the STATE OF CALIFORNIA, **DEPARTMENT OF FISH AND GAME.**

Satisfaction of CDFG Mitigation

4. Within 10 days after the effective date of this Agreement DGS shall notify CDFG of a pending sale to the Purchaser and shall arrange for a letter notification from CDFG to the Purchaser indicating the acceptability or non-acceptability of the Conservation Credits as mitigation to comply with CDFG requirements imposed or to be imposed on Purchaser's project(s). Said notification letter shall also address, if appropriate, the disposition of any deposits made by the Purchaser under its Mitigation Agreement with CDFG.

The Parties agree that consideration to be paid in clauses 2 and 3 of this

Agreement shall be made within 15 days after Purchaser's receipt of an acceptable notification by CDFG as provided herein above. Purchaser retains the right to cancel this Agreement if the notification is unacceptable and shall, within the 15 days after receipt of the unacceptable CDFG notification, provide a written request to DGS to terminate this Agreement.

Notices

5. All notices or other communications required or permitted hereunder including transmittal of payments shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by electronic facsimile, where available and appropriate, to the facsimile numbers set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, or (iii) if given by electronic facsimile, when received by the other party if received Monday through Friday between 9:00 am and 5:00 p.m. so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is a Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

TO DGS:

State of California
Department of General Services
Real Estate Services Division
1102 Q Street, Suite 6000
Sacramento, California 95814-6511

Attention: Larry M. Buczyk
Telephone: (916) 323-5528
Telefacsimile: (916) 327-9654

TO THE PURCHASER:

Representations

6. This transaction involves the sale and conveyance of Conservation Credits only, from the property designated as the Byron Conservation Bank. The sale does not include any real property rights and the State of California shall retain ownership and fee title in the property.

Educational Uses of the Property

7. The Purchaser agrees to co-operate with the State of California to encourage and promote educational uses of the Conservation Bank property for the study, improvement, protection and enhancement of the species and habitat located on the property. Any use of the property shall be subject to restrictions imposed by CDFG in accordance with the Management Plan prepared for the property.

Effective Date *- added*

8. This Agreement shall commence on the herein effective date.

Federal Approval

9. Sales of Conservation Credits for the federally listed Threatened California red-legged frog and Endangered San Joaquin kit fox are subject to review and approval by the U.S. Fish and Wildlife Service. Such approval where necessary shall be obtained by DGS from USFWS and shall be included in the Notification of Acceptance referred to in Clause 5 herein above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as to the date herein above set forth.

SELLER:

PURCHASER:

**STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES**

By: _____

By _____

J. Frank Davidson
Assistant Chief, Real Estate Services Division
Asset Planning and Enhancement Branch

replaces
"sold and conveyed"
EXHIBIT I

CONSERVATION CREDIT PURCHASE ACKNOWLEDGMENT

The undersigned Seller, Department of General Services, hereby acknowledges that it has entered into an Agreement to sell and convey to (Purchaser), (e.g. four (4)) Conservation Credits from the Byron Conservation Bank. All terms of this conveyance shall be governed by the provision of the Conservation Credit Purchase Agreement between Purchaser and the undersigned dated _____, 2000.

deleted "and"

SELLER:

DEPARTMENT OF GENERAL SERVICES

By: _____

Name: _____

Its: _____

PURCHASER:

By: _____

Name: _____

Its: _____

Dated: _____

Byron
1802-199-035-3
035

**CESA MOU (Section 2081/2090)
TRACKING SURNAME COVER SHEET**

Applicant: Dept General Services Tracking # 1802-199-035-3
(From ESD - HQ)

Project Name: Byron Land Bank
(From CESA MOU title page)

REGION (To be completed by Region originating CESA MOU - Please PRINT full names)

<u>CAR Wilcox</u> _____ DFG Representative (Lead Contact)	<u>707-944-5525</u> _____ Telephone
<u>P.O. Box 47</u> _____ <u>Yountville CA 94599</u> _____ Address	<u>707-944-5563</u> _____ Fax

<u>Initials</u> <u>CGW</u> _____ Initials	<u>ES Functional Staff or other reviewer</u> <u>CG Wilcox</u> _____ Environmental Services Supervisor	<u>Date Forwarded</u> <u>10/15/99</u> _____ Date Forwarded
<u>Initials</u> <u>BLA</u> _____ Initials	<u>Regional Manager</u> <u>Burt</u> _____ Regional Manager	<u>10-18-99</u> _____ Date Forwarded

(ALL INFORMATION ABOVE THIS LINE MUST BE COMPLETED PRIOR TO SUBMISSION TO HQ)

HEADQUARTERS

<u>Initials</u> _____ Initials	<u>ESD Reviewer</u> _____ ESD Supervisor	<u>Date Forwarded</u> _____ Date Forwarded
<u>Initials</u> _____ Initials	<u>Division Chief(s)</u> _____ Division Chief(s)	<u>Date Forwarded</u> _____ Date Forwarded
<u>Initials</u> _____ Initials	<u>DFG Staff Counsel</u> _____ DFG Staff Counsel	<u>Date Forwarded</u> _____ Date Forwarded
<u>Initials</u> _____ Initials	<u>General Counsel</u> _____ General Counsel	<u>Date Forwarded</u> _____ Date Forwarded

Memorandum

To : Ms. Susan Cochrane
Habitat Conservation Planning Branch

Date: October 18, 1999

From : **Department of Fish and Game - Post Office Box 47, Yountville, California 94599**

Subject: Mitigation Bank Agreement For The Byron Land Bank (Tracking
Number 1802-1999-035-3), Alameda County

Attached are signed copies of the subject conservation banking agreement with the Department of General Services. The Agreement was developed in consultation with Juliette Virtue in the Legal Advisors' Office. Please review and approve for signature by the Department. The Agreement follows up on Mitigation Agreement No. 1802-1999-035-3.

Questions concerning this agreement should be directed to Carl Wilcox, Environmental Services Supervisor at (707) 944-5525.



Brian Hunter
Regional Manager
Central Coast Region

Attachments

**BYRON CONSERVATION BANK
IMPLEMENTATION AGREEMENT
(Tracking No. 1802-1999-035-3)**

THIS BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "Agreement") is made and entered into this ____ day of September, 1999 by and between the California Department of General Services (DGS) and the California Department of Fish and Game ("CDFG"), hereinafter collectively known as the parties. Both parties are agencies and/or departments of the State of California.

RECITALS

A. The parties have previously entered into a Mitigation Agreement (MA) dated April 6, 1998 (Tracking No. 1802-1997-072-3) to provide for the conveyance to CDFG of 19.5 acres of land to mitigate adverse impacts to the Western Burrowing Owl caused by developments at the Agnews Development Center West Campus Site (Agnews West Campus) in Santa Clara, California. DGS is acquiring by exchange approximately 140 acres of real property located in the County of Alameda, California and more completely described in Exhibit A attached hereto ("Property") which was acquired to meet DGS's obligations under the MA. The amount of acreage being acquired exceeds the obligations of DGS under the MA.

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 § 1802.

C. The Property supports a variety of endangered, threatened and special concern wildlife species including, without limitation, the Western Burrowing Owl (*Speotyto cuniculara* or *Athena cuniculara*); the California tiger salamander (*Ambystoma tigrinum californiense*) ("CTS"); the California red-legged frog (*Rana aurora draytonii*); the San Joaquin Kit Fox (*Vulpes macrotis mutica*); and, the Western Pond Turtle (*Clemmys marmorata*), referred to collectively as "the listed species".

D. It is anticipated that construction and development activity in the South Bay cities of Santa Clara, San Jose and surrounding communities (a large proportion of which is referred to as the "Credit Area", and further defined in Section 4 of this Agreement), will necessitate the mitigation of impacts to endangered, threatened, and species of special concern and biologically sensitive habitats through the preservation of off-site lands that possesses corresponding habitat values for "the listed species". Mitigation of said impacts may require completion of Mitigation Agreements between developers or property owners and CDFG. In addition, CDFG is completing negotiations on mitigation agreements for the Western Burrowing Owl in the Credit Area and may enter into other mitigation agreements for other species identified in paragraph C above in the Credit Area.

E. On the terms and conditions hereinafter provided, the parties hereto desire to establish a conservation bank with respect to portions of the Property (referred to as the BYRON CONSERVATION BANK, or alternatively, the "Conservation Bank") in order to provide for the long term conservation of such portions of the Property, the use of such land as mitigation as provided in Recital D above, and the sale or transfer of conservation bank credits, where available, by DGS to third party purchasers to mitigate the impacts of eligible projects affecting the listed species.

F. The parties desire to enter in to this Agreement to set forth the terms and conditions pursuant to which the BYRON CONSERVATION BANK will be established and implemented.

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 CONSERVATION BANK

Establishment of the Conservation Bank will be accomplished by a dedication of the property to CDFG on behalf of DGS through a Transfer of Control and Possession (TCP) document. Upon CDFG acceptance of the TCP, DGS shall be entitled to receive Conservation Credits as provided (and defined) in Section 4 below.

2. Conservation Bank Evaluation and Acceptance.

Representatives of the CDFG have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation credits. On the basis of such inspection and evaluation, the CDFG acknowledges and agrees that the Property possesses biological values which support the Conservation credits acknowledged in Section 4 below.

3. Conveyance.

Dedication for conservation purposes shall begin substantially concurrently with the execution of this Agreement, under the terms and conditions as follows:

- (a) CDFG has received and accepted the following documentation, in part required under the parties MA:
 - (i) A preliminary title report covering the entire property;
 - (ii) A phase/level I hazardous waste, environmental report;
 - (iii) Copies of biologist reports and assessments prepared on behalf of DGS;
- (b) Within 30 days from the effective date of this agreement, DGS shall deliver to CDFG the following:
 - (i) A final policy of Title Insurance showing the vesting of fee title with the State of California subject to existing easements, rights of way, and encumbrances as previously accepted by CDFG, including a non-recorded interest of a month to month cattle grazing tenant;
 - (ii) A fully executed (TCP) and supplemental documents, where required, to transfer control and possession to CDFG;

- (iii) Payment of \$10,000 for deposit into an appropriate fund as designated by CDFG to provide an endowment for the long-term management of the property as required by the MA;
 - (iv) Payment of \$3,000 to reimburse CDFG for reasonable expenses incurred to review, approve, and implement this Agreement and TCP as required by the MA.
- (c) Within 120 days from the effective date of this agreement DGS shall deliver to CDFG a Management Plan (the plan) for the site that describes the management actions to be taken to maintain the site as habitat for "the listed species". This plan will address the issues identified in the biologists reports on November 18, 1998 (Burrowing Owls) and July 21, 1999 (CTS and aquatic species).
- (d) CDFG agrees that upon acceptance of the property and in consideration of the property's suitable present condition as acceptable habitat for "the listed species", it shall waive any initial improvement or enhancement fees required in the parties MA.
- (e) CDF shall accept the existing warehouse/utility building located at the southeast corner of the property, and further AGREES to co-operate with third parties to make the building, along with all or portions of the entire property, available to be used for educational purposes for the study, improvement, protection and enhancement of the species and habitat as listed herein.
- (f) Within 60 days of receipt of the TCP from DGS and subject to the approval of the Fish and Game Commission or Wildlife Conservation Board the Director of CDFG shall execute a certificate of acceptance for the property. Upon execution, the property shall be deemed as dedicated and transferred and 19.5 acres (credits) shall be retired from the total credits available as set forth in Section 4 for mitigation of the Western Burrowing Owl as required under the parties April 6, 1998 Agnews West Campus Mitigation Agreement.

Remaining credits on the property shall accrue to DGS to be used at its own discretion for mitigation or habitat preservation needs for the listed species including but not limited to the sale or credits to other third parties for these purposes.

- (g) Upon the above acceptance by CDFG and upon receipt or notice that the funds to be paid pursuant to Section 3 (b) herein above have been deposited for the benefit of CDFG, the parties AGREE that notwithstanding obligations as set forth herein, all obligations of the parties under the April 6, 1998 MA have been met and satisfied.

4. Conservation Credits

As a result of the considerable size, the benefits accruing to endangered, threatened, sensitive and special concern species and their habitat upon the establishment of the Conservation Bank and the dedication of land for conservation purposes, Conservation Credits shall be established as follows:

- (a) Credit Area Description - The Credit Area for the BYRON CONSERVATION BANK includes all land within a 40-mile radius of the property boundary including those areas within the current city limits of the cities of San Jose and Santa Clara. In the event CDFG agrees to or has agreed to a larger geographic area with other third parties for acquiring mitigation properties for the species identified in recital C above, then such larger

geographic area shall govern for projects which may use the BYRON CONSERVATION BANK. Projects outside the Credit Area may be eligible to participate in the Conservation Bank at CDFG's sole discretion. Projects within the Credit Area that impact the listed species, or habitat types found at the Conservation Bank site, shall be eligible to participate in the Conservation Bank ("Eligible Projects") upon CDFG's approval, which approval shall not be withheld unreasonably. CDFG shall determine whether to approve a project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the Conservation Bank.

- (b) CDFG agrees to accept each acre of land within the Conservation Bank as an equivalent of one acre of affected listed species mitigation (each acre to equal one "Conservation Credit"). A total of 139.2 credits are available at the Conservation Bank with the apportionment of credits among the listed species as follows:

Western Burrowing Owl	132.3 credits
California Tiger Salamander	136.9 credits
California Red legged Frog	63.4 credits
Western Pond Turtle	139.2 credits
San Joaquin Kit Fox	139.2 credits

In no event shall the total available credits on the Conservation Bank property exceed 139.2 credits. Credits may be used among the listed species group but no one credit shall be used for more than one specie. Sale of credits for impacts to the federally listed threatened red-legged frog and endangered San Joaquin Kit Fox will be subject to review and approval by the U.S. Fish and Wildlife Service.

- (c) DGS shall be entitled to sell or use Conservation Credits for Eligible Projects, including Eligible Projects on properties owned by DGS or controlled by other State agencies.. Subject to DGS's obligations under Section 5 below, DGS shall have the exclusive right to determine the price for any and all Conservation credits offered for sale or conveyance.
- (d) Nothing contained in this Agreement shall be deemed to limit the CDFG's authority under CESA, or any other law, to protect and conserve endangered, threatened or species of special concern; provided however, that except as provided in Section 4(a) above, the CDFG will not withhold its consent for Eligible Projects to use Conservation Credits as mitigation on a one acre-for-one credit basis for listed species mitigation.
- (e) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6 below.
- (f) Upon each conveyance of use of Conservation Credits by DGS, the requisite Endowment Deposits and Endowment Agreements (where required as hereinafter defined) shall be delivered in accordance with Section 5 below.

5. Endowment

An endowment will be established through the sale of Credits to provide for the costs of maintaining the Conservation Bank site in perpetuity, including but not limited to maintenance expenses, management costs, monitoring and property enhancements (initial or otherwise). With respect to the

conveyance to each Conservation Credit, DGS or the acquirer or purchaser (Purchaser) of such credits shall deposit with the CDFG at the time of conveyance, the sum of \$1,000.00 for each Conservation Credit so conveyed. The total amount of the endowment to be funded, including DGS's initial deposit of \$10,000 for the "long term management" of the property under their MA (Clause 5, Page 3) with the Department, will be no greater than \$130,000, One Hundred and Thirty Thousand Dollars, (excluding interest thereon) after the sale or conveyance of all credits available have been completed.

The endowment fund is intended to generate interest at a rate, which would cover the CDFG's annual management and monitoring costs, and to allow the endowment fund pursuant to this clause.

The CDFG shall deposit the endowment fund principal in a special deposit account established pursuant to the California Government Code section 16370, and the principal shall not be drawn upon unless the CDFG find such expenditure is essential to protect the biological values and qualities of the Conservation Bank site. Management activities shall include but shall not be limited to, costs of attorneys, reasonable administrative overhead, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat values in perpetuity.

6. Database for Conservation Bank Transactions

A database shall be established in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG had been notified in writing that all Conservation Credits have been conveyed, DGS (or any successor in interest) shall be responsible for maintaining a numerical accounting of the credits sold or conveyed during any calendar year. Concurrent with the delivery of any Endowment Deposits in accordance with Section 5 above, DGS shall deliver to CDFG (or its manager-assignee) an updated database of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. The database maintained by DGS shall include the number of Conservation Credits sold or conveyed, the name of the entity receiving the Conservation Credits, a description of the project for which the Conservation Credits were purchased, the location of the project, the date of sale or conveyance, the total number of credits sold or conveyed and the total number of credits remaining. The DGS shall make the database available to the CDFG with each Credit transaction and upon written request.

7. Term of Agreement; Termination Rights

(a) Unless sooner terminated by mutual written agreement of CDFG and DGS, this Agreement shall terminate on the earlier to occur of: (i) the date all Conservation Credits have been conveyed by DGS, or (ii) the date 30 years from the date of this Agreement.

(b) Notwithstanding anything to the contrary contained in this Agreement, once a Conservation Bank has been dedicated in accordance with Section 3 above, (i) DGS shall be entitled to CDFG's acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) DGS shall remain liable for the delivery of the endowment Deposits where required in connection with the conveyance of any such Conservation Credits, as provided in Section 5 above.

8. Cooperation

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

- (a) Confirming in writing to prospective Credit Purchasers that Conservation Credits are available to offset listed species impacts described above.
- (b) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 5 above.
- (c) Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.
- (d) Acknowledging that the BYRON CONSERVATION BANK is a conservation bank "approved" by the CDFG; including the placing of the BYRON CONSERVATION BANK on a list to be maintained by the Resource Agencies 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 "listed species" mitigation is disclosed to the CDFG.
- (e) Compliance with co-operation requirements as defined in section 3(e) herein above.
- (f) At DGS's request, provide copies of all mitigation agreements covering the listed species in recital C above within the Credit Area. CDFG will work with DGS to assure that DGS is aware of entities within the Credited area, with current or pending MA's for the listed species.

9. 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.

10. 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.

11. Modification

This Agreement is not subject to modification except in 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.

12. Notices

All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile transmission, or mailing to:

DGS: Department of General Services
Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q St. Suite 6000
Sacramento, California 95814

ATTN: Larry M. Buczyk, Senior Real Estate Officer

(Phone) (916) – 323-5528
(Fax No.) (916) -327-9654

CDFG: Regional Manager
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

(Fax No.) (707) – 944-5517

With a copy to: General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

(Fax No.) (916) – 654-3805

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept Facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

13. Exhibits:

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

14. Assignment:

Any sale or assignment of this Agreement or any of the rights or obligations hereunder is void absent the written consent of both CDFG and DGS; provided, however, that no consent shall be required for assignment of pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of DGS; or (b) as security for a debt under the provision of any mortgage, deed or trust, indenture, bank credit agreement, or similar instrument.

15. Further Actions:

From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties.

16. Disclaimer

DGS understands and recognizes that this Agreement does not constitute or imply that the Conservation Bank or Conservation Credits fulfill requirements of state or federal laws or regulations beyond the authority or jurisdiction of CDFG and does not create an entitlement to proceed in any Eligible Project.

17. Effective Date:

This Agreement shall be immediately effective upon the date the last party executes the agreement on behalf of CDFG and DGS.

Executed by the last party this _____ day of _____ 1999

CDFG:

BY: Brian Hunter

Brian Hunter, Regional Manager
THE CALIFORNIA DEPARTMENT
OF FISH AND GAME

DGS:

BY: J. Frank Davidson

J. Frank Davidson, Assistant Chief
Asset Planning and Enhancement Branch

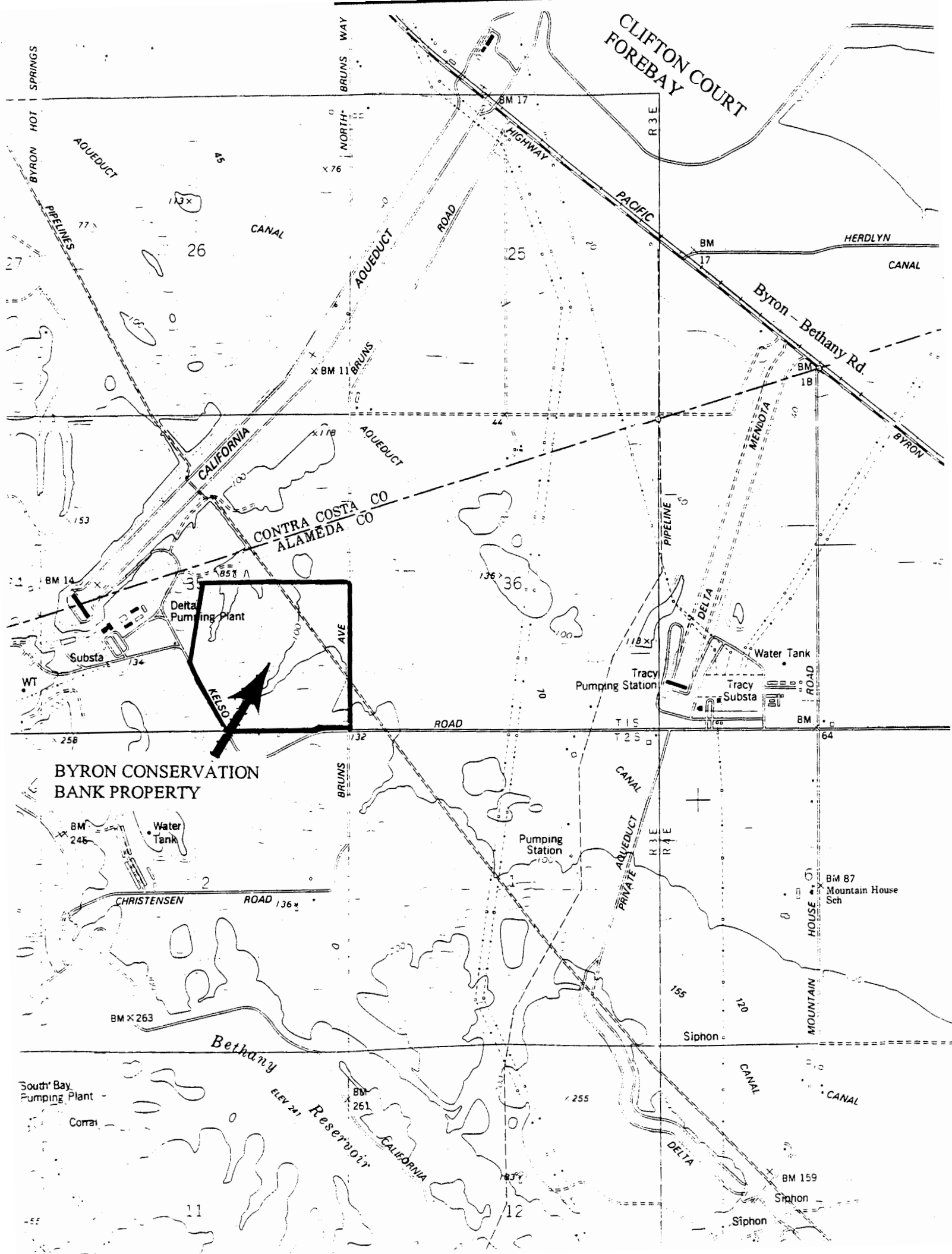
Approved as to form: _____ Date: _____

Craig Manson, General Counsel
California Department of Fish and Game

Ron Small

Ron Small, General Counsel
Department of General Services

Date: 9-8-95




Ms. Susan Cochrane
Habitat Conservation Planning Branch

October 18, 1999

Mitigation Bank Agreement For The Byron Land Bank (Tracking
Number 1802-1999-035-3), Alameda County

Attached are signed copies of the subject conservation
banking agreement with the Department of General Services. The
Agreement was developed in consultation with Juliette Virtue in
the Legal Advisors' Office. Please review and approve for
signature by the Department. The Agreement follows up on
Mitigation Agreement No. 1802-1999-035-3.

Questions concerning this agreement should be directed to
Carl Wilcox, Environmental Services Supervisor at (707) 944-5525.


Brian Hunter
Regional Manager
Central Coast Region

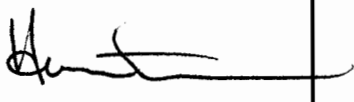
Attachments

CGW/jp

bc: Wilcox

SURNAME

FG-455 (REV. 1/92)





MEMORANDUM

Date: September 8, 1999

To: Carl Wilcox
Environmental Services Supervisor
California Department of Fish and Game
7329 Silverado Trail
Napa, CA 94558

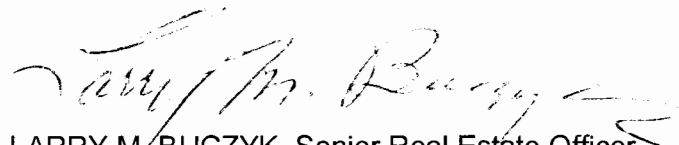
From: Department of General Services – Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q Street, Suite 6000, Sacramento, CA 95814-6280

Subject: Byron Land Bank Agreement (VOS Acquisition)

Enclosed are five copies of the Byron Conservation Bank Implementation Agreement signed by representatives of the Department of General Services covering a 140 acre parcel purchased by the Department of General Services for mitigation purposes. The wording in the document incorporates the changes you and your legal staff had requested.

Please arrange to have all copies of the document signed and dated (pages 1 and 8). Please retain copies for your files and return the remaining signed documents to me. Upon receipt, I shall prepare the necessary transfer of the property to your department in accordance with the terms of the Agreement.

Thank you for your assistance and I look forward to working with you and your staff to implement the Land Bank of this property.


LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

LMB:ts:Larry9-8-99toWilcoxrebyronlandbank.doc

cc: Agnews Team



MEMORANDUM

Date: September 8, 1999

To: Carl Wilcox
Environmental Services Supervisor
California Department of Fish and Game
7329 Silverado Trail
Napa, CA 94558

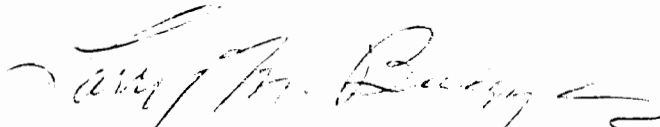
From: Department of General Services – Real Estate Services Division
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Thank you for your assistance and I look forward to working with you and your staff to implement the Land Bank of this property.


LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

LMB:ts:Larry9-8-99toWilcoxrebyronlandbank.doc

cc: Agnews Team

**BYRON CONSERVATION BANK
IMPLEMENTATION AGREEMENT
(Tracking No. 1802-1999-035-3)**

THIS BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "Agreement") is made and entered into this ____ day of September, 1999 by and between the California Department of General Services (DGS) and the California Department of Fish and Game ("CDFG"), hereinafter collectively known as the parties. Both parties are agencies and/or departments of the State of California.

RECITALS

A. The parties have previously entered into a Mitigation Agreement (MA) dated April 6, 1998 (Tracking No. 1802-1997-072-3) to provide for the conveyance to CDFG of 19.5 acres of land to mitigate adverse impacts to the Western Burrowing Owl caused by developments at the Agnews Development Center West Campus Site (Agnews West Campus) in Santa Clara, California. DGS is acquiring by exchange approximately 140 acres of real property located in the County of Alameda, California and more completely described in Exhibit A attached hereto ("Property") which was acquired to meet DGS's obligations under the MA. The amount of acreage being acquired exceeds the obligations of DGS under the MA.

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 § 1802.

C. The Property supports a variety of endangered, threatened and special concern wildlife species including, without limitation, the Western Burrowing Owl (*Speotyto cuniculara* or *Athena cuniculara*); the California tiger salamander (*Ambystoma tigrinum californiense*) ("CTS"); the California red-legged frog (*Rana aurora draytonii*); the San Joaquin Kit Fox (*Vulpes macrotis mutica*); and, the Western Pond Turtle (*Clemmys marmorata*), referred to collectively as "the listed species".

D. It is anticipated that construction and development activity in the South Bay cities of Santa Clara, San Jose and surrounding communities (a large proportion of which is referred to as the "Credit Area", and further defined in Section 4 of this Agreement), will necessitate the mitigation of impacts to endangered, threatened, and species of special concern and biologically sensitive habitats through the preservation of off-site lands that possesses corresponding habitat values for "the listed species". Mitigation of said impacts may require completion of Mitigation Agreements between developers or property owners and CDFG. In addition, CDFG is completing negotiations on mitigation agreements for the Western Burrowing Owl in the Credit Area and may enter into other mitigation agreements for other species identified in paragraph C above in the Credit Area.

E. On the terms and conditions hereinafter provided, the parties hereto desire to establish a conservation bank with respect to portions of the Property (referred to as the BYRON CONSERVATION BANK, or alternatively, the "Conservation Bank") in order to provide for the long term conservation of such portions of the Property, the use of such land as mitigation as provided in Recital D above, and the sale or transfer of conservation bank credits, where available, by DGS to third party purchasers to mitigate the impacts of eligible projects affecting the listed species.

F. The parties desire to enter in to this Agreement to set forth the terms and conditions pursuant to which the BYRON CONSERVATION BANK will be established and implemented.

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 CONSERVATION BANK

Establishment of the Conservation Bank will be accomplished by a dedication of the property to CDFG on behalf of DGS through a Transfer of Control and Possession (TCP) document. Upon CDFG acceptance of the TCP, DGS shall be entitled to receive Conservation Credits as provided (and defined) in Section 4 below.

2. Conservation Bank Evaluation and Acceptance.

Representatives of the CDFG have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation credits. On the basis of such inspection and evaluation, the CDFG acknowledges and agrees that the Property possesses biological values which support the Conservation credits acknowledged in Section 4 below.

3. Conveyance.

Dedication for conservation purposes shall begin substantially concurrently with the execution of this Agreement, under the terms and conditions as follows:

(a) CDFG has received and accepted the following documentation, in part required under the parties MA:

- (i) A preliminary title report covering the entire property;
- (ii) A phase/level I hazardous waste, environmental report;
- (iii) Copies of biologist reports and assessments prepared on behalf of DGS;

(b) Within 30 days from the effective date of this agreement, DGS shall deliver to CDFG the following:

- (i) A final policy of Title Insurance showing the vesting of fee title with the State of California subject to existing easements, rights of way, and encumbrances as previously accepted by CDFG, including a non-recorded interest of a month to month cattle grazing tenant;
- (ii) A fully executed (TCP) and supplemental documents, where required, to transfer control and possession to CDFG;

- (iii) Payment of \$10,000 for deposit into an appropriate fund as designated by CDFG to provide an endowment for the long-term management of the property as required by the MA;
- (iv) Payment of \$3,000 to reimburse CDFG for reasonable expenses incurred to review, approve, and implement this Agreement and TCP as required by the MA.
- (c) Within 120 days from the effective date of this agreement DGS shall deliver to CDFG a Management Plan (the plan) for the site that describes the management actions to be taken to maintain the site as habitat for "the listed species". This plan will address the issues identified in the biologists reports on November 18, 1998 (Burrowing Owls) and July 21, 1999 (CTS and aquatic species).
- (d) CDFG agrees that upon acceptance of the property and in consideration of the property's suitable present condition as acceptable habitat for "the listed species", it shall waive any initial improvement or enhancement fees required in the parties MA.
- (e) CDF shall accept the existing warehouse/utility building located at the southeast corner of the property, and further AGREES to co-operate with third parties to make the building, along with all or portions of the entire property, available to be used for educational purposes for the study, improvement, protection and enhancement of the species and habitat as listed herein.
- (f) Within 60 days of receipt of the TCP from DGS and subject to the approval of the Fish and Game Commission or Wildlife Conservation Board the Director of CDFG shall execute a certificate of acceptance for the property. Upon execution, the property shall be deemed as dedicated and transferred and 19.5 acres (credits) shall be retired from the total credits available as set forth in Section 4 for mitigation of the Western Burrowing Owl as required under the parties April 6, 1998 Agnews West Campus Mitigation Agreement.

Remaining credits on the property shall accrue to DGS to be used at its own discretion for mitigation or habitat preservation needs for the listed species including but not limited to the sale or credits to other third parties for these purposes.

- (g) Upon the above acceptance by CDFG and upon receipt or notice that the funds to be paid pursuant to Section 3 (b) herein above have been deposited for the benefit of CDFG, the parties AGREE that notwithstanding obligations as set forth herein, all obligations of the parties under the April 6, 1998 MA have been met and satisfied.

4. Conservation Credits

As a result of the considerable size, the benefits accruing to endangered, threatened, sensitive and special concern species and their habitat upon the establishment of the Conservation Bank and the dedication of land for conservation purposes, Conservation Credits shall be established as follows:

- (a) Credit Area Description - The Credit Area for the BYRON CONSERVATION BANK includes all land within a 40-mile radius of the property boundary including those areas within the current city limits of the cities of San Jose and Santa Clara. In the event CDFG agrees to or has agreed to a larger geographic area with other third parties for acquiring mitigation properties for the species identified in recital C above, then such larger

geographic area shall govern for projects which may use the BYRON CONSERVATION BANK. Projects outside the Credit Area may be eligible to participate in the Conservation Bank at CDFG's sole discretion. Projects within the Credit Area that impact the listed species, or habitat types found at the Conservation Bank site, shall be eligible to participate in the Conservation Bank ("Eligible Projects") upon CDFG's approval, which approval shall not be withheld unreasonably. CDFG shall determine whether to approve a project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the Conservation Bank.

- (b) CDFG agrees to accept each acre of land within the Conservation Bank as an equivalent of one acre of affected listed species mitigation (each acre to equal one "Conservation Credit"). A total of 139.2 credits are available at the Conservation Bank with the apportionment of credits among the listed species as follows:

Western Burrowing Owl	132.3 credits
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In no event shall the total available credits on the Conservation Bank property exceed 139.2 credits. Credits may be used among the listed species group but no one credit shall be used for more than one specie. Sale of credits for impacts to the federally listed threatened red-legged frog and endangered San Joaquin Kit Fox will be subject to review and approval by the U.S. Fish and Wildlife Service.

- (c) DGS shall be entitled to sell or use Conservation Credits for Eligible Projects, including Eligible Projects on properties owned by DGS or controlled by other State agencies.. Subject to DGS's obligations under Section 5 below, DGS shall have the exclusive right to determine the price for any and all Conservation credits offered for sale or conveyance.
- (d) Nothing contained in this Agreement shall be deemed to limit the CDFG's authority under CESA, or any other law, to protect and conserve endangered, threatened or species of special concern; provided however, that except as provided in Section 4(a) above, the CDFG will not withhold its consent for Eligible Projects to use Conservation Credits as mitigation on a one acre-for-one credit basis for listed species mitigation.
- (e) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6 below.
- (f) Upon each conveyance of use of Conservation Credits by DGS, the requisite Endowment Deposits and Endowment Agreements (where required as hereinafter defined) shall be delivered in accordance with Section 5 below.

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conveyance to each Conservation Credit, DGS or the acquirer or purchaser (Purchaser) of such credits shall deposit with the CDFG at the time of conveyance, the sum of \$1,000.00 for each Conservation Credit so conveyed. The total amount of the endowment to be funded, including DGS's initial deposit of \$10,000 for the "long term management" of the property under their MA (Clause 5, Page 3) with the Department, will be no greater than \$130,000, One Hundred and Thirty Thousand Dollars, (excluding interest thereon) after the sale or conveyance of all credits available have been completed.

The endowment fund is intended to generate interest at a rate, which would cover the CDFG's annual management and monitoring costs, and to allow the endowment fund pursuant to this clause.

The CDFG shall deposit the endowment fund principal in a special deposit account established pursuant to the California Government Code section 16370, and the principal shall not be drawn upon unless the CDFG find such expenditure is essential to protect the biological values and qualities of the Conservation Bank site. Management activities shall include but shall not be limited to, costs of attorneys, reasonable administrative overhead, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat values in perpetuity.

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A database shall be established in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG had been notified in writing that all Conservation Credits have been conveyed, DGS (or any successor in interest) shall be responsible for maintaining a numerical accounting of the credits sold or conveyed during any calendar year. Concurrent with the delivery of any Endowment Deposits in accordance with Section 5 above, DGS shall deliver to CDFG (or its manager-assignee) an updated database of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. The database maintained by DGS shall include the number of Conservation Credits sold or conveyed, the name of the entity receiving the Conservation Credits, a description of the project for which the Conservation Credits were purchased, the location of the project, the date of sale or conveyance, the total number of credits sold or conveyed and the total number of credits remaining. The DGS shall make the database available to the CDFG with each Credit transaction and upon written request.

7. Term of Agreement; Termination Rights

(a) Unless sooner terminated by mutual written agreement of CDFG and DGS, this Agreement shall terminate on the earlier to occur of: (i) the date all Conservation Credits have been conveyed by DGS, or (ii) the date 30 years from the date of this Agreement.

(b) Notwithstanding anything to the contrary contained in this Agreement, once a Conservation Bank has been dedicated in accordance with Section 3 above, (i) DGS shall be entitled to CDFG's acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) DGS shall remain liable for the delivery of the endowment Deposits where required in connection with the conveyance of any such Conservation Credits, as provided in Section 5 above.

8. Cooperation

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

- (a) Confirming in writing to prospective Credit Purchasers that Conservation Credits are available to offset listed species impacts described above.
- (b) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 5 above.
- (c) Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.
- (d) Acknowledging that the BYRON CONSERVATION BANK is a conservation bank "approved" by the CDFG; including the placing of the BYRON CONSERVATION BANK on a list to be maintained by the Resource Agencies 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 "listed species" mitigation is disclosed to the CDFG.
- (e) Compliance with co-operation requirements as defined in section 3(e) herein above.
- (f) At DGS's request, provide copies of all mitigation agreements covering the listed species in recital C above within the Credit Area. CDFG will work with DGS to assure that DGS is aware of entities within the Credited area, with current or pending MA's for the listed species.

9. 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.

10. 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.

11. Modification

This Agreement is not subject to modification except in 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.

12. Notices

All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile transmission, or mailing to:

DGS: Department of General Services
Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q St. Suite 6000
Sacramento, California 95814

ATTN: Larry M. Buczyk, Senior Real Estate Officer

(Phone) (916) – 323-5528
(Fax No.) (916) -327-9654

CDFG: Regional Manager
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

(Fax No.) (707) – 944-5517

With a copy to: General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

(Fax No.) (916) – 654-3805

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept Facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

13. Exhibits:

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

14. Assignment:

Any sale or assignment of this Agreement or any of the rights or obligations hereunder is void absent the written consent of both CDFG and DGS; provided, however, that no consent shall be required for assignment of pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of DGS; or (b) as security for a debt under the provision of any mortgage, deed or trust, indenture, bank credit agreement, or similar instrument.

15. Further Actions:

From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties.

16. Disclaimer

DGS understands and recognizes that this Agreement does not constitute or imply that the Conservation Bank or Conservation Credits fulfill requirements of state or federal laws or regulations beyond the authority or jurisdiction of CDFG and does not create an entitlement to proceed in any Eligible Project.

17. Effective Date:

This Agreement shall be immediately effective upon the date the last party executes the agreement on behalf of CDFG and DGS.

Executed by the last party this _____ day of _____ 1999

CDFG:

BY: _____

Brian Hunter, Regional Manager
THE CALIFORNIA DEPARTMENT
OF FISH AND GAME

DGS:

BY: _____

J. Frank Davidson, Assistant Chief
Asset Planning and Enhancement Branch

Approved as to form: _____ Date: _____

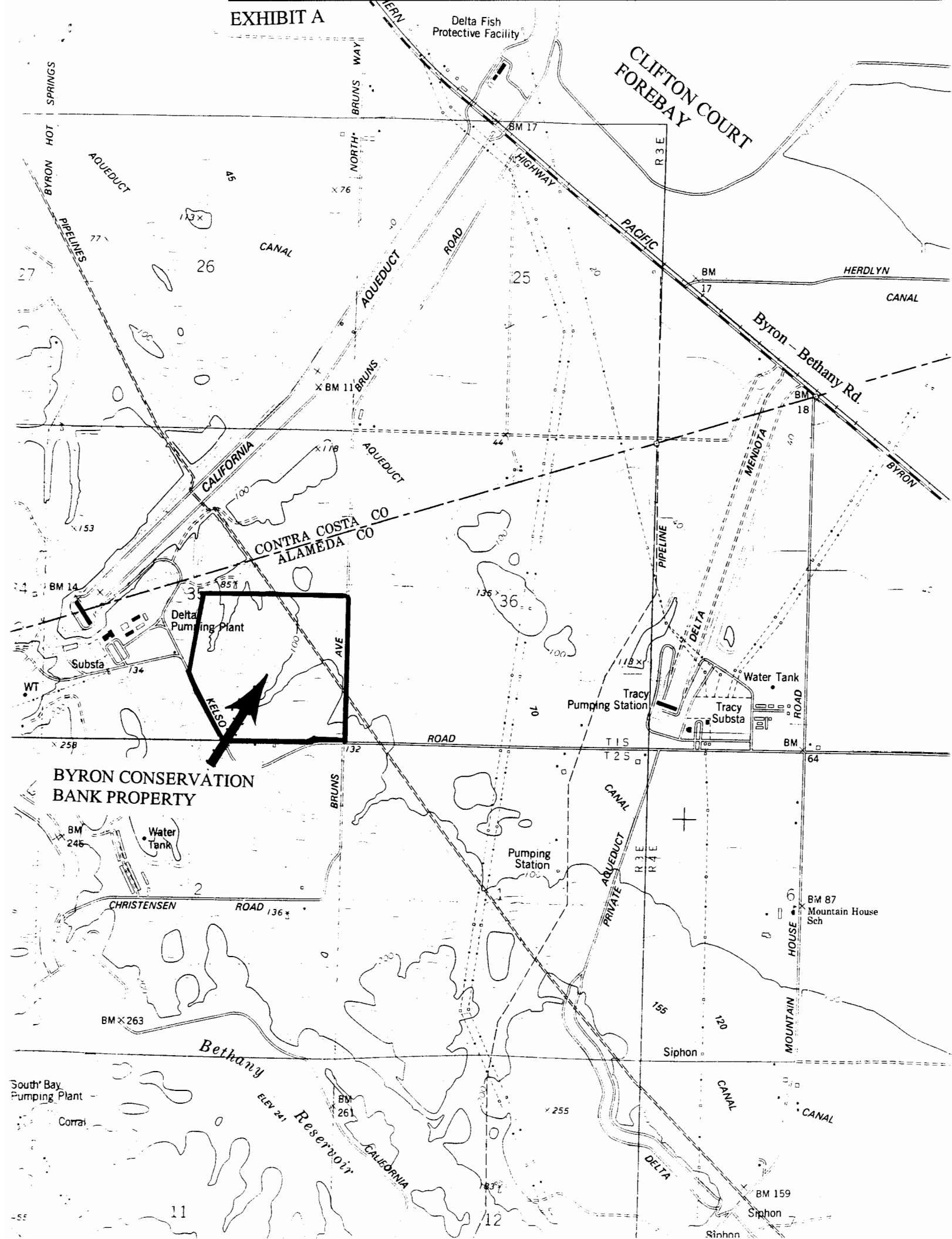
Craig Manson, General Counsel
California Department of Fish and Game

Ron Small

Ron Small, General Counsel
Department of General Services

Date: 9-8-95

EXHIBIT A



BYRON CONSERVATION BANK
IMPLEMENTATION AGREEMENT
(Tracking No. 1802-1999-035-3)

THIS BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "Agreement") is made and entered into this 12th day of August, 1999 by and between the California Department of General Services (DGS) and the California Department of Fish and Game ("CDFG"), hereinafter collectively known as the parties. Both parties are agencies and/or departments of the State of California.

RECITALS

A. The parties have previously entered into a Mitigation Agreement (MA) dated April 6, 1998 (Tracking No. 1802-1997-072-3) to provide for the conveyance to CDFG of 19.5 acres of land to mitigate adverse impacts to the Western Burrowing Owl caused by developments at the Agnews Development Center West Campus Site (Agnews West Campus) in Santa Clara, California. DGS is acquiring by exchange approximately 140 acres of real property located in the County of Alameda, California and more completely described in Exhibit A attached hereto ("Property") which was acquired to meet DGS's obligations under the MA. The amount of acreage being acquired exceeds the obligations of DGS under the MA.

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 § 1802.

C. The Property supports a variety of endangered, threatened and special concern wildlife species including, without limitation, the Western Burrowing Owl (*Speotyto cuniculara* or *Athena cuniculara*); the California tiger salamander (*Ambystoma tigrinum californiense*) ("CTS"); the California red-legged frog (*Rana aurora draytonii*); the San Joaquin Kit Fox (*Vulpes macrotis mutica*); and, the Western Pond Turtle (*Clemmys marmorata*), referred to collectively as the listed species.

D. It is anticipated that construction and development activity in the South Bay cities of Santa Clara, San Jose and surrounding communities (a large proportion of which is referred to as the "Credit Area", and further defined in Section 4 of this Agreement), will necessitate the mitigation of impacts to endangered, threatened, and species of special concern and biologically sensitive habitats through the preservation of offsite lands that possess corresponding habitat values for the listed species. Mitigation of said impacts may require completion of Mitigation Agreements between developers or property owners and CDFG. In addition, CDFG is completing negotiations on mitigation agreements for the Western Burrowing Owl in the Credit Area and may enter into other mitigation agreements for other species identified in paragraph C above in the Credit Area.

E. On the terms and conditions hereinafter provided, the parties hereto desire to establish a conservation bank with respect to portions of the Property (referred to as the BYRON CONSERVATION BANK, or alternatively, the "Conservation Bank") in order to provide for the long term conservation of such portions of the Property, the use of such land as mitigation as provided in Recitals D above, and the sale or transfer of conservation bank credits, where available, by DGS to third party purchasers to mitigate the impacts of eligible projects affecting the listed species.

F. The parties desire to enter in to this Agreement to set forth the terms and conditions pursuant to which the BYRON CONSERVATION BANK will be established and implemented.

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 CONSERVATION BANK

Establishment of the Conservation Bank will be accomplished by a dedication of the property to CDFG on behalf of DGS through a Transfer of Control and Possession (TCP) document. Upon CDFG acceptance of the TCP, DGS shall be entitled to receive Conservation Credits as provided (and defined) in Section 4 below.

2. Conservation Bank Evaluation and Acceptance.

Representatives of the CDFG have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation credits. On the basis of such inspection and evaluation, the CDFG acknowledges and agrees that the Property possesses biological values which support the Conservation Credits acknowledged in Section 4 below.

3. Conveyance.

Dedication for conservation purposes shall begin substantially concurrently with the execution of this Agreement, under the terms and conditions as follows:

a. CDFG has received and accepted the following documentation, in part required under the parts' MA:

A preliminary title report covering the entire property;
A phase/level I hazardous waste, environmental report;
Copies of biologist reports and assessments prepared on behalf of DGS

b. Within 30 days from the effective date of this agreement, DGS shall deliver to CDFG the following:

- (i) A final policy of Title Insurance showing the vesting of fee title with the State of California subject to existing easements, rights of way, and encumbrances as previously accepted by CDFG, including a non-recorded interest of a month to month cattle grazing tenant;
- (ii) A fully executed TCP and supplemental documents, where required, to transfer control and possession;
- (iii) Payment of \$10,000 for deposit into an appropriate fund as designated by CDFG to provide an endowment for the long term management of the property as required by the MA;
- (iv) Payment of \$3,000 to reimburse CDFG for reasonable expenses incurred to review, approve and implement this Agreement and TCP as required by the MA.

c. Within 120 days from the effective date of this agreement DGS shall deliver to CDFG a Management Plan (the Plan), for the site that describes the management actions to be taken to maintain the site as habitat for "the listed species". This plan will address the issues identified in the biologists report of -----.

d. CDFG agrees that upon acceptance of the property and in consideration of the property's suitable present condition as acceptable habitat for "the listed species", it shall waive any initial improvement or enhancement fees required in the parties MA or in current or future MA's of entities acquiring credits from the Conservation Bank (delete).

e. CDFG shall accept the existing warehouse/utility building located at the southeast corner of the property, and further AGREES to co-operate with third parties to make the building, along with all or portions of the entire property, available to be used for educational purposes for the study, improvement, protection and enhancement of the species and habitat as listed herein.

f. Within 60 days of receipt of the TCP from DGS and subject to the approval of the Fish and Game Commission or Wildlife Conservation Board the Director of CDFG shall execute a certificate of acceptance for the property. Upon execution, the property shall be deemed as dedicated and transferred and 19.5 acres (credits) shall be retired from the total credits available as set forth in Section 4 for mitigation of the Western Burrowing Owl as required under the parties April 6, 1998 Agnews West Campus

Mitigation Agreement.

Remaining credits on the property shall accrue to DGS to be used at its own discretion for mitigation or habitat preservation needs for the listed species including but not limited to the sale of credits to other third parties for these purposes.

- g. Upon the above acceptance by CDFG and upon receipt or notice that the funds to be paid pursuant to Section 3 (b) herein above have been deposited for the benefit of CDFG, the parties AGREE that notwithstanding obligations as set forth herein, all obligations of the parties under the April 6, 1998 MA have been met and sat

4. Conservation Credits

As a result of the considerable size, the benefits accruing to endangered, threatened, sensitive and special concern species and their habitat upon the establishment of the Conservation Bank and the dedication of land for conservation purposes, Conservation Credits shall be established as follows:

- a. Credit Area Description - The Credit Area for the BYRON CONSERVATION BANK includes all land within a 40 mile radius of the property boundary including those areas within the current city limits of the cities of San Jose and Santa Clara. In the event CDFG agrees to or has agreed to a larger geographic area with other third parties for acquiring mitigation properties for the species identified in recital C above, then such larger geographic area shall govern for projects which may use the BYRON CONSERVATION BANK. Projects outside the Credit Area may be eligible to participate in the Conservation Bank at CDFG's sole discretion. Projects within the Credit Area that impact the listed species, or habitat types found at the Conservation Bank site, shall be eligible to participate in the Conservation Bank ("Eligible Projects") upon CDFG's approval, which approval shall not be withheld unreasonably. CDFG shall determine whether to approve a project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the project as an "Eligible Project" by comparing the type and quality of soil, flora and fauna present on the Conservation Bank.
- b. CDFG agrees to accept each acre of land within the Conservation Bank as an equivalent of one acre of affected listed species mitigation (each acre to equal one "Conservation Credit"). A total of 139.2 credits are available at the Conservation Bank with the apportionment of credits among the listed species as follows:

Western Burrowing Owl	132.3 credits
California Tiger Salamander	136.9 credits
California Red legged Frog	63.4 credits
Western Pond Turtle	139.2 credits
San Joaquin Kit Fox	139.2 credits

In no event shall the total available credits on the Conservation Bank property exceed 139.2 credits. Credits may be used among the listed species group but no one credit shall be used for more than one species. Sale of credits for impacts to the federally listed threatened red-legged frog and endangered San Joaquin kit fox will be subject to review and approval by the U.S. Fish and Wildlife Service.

DGS shall be entitled to sell or use Conservation Credits for Eligible Projects, including Eligible Projects on properties owned by DGS or controlled by other State agencies. Subject to DGS's obligations under Section 5 below, DGS shall have the exclusive right to determine the price for any and all Conservation Credits offered for sale or com

Nothing contained in this Agreement shall be deemed to limit the CDFG's authority under CESA, or any other law, to protect and conserve endangered, threatened or species of special concern; provided however, that except as provided in Section 4(a) above, the CDFG will not withhold its consent for Eligible Projects to use Conservation Credits as mitigation on a one acre-for-one credit basis for listed species mitigation.

The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6 below.

Upon each conveyance of use of Conservation Credits by DGS, the requisite Endowment Deposits and Endowment Agreements (where required as hereinafter defined) shall be delivered in accordance with S

5. Endowment

Where a MA for an Eligible Project does not exist, or if an existing MA does not identify an endowment amount for long term maintenance and management, an endowment will be established through the sale of Credits to provide for the costs of maintaining the Conservation Bank site in perpetuity. With respect to the conveyance of each Conservation Credit, DGS or the purchaser of such credits shall deposit with the CDFG at the time of conveyance, the sum of 1000.00 for each Conservation Credit so conveyed. The total amount of the endowment including DGS's initial deposit of \$10,000 under their MA with the Department will be \$130,000 (One hundred and thirty thousand dollars). (This recognizes considers our not requiring fencing as part of initial improvement and not requiring additional enhancement as part of future MA's as well as a need based upon the biologists report that an active level of management and monitoring will be required by the Department to maintain the conservation values of the site.)

Where the sale or conveyance of a Credit(s) is made to a purchasing entity having an existing MA with CDFG, DGS shall collect or otherwise ensure payment, from the purchaser the endowment fee and deposit this payment for the benefit of CDFG. payment. (Delete) this is addressed above, we will not ask for a separate endowment in an MOA if they are using the Bank, this is addressed above.

The endowment fund is intended to generate interest at a rate which would cover the CDFG's annual management and monitoring costs and to allow the endowment principal to grow in proportion to inflation.

The CDFG shall deposit the endowment fund principal in a special deposit account established pursuant to the California Government Code section 16370, and the principal shall not be drawn upon unless the CDFG find such expenditure is essential to protect the biological values and qualities of the Conservation Bank site. Management activities shall include but shall not be limited to, costs of attorneys, reasonable administrative overhead, biological monitoring, fire control, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of its habitat values in perpetuity.

6. Database for Conservation Bank Transactions

A database shall be established in the following manner for purposes of tracking the conveyance of Conservation Credits. Until such time as the CDFG had been notified in writing that all Conservation Credits have been conveyed, DGS (or any successor in interest) shall be responsible for maintaining a numerical accounting of the credits sold or conveyed during any calendar year. Concurrent with the delivery of any Endowment Deposits in accordance with Section 5 above, DGS shall deliver to CDFG (or its manager assignee) an updated database of all Conservation Credits sold or used as of the date of the most recent conveyance of Conservation Credits. The database maintained by DGS shall include the number of Conservation Credits sold or conveyed, the name of the entity receiving the Conservation Credits, a description of the project for which the Conservation Credits were purchased, the location of the project, the date of sale or conveyance, the total number of credits sold or conveyed and the total number of credits remaining. The DGS shall make the database available to the CDFG with each Credit transaction and upon written request.

7. Term of Agreement; Termination Rights

(a) Unless sooner terminated by mutual written agreement of CDFG and DGS, this Agreement shall terminate on the earlier to occur of:
(i) the date all Conservation Credits have been conveyed by DGS, and (ii) the date 30 years from the date of this Agreement.

(b) Notwithstanding anything to the contrary contained in this Agreement, once a Conservation Bank has been dedicated in accordance with Section 3 above, (i) DGS shall be entitled to CDFG's acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4; and (ii) DGS shall remain liable for the delivery of the endowment Deposits where required in connection with the conveyance of any such Conservation Credits, as provided in Section 5 above.

8. Cooperation

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

Confirming in writing to prospective Credit Purchasers that Conservation Credits are available to offset listed species impacts described above.

(b) Acknowledging the delivery of Endowment Deposits when actually delivered in accordance with Section 5 above. Acknowledging, to the extent applicable, that this Agreement remains in full force and effect.

(d) Acknowledging that the BYRON CONSERVATION BANK is a conservation bank "approved" by the CDFG; including the placing of the BYRON CONSERVATION BANK on a list to be maintained by the Resource Agencies 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 "listed species" mitigation is disclosed to the CDFG.

Compliance with co-operation requirements as defined in section 3(d) herein above.

(f) At DGS's request, provide copies of all mitigation agreements covering the species in recital C above within the Credit Area. CDFG will notify DGS when it enters into negotiations with third parties within the Credit Area for mitigation related to the species in listed in recital C above. ~~Delete, administratively we won't be able to do this, we don't do it for other bankers, we will make lists available for prospective applicants of all available conservation banks where they could satisfy their mitigation requirements.~~

9. 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.

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.

Modification

This Agreement is not subject to modification except in 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.

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DGS: Department of General Services
Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q St. Suite 6000
Sacramento, California 95814

ATTN: Larry M. Buczyk, Senior Real Estate Officer

(Phone) (916) 323-5528
(Fax No.) (916) -327-9654

CDFG: Regional Manager
California Department of Fish and Game

P.O. Box 47
Yountville, CA 94599

(Fax No.) (707) 944-5517

With a copy to: General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

(Fax No.) (916) 654-3805

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept Facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventytwo (72) hours after transmission, such documents bearing the original signatures.

Exhibits:

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

Assignment:

Any sale or assignment of this Agreement or any of the rights or obligations hereunder is void absent the written consent of both CDFG and DGS; provided, however, that no consent shall be required for assignment of pledge made by DGS (a) to any company that shall succeed by purchase, merger or consolidation to the properties of DGS; or (b) as security for a debt under the provision of any mortgage, deed or trust, indenture, bank credit agreement, or similar instrument.

Further Actions:

From time to time, the Parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this Agreement. This Agreement cannot be amended or modified in any way except by a written instrument duly executed by the Parties.

Disclaimer

DGS understands and recognizes that this Agreement does not constitute or imply that the Conservation Bank or Conservation Credits fulfill requirements of state or federal laws or regulations beyond the authority or jurisdiction of CDFG and does not create an entitlement to proceed in any Eligible Project.

Effective Date:

This Agreement shall be immediately effective upon the date the last party executes the agreement on behalf of CDF

Executed this day of 1999

CDFG: DGS:

BY: _____

BY: _____

Brian Hunter, Regional Manager J. Frank Davidson, Assistant Chief
THE CALIFORNIA DEPARTMENT OF FISH AND GAME Asset Planning and Enhancement Branch

Ron Small, General Counsel
Department of General Services

Date: _____



MEMORANDUM

file
02-27-02
1/16/02

Date: January 16, 2002

To: Mr. Carl Wilcox
Environmental Program Manager
California Department of Fish and Game
Region 2
P.O. Box 47
Yountville, CA 94599

From: Department of General Services – Real Estate Services Division
Asset Planning and Enhancement Branch
707 Third Street, Sixth Floor, West Sacramento, CA 95605

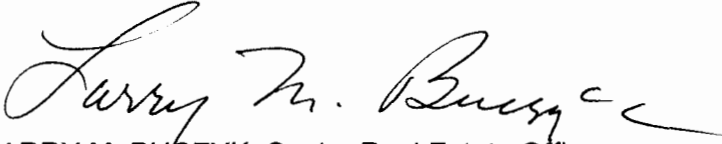
Subject: BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT
(TRACKING NO. 1802-1999-035-3)

Pursuant to requirements of the Byron Conservation Bank Agreement (Tracking No. 1802-1999-035-3), enclosed is your copy of the annual report showing credits sold and remaining at the conservation bank.

Under the agreement, the Department of General Services (DGS) received approval for 139.2 mitigation credits for five named species. To date, DGS has sold or used for current projects under our control, 110.75 credits for Burrowing Owl mitigation out of an available 132.3 credits approved at the site for this specie. Of the remaining 21.55 owl credits DGS will use 6.5 credits for mitigation obligations imposed by the City of Santa Clara for the Rivermark mixed use development on the surplus Agnews Developmental Center – West. Additionally, DGS intends to hold in reserve 15.05 credits for use as either owl or California Tiger Salamander (CTS) mitigation on future eligible (not yet designated) DGS or other State projects. DGS will retain its right to sell to third parties for eligible projects any of the 15.05 reserved credits if not used for other DGS or State projects. Within the next three weeks DGS intends to request the transfer of \$23,500 to the Department of Fish and Game (DFG) for endowment funds for 21.55 of these remaining credits.

As to the remaining 6.9 non Burrowing Owl credits at the bank, DGS is currently negotiating a pending agreement with the County of Alameda for the sale of 4.6 credits for CTS mitigation. The County has been working with your legal office (Steve Puccini) and apparently intends to use these credits, in part, for future projects. Any of the remaining 2.3 credits not sold by DGS prior to April 1, 2002 shall be reserved for future eligible projects either as red-legged frog or western pond turtle mitigation. Any remaining endowment payments due for these credits will be provided to DFG by DGS.

It is our intention to either sell or reserve all credits at the land bank, and apply for termination of the agreement by May 1, 2002. Please call me at my new phone number, (916) 376- 1814 if you have any questions or wish to further clarify on our intention discussed above.

A handwritten signature in black ink, reading "Larry M. Buczyk". The signature is fluid and cursive, with a long horizontal stroke at the end.

LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

LMB:ts:P:\Buczyk\Larry1-16-02 to Carl Wilcox re Byron Conservation Bank Implementation Agreement.doc

cc: Agnews Team
Scott Wilson, Department of Fish and Game, Region 3
Steve Puccini, – Department of Fish and Game, Legal Office
Ron Small, Office of Legal Services

Sale/Transfer of Conservation Credits at Byron Conservation Bank

	Owner / Purchaser	Date of Sale/Transfer	Mitigated Project Description	Project Location	Number of Credits	Sale Price	Accept by CDFG	Endowment Amount	Endow to CDFG
Burrowing Owls									
132.3 Credits available as of 2/2000	City of Santa Clara	04/28/2000	CDFG MA NO. (1802-1999-024-3)	Santa Clara	58.5	\$468,000	04/11/2000	\$58,500	04/28/2000
	State (DDS) Agnews East Developmental Center	05/04/2000	Agnews East - 6 acres on Zanker Road Frontage	San Jose	10.5	0	03/13/2000	\$10,500	05/04/2000
	Santa Clara University	12/13/2000	MA No. 1802-1999-007-3	Santa Clara	9.25	\$74,000	11/27/2000	\$9,250	12/13/2000
	DGS Agnews West	4/12/01 (T.C.P.)	Agnews West - MA 1802-1997-072-3	Santa Clara	19.5	0	04/12/2001	10,000	02/24/2000
*	DGS Agnews West	Pending	Agnews West - May 2000 EIR Mitigation	Santa Clara	6.5	0	N/A	\$6,500	Pending
**	DGS Misc.	Pending	Reserved for Winchester BRAC or other DGS projects	Santa Clara	15.05	0	N/A	\$17,000	Pending
	West Valley Mission Community College District	11/30/2001	Expansion Project MA 1802-2000-020-3	Santa Clara	13	\$103,500	07/23/2001	\$13,000	11/30/2001
* Additional mitigation as required by the City of Santa Clara for developmental approval									
** Credits to be held in reserve by DGS for future (undetermined) projects									
Credits remaining or available as of 12/31/01 - 0									
TOTALS					132.3	\$645,500		\$124,750	

Sale/Transfer of Conservation Credits at Byron Conservation Bank

	Purchaser	Date of Sale/Transfer	Mitigated Project Description	Project Location	Number of Credits Sold	Sale Price	Accept by CDFG	Endowment Amount	Endow to CDFG
Tiger Salamander									
136.9 Credits available as of 2/2000									
Credits Remaining <u>4.6</u> as of <u>12/31/01</u>									
TOTALS									

Sale/Transfer of Conservation Credits at Byron Conservation Bank

	Purchaser	Date of Sale/Transfer	Mitigated Project Description	Project Location	Number of Credits Sold	Sale Price	Accept by CDFG	Endowment Amount	Endow to CDFG
Red Legged Frog									
63.4 Credits available as of 2/2000									
Credits Remaining <u>6.9</u> as of <u>12/31/01</u>									
TOTALS									

Sale/Transfer of Conservation Credits at Byron Conservation Bank

	Purchaser	Date of Sale/Transfer	Mitigated Project Description	Project Location	Number of Credits Sold	Sale Price	Accept by CDFG	Endowment Amount	Endow to CDFG
Western Pond Turtle									
139.2 Credits available as of 2/2000									
Credits Remaining <u>6.9</u> as of <u>12/31/01</u>									
TOTALS									

Sale/Transfer of Conservation Credits at Byron Conservation Bank

	Purchaser	Date of Sale/Transfer	Mitigated Project Description	Project Location	Number of Credits Sold	Sale Price	Accept by CDFG	Endowment Amount	Endow to CDFG
San Joaquin Kit Fox									
139.2 Credits available as of 2/2000									
Credits Remaining <u>6.9</u> as of <u>12/31/01</u>									
TOTALS									

Summary - Total Credits Sold / Available Balance as of 12/31/01

	Beginning Credits 2/9/2000	Sales or Transfers	Other Credit Reduction*	Available Credit Balances					
Burrowing Owls	132.3	132.3		0					
Tiger Salamander	136.9	0	132.3	4.6					
Red Legged Frog	63.4	0		6.9					
Western Pond Turtle	139.2	0	132.3	6.9					
San Joaquin Kit Fox	139.2	0	132.3	6.9					
All Species	139.2	132.3		6.9					

* Multiple species occupy the property and each credit available may be used for only one species. A reduction shown represents a loss of credit or habitat resulting from a previous credit transfer or sale for another listed specie.



MEMORANDUM

Date: June 1, 2001

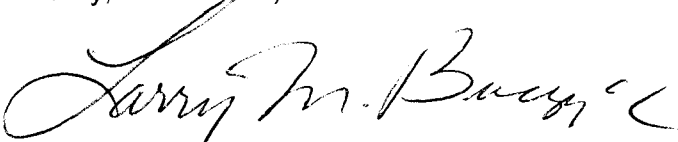
To: Regional Manager
Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599
Attn: Carl Wilcox, Environmental Program Manager

From: Department of General Services – Real Estate Services Division
Asset Planning and Enhancement Branch
1102 Q Street, Suite 6000, Sacramento, CA 95814-6280

Subject: TRANSFER OF CONTROL AND POSSESSION AS PROVIDED BY THE
BYRON CONSERVATION BANK IMPLEMENTATION AGREEMENT
(TRACKING NO. 1802-1999-035-3)

As provided in the Byron Conservation Bank Agreement dated February 9, 2000, the Department of General Services has recorded the Transfer of Control (TCP) document to the Department of Fish and Game. A copy of this document is enclosed for your files.

Please note that in addition to the TCP, we shall provide copies of related documents (Title Policy, Grant Deed) to the Wildlife Conservation Board.


LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

LMB:ts:P:\Buczyk\Larry6-1-01 to Carl Wilcox re transfer of control and possession.doc

cc: California Department of Fish and Game, General Counsel

*Scanned
6/19/07
(the whole stack)*



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Central Coast Region
California Department of Fish and Game
P.O. Box 47
Yountville, CA 94599

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LARRY M. BUCZYK, Senior Real Estate Officer
Asset Planning and Enhancement Branch

CC: General Counsel
California Dept. of Fish and Game
1416 9th St., 13th flr.
Sacramento, CA 95814

Order No. SP851408
Escrow No. 515923

WHEN RECORDED MAIL TO:

State of Calif. Dept. of General Services
1102 Q Street #6000, Attn: L. Buczyk
Sacramento, Ca 95814-6511

This is to certify that this is a true
and correct copy of AGREEMENT

recorded in the
Office of the Recorder of ALAMEDA
County, California, Instrument No. 2001
163562 in (Book-Page) N/A
(Page-Page) N/A on the 15th
day of May 192001
FIRST AMERICAN TITLE GUARANTY COMPANY

By Paul E. Decker

\$34.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Agreement for the Transfer of Control and Possession of
State Owned Real Property

WHEN RECORDED MAIL TO:
State of California - Dept. of General Services
1102 Q St., Suite 6000 - Attn: L.Buczyk
Sacramento, CA. 95814-6511

AGREEMENT FOR THE TRANSFER OF CONTROL AND POSSESSION OF STATE OWNED REAL PROPERTY

BY THIS AGREEMENT, made and entered into this 17th day of February 2000, by and between the Department of General Services (TRANSFEROR) and the Department of Fish and Game (TRANSFeree), hereinafter collectively referred to as "The Parties";

WITNESSETH

WHEREAS, TRANSFEROR by Grant Deed dated August 3, 1999 and recorded as document number 99316425 in Official Records of Alameda (shown as attached Exhibit "1") acquired real property (the property) on behalf of the State of California and thereby has control and possession of the property;

WHEREAS, The Parties have previously entered into agreements known as the "Mitigation Agreement" dated April 6, 1998 and the "Byron Conservation Bank Implementation Agreement" dated February 9, 2000 to provide for transfer of the property to the TRANSFeree;

WHEREAS, The Parties desire to transfer the property to be used solely for the following purpose in accordance with the conditions as specified herein as follows:

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE DEPARTMENT OF FISH AND GAME, ITS DESIGNEE OR SUCCESSOR SHALL HOLD TITLE TO AND PROTECT THE LANDS TRANSFERRED HEREIN SOLELY FOR THE PURPOSES OF CONSERVATION, PROTECTION, RESTORATION AND ENHANCEMENT OF WILDLIFE SPECIES KNOWN AS: (1) THE WESTERN BURROWING OWL; (2) THE CALIFORNIA TIGER SALAMANDER; (3) THE CALIFORNIA RED-LEGGED FROG; (4) THE WESTERN POND TURTLE; (5) THE SAN JOAQUIN KIT FOX.

THIS COVENANT SHALL RUN WITH THE LAND AND NO USE OF SUCH LAND SHALL BE PERMITTED BY THE DEPARTMENT OF FISH AND GAME OR ANY SUBSEQUENT TITLE HOLDER OR ASSIGNEE WHICH IS IN CONFLICT WITH THE STATED CONSERVATION PURPOSES HEREIN DESCRIBED. THE DEPARTMENT OF FISH AND GAME, ITS DESIGNEE OR SUCCESSOR MAY ALLOW SOME WETLAND CREATION AND OR LIMITED GRAZING ON THE PROPERTY IF SAID USES DO NOT CONFLICT IN ANY WAY WITH THE CONSERVATION GOALS FOR THE NAMED SPECIES.

THE PURPOSES, USES AND CONDITIONS AS DESCRIBED HEREIN ABOVE SHALL BE APPLICABLE TO THE ENTIRE PROPERTY WITH THE EXCEPTION OF AN EXISTING BUILDING/STRUCTURE INCLUDING APPROXIMATELY 1 ACRE OF SURROUNDING LAND LOCATED AT THE SOUTH EAST CORNER OF THE PROPERTY AND SHOWN ON THE ATTACHED EXHIBIT "2" PLAT MAP.

WHEREAS, upon acceptance of this Transfer to TRANSFeree, it is the intention of the TRANSFEROR to record in the official records of the County of Alameda a Memorandum of Agreement to make this transfer and the uses and conditions specified herein a matter of public record;

NOW THEREFORE, in consideration of the foregoing, TRANSFEROR hereby transfers unto TRANSFEREE and TRANSFEREE accepts the control and possession of the property described as follows and as depicted on the attached Exhibit "2" plat map:

REAL PROPERTY in the City of Mountain House School, County of Alameda, State of California described as follows:

The Southeast quarter of Section 35, in Township 1 South, in Range 3 East of the Mount Diablo Base and Meridian, according to the United States Public Survey thereof.

Excepting therefrom: Those portions thereof described in the deed from Arden Hans Christensen, a single man, to the State of California, dated November 8, 1963, recorded May 20, 1964, on Reel 1207, Image 941, Series No. AW-80211, Alameda County Records.

Also excepting therefrom that portion thereof described in the Deed from Arden Christensen to Franklin D. Beck and D'Ette G. Beck, dated January 21, 1972, recorded February 1, 1972, Series No. 72-13886, Reel 3051, Image 958, Alameda County Records.

Also excepting therefrom: All oil, gas, casinghead gasoline and other hydrocarbons and mineral substances below a point 500 feet below the surface of the land, hereinabove described together with the right to take, remove, mine, pass through and dispose of all oil, gas, casinghead gasoline and other hydrocarbons and mineral substances but without any right whatsoever to enter upon the surface of said land, as reserved in the Deed from Ida B. Hayes Christensen, a widow, recorded June 30, 1988, Series No. 88-157279.

A.P. No.: 099B-7010-002-09

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have executed this agreement the day and year first above written.

TRANSFEROR:

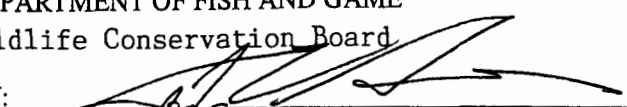
DEPARTMENT OF GENERAL SERVICES


BY: 
J. Frank Davidson

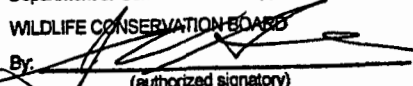
ASSISTANT CHIEF ASSET, PLANNING AND ENHANCEMENT BRANCH
REAL ESTATE SERVICES DIVISION

TRANSFEREE:

DEPARTMENT OF FISH AND GAME
Wildlife Conservation Board

BY: 
Al Wright, Executive Director
REGIONAL MANAGER Wildlife Conservation Board

Approved as to form.

Deputy General Counsel.

I hereby certify that all conditions for exemption have been complied with and this document is exempt from Department of General Services approval.
WILDLIFE CONSERVATION BOARD
By:  (authorized signatory)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

SACRAMENTO

SS.

On

2/17/2000

Date

, before me,

JANETTE M. WILCOX

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

J. FRANK DAVIDSON

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Janette M. Wilcox

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: AGREEMENT FOR THE TRANSFER OF CONTROL AND POSSESSION OF STATE OWNED REAL PROPERTY

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name: J. FRANK DAVIDSON

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

DEPT OF GENERAL SERVICES

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Sacramento } ss.

On May 1, 2001 before me, Terri L. Muzik,
(DATE) (NOTARY)

personally appeared James V. Sarro
SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signatures(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.



WITNESS my hand and official seal.

Terri L. Muzik
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

RIGHT THUMBPRINT
OF
SIGNER

Top of thumbprint here

First American Title Guaranty Company
Order No. SP851408
Escrow No. 515923

WHEN RECORDED MAIL TO:
State of California
Department of General Services
1102 Q Street, Suite 6000
Sacramento, Ca. 95814-6511
Attn: Larry M. Buczyk



13.00

99316425 08:30am 08/18/99

004 890170 38 27 000065
A03 3 7.00 6.00 0.00 0.00 0.00 0.00 0.00 0.00
0.00

EXHIBIT "1"

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX \$
DOCUMENTARY TRANSFER TAX \$
SURVEY MONUMENT FEE \$

Computed on the consideration or value of property conveyed; OR
Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

APN 099B-7010-002-09

GRANT DEED

STATE OF CALIFORNIA -
OFFICIAL BUSINESS

Document entitled to free
recordation pursuant to Governme
Code Section 6103..

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Selwyn D.J. Vos and Loretta Soderlund Vos, husband and wife,

hereby GRANT(S) to

State of California,

the real property in the City of
County of

Mountain House School,
Alameda

, State of California, described as:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

Dated August 3, 1999

STATE OF CALIFORNIA)
COUNTY OF Contra Costa)ss.

On August 3, 1999
before me, Linda P. Silvera, personally
appeared Selwyn D.J. Vos and Loretta
Soderlund Vos

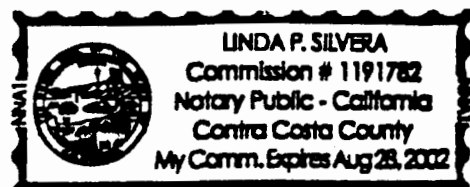
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Selwyn D.J. Vos

Loretta Soderlund Vos



my Comm. Expires Aug. 28, 2002

LEGAL DESCRIPTION

REAL PROPERTY in the City of Mountain House School, County of Alameda, State of California, described as follows:

The Southeast quarter of Section 35, in Township 1 South, in Range 3 East of the Mount Diablo Base and Meridian, according to the United States Public Survey thereof.

Excepting therefrom: Those portions thereof described in the deed from Arden Hans Christensen, a single man, to State of California, dated November 8, 1963, recorded May 20, 1964, on Reel 1207, Image 941, Series No. AW-80211, Alameda County Records.

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A.P. No.: 099B-7010-002-09

EXHIBIT A

AGENCY: Department of General Services

PROJECT: Agnews Mitigation Acquisition


PARCEL: DGS 9860; PROJECT MF 037

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated August 3, 1999 from Selwyn D.J. Vos and Loretta Soderlund Vos to the State of California pursuant to Government Code Section 11011.21(c), is hereby accepted by the undersigned officer on behalf of the State of California and the grantee consents to the recordation thereof by its duly authorized officer.

STATE OF CALIFORNIA
DEPARTMENT OF GENERAL SERVICES

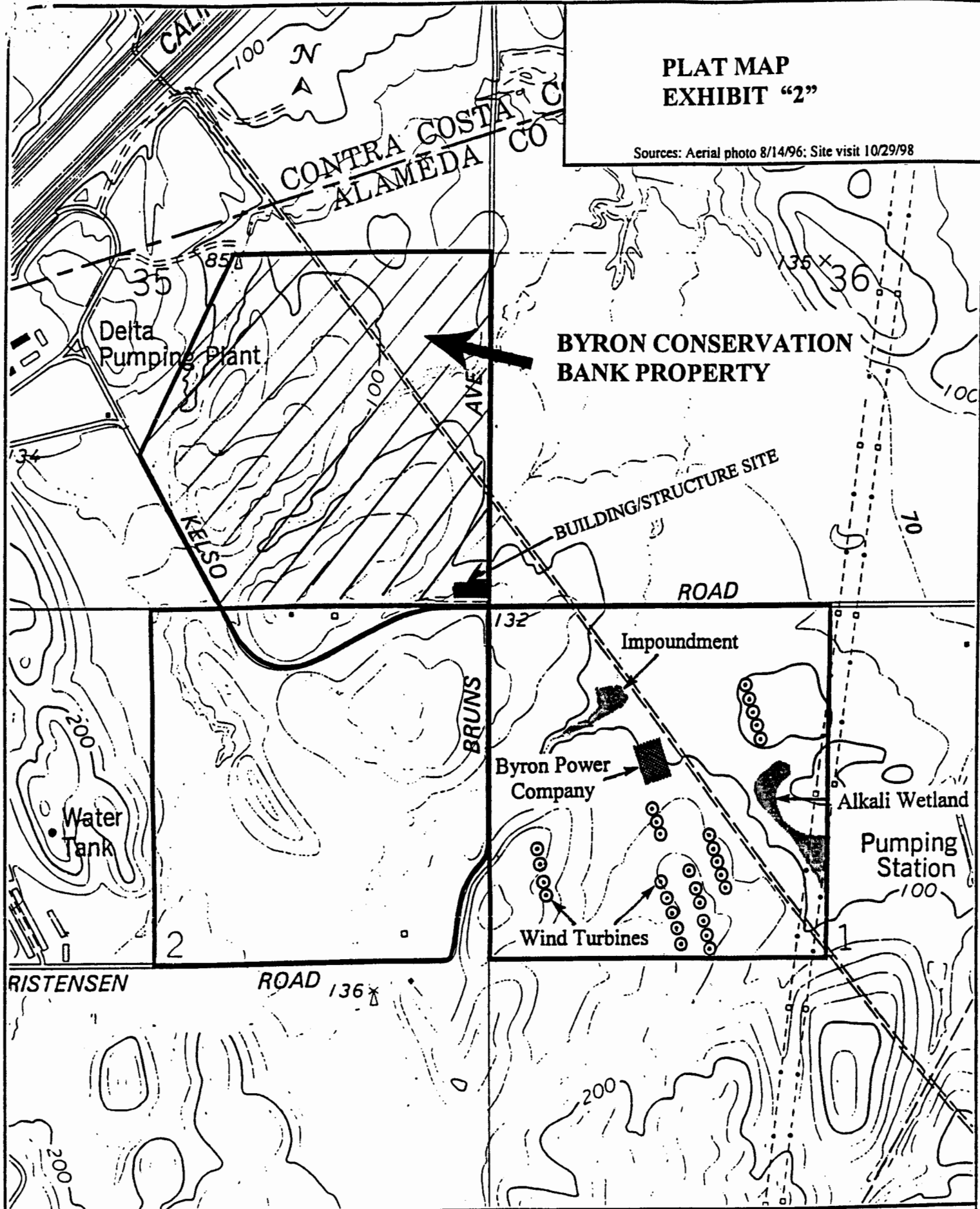
Dated: August 16, 1999

By: 

J. Frank Davidson
Assistant Chief
Department of General Services
Real Estate Services Division
Asset Planning and Enhancement

PLAT MAP EXHIBIT "2"

Sources: Aerial photo 8/14/96; Site visit 10/29/98



Burrowing Owl Habitat
Assessment - APN: Alameda Co. 099B
-7020-1-8; -7010-002-07; -7010-002-09

Biosearch Wildlife Surveys
P.O. Box 8043
Santa Cruz, CA 95060

0 1/4 1/2
Scale in Miles

Source: Clifton Court Forebay USGS 7.5' Series Quadrangle


Byron Conservation Bank
Department of General Services
Alameda County

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by the Agreement for the Transfer of Control and Possession of State Owned Real Property, dated 2/17/2000 from the State of California Department of General Services to the State of California Department of Fish and Game, is hereby accepted by the undersigned officer on behalf of the State of California Department of Fish and Game, pursuant to authority conferred by authorization of the Fish and Game Commission, Department of Fish and Game, Resources Agency, State of California, adopted on October 20, 2000 and the grantee consents to the recordation thereof by its duly authorized officer.

STATE OF CALIFORNIA
Resources Agency
Department of Fish and Game

By


Al Wright

Executive Director

Wildlife Conservation Board

Date

4/12/01