

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND  
NATIONAL FISH AND WILDLIFE FOUNDATION  
LONG-TERM LAND MANAGEMENT FUNDING  
RECIPIENT AGREEMENT**

This Long-Term Land Management Funding Recipient Agreement ("Recipient Agreement") is entered by and among the California Department of Fish and Wildlife, an agency of the State of California ("CDFW"), the National Fish and Wildlife Foundation ("Foundation"), and Westervelt Ecological Services ("Recipient") (together "Parties" and individually "Party"), as of the date of the signature of the last Party to sign ("Effective Date").

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

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

**WHEREAS**, the Recipient is the sole owner in fee simple of certain real property containing approximately 274 acres located in Merced County, State of California, commonly known as Grasslands Mitigation Bank and generally shown on the map as **Exhibit A-1** and legally described in **Exhibit A-2** attached hereto and incorporated by this reference (the "Bank Property").

**WHEREAS**, the Recipient is responsible to protect and manage for conservation purposes the Bank Property in accordance with the 1) Mitigation Bank Enabling Instrument (the "BEI"), by and among Westervelt Ecological Services ("Bank Sponsor"), the Central Region of CDFW, the Sacramento Field Office of the United States Fish and Wildlife Service ("USFWS") the Sacramento District of the U.S. Army Corps of Engineers ("USACE"), and Region IX of the U.S. Environmental Protection Agency ("USEPA") entered into concurrently with this Recipient Agreement, and the Long-Term Management Plan created under the BEI and 2) a perpetual conservation easement to be executed and recorded over the Bank Property (the "CE"). CDFW, USFWS, USACE, and USEPA are together referred to in this Recipient Agreement as the Interagency Review Team (the "IRT").

**WHEREAS**, the Long-Term Management Plan identifies specific land management activities that are required to be performed on the Bank Property to improve, conserve, and/or protect the habitat values of the Bank Property (together the "Land Management Activities"). The Long-Term Management Plan is **Exhibit B-1** attached hereto and incorporated herein by this reference.

**WHEREAS**, the “Property Analysis Record”, or equivalent endowment assessment methodology for the Bank Property created by or on behalf of Bank Sponsor and approved by IRT (the “Endowment Assessment”) calculated the amount of money (the “Endowment Amount”) necessary to provide a source of perpetual funding for the Land Management Activities. The Endowment Assessment is **Exhibit B-2** attached hereto and incorporated by this reference.

**WHEREAS**, an Endowment Payment schedule created and/or approved by the Recipient and CDFW reflecting the total dollar value of Land Management Activities for each calendar year, including annual and applicable single or limited occurrence expenses, exclusive of any contingency amount, set forth in the Endowment Assessment, (the “Endowment Payment Schedule”) is **Exhibit B-3** attached hereto and incorporated by this reference.

**WHEREAS**, the Bank Sponsor has deposited or will deposit (or cause to be deposited) the Endowment Amount with the Foundation, to be managed and administered in accordance with the Master Mitigation Account Memorandum of Agreement (“MOA”) entered between CDFW and the Foundation as of November 23, 2010. The MOA is **Exhibit C** attached hereto for informational purposes.

**WHEREAS**, the Parties intend that the Recipient will perform, either directly or by entering into a separate agreement with a land manager, the Land Management Activities on the Bank Property in accordance with the BEI, CE, Long-Term Management Plan, and the Endowment Assessment, using funds provided by the Foundation from the Endowment Amount in accordance with the terms of this Recipient Agreement.

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

1. **Performance of Land Management Activities.** The Recipient hereby agrees to perform the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.
2. **Funding for Land Management Activities.** The Foundation hereby agrees to provide funds from the Endowment Amount to the Recipient for its performance of the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.
3. **Scope of Services to be Performed.** The Recipient will perform the Land Management Activities as set forth in the Long-Term Management Plan and the Endowment Assessment with funds provided under this Recipient Agreement. The Parties agree and acknowledge that the Long-Term Management Plan and the Endowment Assessment were created by or on behalf of the Bank Sponsor and

approved by IRT. The Foundation is expressly entitled to rely on the validity of the IRT Approval and the accuracy of the Long-Term Management Plan, and the Endowment Assessment, the Endowment Payment Schedule, and any future amendments thereto without independent verification. The Foundation shall not be liable in any respect to CDFW, the Recipient, the IRT, or to any other party, for errors, omissions, inaccuracies, or other elements of the Long-Term Management Plan, or the Endowment Assessment, or the Endowment Payment Schedule, whether contained therein or omitted therefrom, or any future amendments thereto. The Parties agree and acknowledge that the scope of services the Recipient is required to perform under this Recipient Agreement is limited to the Land Management Activities on the Bank Property to the extent funds are made available under this Recipient Agreement to pay for such Land Management Activities.

The Long-Term Management Plan, Endowment Assessment, and Endowment Payment Schedule may be amended with the written approval of the IRT, and any approved amendments to the Long-Term Management Plan, Endowment Assessment, and Endowment Payment Schedule shall be deemed incorporated into this Recipient Agreement automatically, without the need for an amendment to this Recipient Agreement.

4. **Term.** Unless terminated earlier pursuant to Section 11 herein, this Recipient Agreement shall be effective from the Effective Date until the date (if any) that a successor Recipient approved by the IRT becomes obligated to perform the Land Management Activities.

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

6. **Payment.**

a. **Payment in the Ordinary Course.** In consideration of the Land Management Activities to be performed by the Recipient, the Foundation shall disburse to the Recipient from the Endowment Amount annual, advance payments (each such payment an "Endowment Payment") which the Recipient shall use to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Foundation is directed otherwise in writing by CDFW, each Endowment Payment will be made in the amount requested by the Recipient in a written payment request ("Payment Request") submitted to the Foundation pursuant to this section (as adjusted by a measure of inflation as described below in this subsection 6.a.). Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities, exclusive

of any contingency amount set forth in the Endowment Assessment, for the applicable calendar year as set forth in the Endowment Assessment. Endowment Payments shall be adjusted by a measure of inflation over the period of time since the Endowment Assessment was completed. The measure of inflation shall be calculated using the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, West Region (1982-84=100), or the successor of such index over the same period of time.

The Recipient must submit to the Foundation a Payment Request between July 1 and November 15 in order to receive an Endowment Payment to fund Land Management Activities in the next calendar year. The Foundation will disburse Endowment Payments in December for Payment Requests properly submitted to the Foundation in the period from the immediately prior July 1 through November 15.

If and only if the Effective Date of this Recipient Agreement is in a year in which the Recipient has first assumed responsibility for performing Land Management Activities on the Bank Property, to be funded out of the Endowment Amount (the "Initial Year"), then the Recipient may submit a Payment Request as soon as is practicable after the Recipient has assumed responsibility for performing Land Management Activities on the Bank Property, and in no event after November 1 of the Initial Year. The maximum amount of funds that may be requested in such Payment Request shall be the pro rata portion (on an annual basis) of the annual costs for the Initial Year as specified for the Bank Property in the corresponding Endowment Assessment. The Foundation will disburse an Endowment Payment within thirty (30) days of receipt of a properly submitted Payment Request. For Endowment Payments in all calendar years thereafter, the Recipient is required to submit Payment Requests between July 1 and November 15 in accordance with the paragraph above of this subsection.

Requests by the Recipient for non-annualized funds (i.e. funds for single or limited-occurrence expenses as set forth in the Endowment Assessment) from the Endowment Amount shall be included with the Payment Request submitted prior to the calendar year in which use of such funds is scheduled in the Endowment Assessment. The Foundation will disburse non-annualized funds as a part of any December Endowment Payment for Payment Requests made between July 1 and November 15. If use of non-annualized funds is scheduled in the Endowment Assessment for the Initial Year, then the request for such funds shall be included in the Payment Request of the Initial Year. The Foundation will disburse non-annualized funds within thirty (30) days after submission of a Payment Request properly made in the Initial Year.

Payment Requests and Endowment Payments shall be made in accordance with the Endowment Payment Schedule in effect as of July 1 of that year, except as otherwise provided in this Recipient Agreement.

The Recipient shall submit all Payment Requests via email, fax, or mail to the Foundation. In the event an alternate method of requesting payment becomes available in the future, such as an online payment request system, the Foundation will notify the



Recipient and provide appropriate instructions. All Payment Requests must include a written statement by the Recipient that (i) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (ii) the Recipient reasonably expects the Land Management Activities specified in the Endowment Assessment for the applicable calendar year to be actually necessary in that year.

b. CDFW Suspension or Reduction of Payments for Financial Reasons.

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

c. Other Payments. Either on its own initiative or at the request of the Recipient, CDFW may, after consulting with the IRT and the Conservation Easement Grantee, elect to authorize payments to be made from the Endowment Amount other than those payments made in the ordinary course pursuant to Section 6.a. If CDFW, after consulting with the IRT and the Conservation Easement Grantee, and in accordance with the MOA, elects to exercise this authority, it shall direct the Foundation in writing to disburse a specific amount of funding from the Endowment Amount to the Recipient, whether requested by the Recipient or not, so that the Recipient may perform an activity, or activities, which the IRT and/or the Conservation Easement Grantee determines to be appropriate with respect to the Bank Property. Upon receipt of such written direction, the Foundation shall, as soon as practicable, make the disbursement as directed by CDFW. Upon receipt of such a payment the Recipient shall, as soon as practicable, perform whatever activity, or activities, the payment is intended to fund as directed by CDFW.

If the Recipient submits a payment request pursuant to this subsection to address an emergency or catastrophic event affecting the Bank Property, and if the request clearly and expressly identifies the nature of the emergency, CDFW shall inform the Recipient whether the request is granted, granted in part, or denied within five (5) days after

receiving the written request. For all requests from the Recipient for a payment pursuant to this subsection other than those to address an emergency or catastrophic event affecting the Bank Property, CDFW shall respond to such payment request (indicating that it is granted, granted in part, or denied) within sixty (60) days after receiving the written request.

CDFW hereby acknowledges that any direction by CDFW under this subsection for the disbursement of a payment not contemplated by the Long-Term Management Plan or Endowment Assessment may impair or preclude the continuing existence of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFW, the IRT, or to any other party for any adverse impacts to the continuing existence of the Endowment Amount caused by a decision of CDFW, after consulting with the IRT and the Conservation Easement Grantee, to direct a one-time payment under this subsection.

d. Overages in Payments. Any portion of an Endowment Payment that remains unspent by the Recipient as of the end of the period in which such amount was paid shall be deemed an “overage” for purposes of this subsection. Overages in payments resulting from discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period shall be retained and accounted for on an ongoing basis by the Recipient. All such overages shall be used by the Recipient exclusively for payment of the following year’s Land Management Activities on the Bank Property, and shall be reflected as a deduction from the invoice request and disbursement for the following year’s Land Management Activities.

7. Review and Reporting Requirements. The Recipient shall submit to the Foundation an annual report (“Annual Report”) for each calendar year this Recipient Agreement is in effect. Each Annual Report shall be submitted by the Recipient to the Foundation between January 1 and January 31, or at least thirty (30) days prior to the effective date of termination of this Recipient Agreement. The Annual Report shall (a) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or in the event of termination the current calendar year (collectively the “Reporting Period”); (b) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period (c) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Long-Term Management Plan and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period; and (d) describe any discrepancy between the costs of Land Management Activities as modeled in the Endowment Assessment and the costs of Land Management Activities actually performed during the Reporting Period.

The Foundation will provide the Annual Report and a corresponding summary of its contents to CDFW by March 15 of the year received by the Foundation, or within thirty (30) days of receipt in the event of termination of this Recipient Agreement, which summary will include a notation of any discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period. The Parties expressly agree and acknowledge that the Foundation is entitled to rely on the accuracy and validity of the Annual Reports submitted by the Recipient and shall have no duty to independently verify the information set forth therein. The Parties further agree and acknowledge that the Foundation shall have neither the right nor the obligation to reduce, suspend, or otherwise modify Endowment Payments based on the contents of any Annual Report, and that any remedial action under this Recipient Agreement or otherwise with respect to Endowment Payments based on the contents of any Annual Report shall be the exclusive right and/or obligation of CDFW, after consultation with the IRT and the Conservation Easement Grantee.

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

Foundation Primary:	Shawn Marchand National Fish and Wildlife Foundation Senior Manager, Impact-Directed Environmental Accounts (IDEA) 90 New Montgomery Street, Suite 1010 San Francisco, CA 94105 Telephone: (415) 243-3102 Fax: (415) 778-0998 E-mail: Shawn.Marchand@nfwf.org
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Foundation Alternate:	Michelle Olson National Fish and Wildlife Foundation Manager, Impact-Directed Environmental Accounts (IDEA) 1133 15th Street, NW, Suite 1100 Washington, D.C. 20005 Telephone: (202) 595-2437 Fax: (202) 857-0162 E-mail: Michelle.Olson@nfwf.org
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Recipient:	<p>Greg DeYoung Vice President  Westervelt Ecological Services  600 N. Market Blvd. Ste. 3  Sacramento, CA 95834  Telephone: (916) 646-3644  Fax: (916) 646-3675  E-mail: <a href="mailto:gdeyoung@westervelt.com">gdeyoung@westervelt.com</a></p>
CDFW:	<p>Regional Manager, Central Region  California Department of Fish and Wildlife  1234 E. Shaw Ave  Fresno, CA 93710  Telephone: (559) 243-4005 x141  Fax: (559) 243-4022  E-mail:</p>
USFWS:	<p>Jennifer Norris  Field Supervisor  Sacramento Field Office  U.S. Fish and Wildlife Service  2800 Cottage Way, Rm. W-2605  Sacramento, CA 95825  Telephone: (916) 414-6600  Fax: (916) 414-6712  E-Mail: <a href="mailto:Jennifer.Norris@fws.gov">Jennifer.Norris@fws.gov</a></p>
USACE	<p>Zachary Simmons  US Army Corps of Engineers, Sacramento District  1325 J Street, Room 1350  Sacramento, CA 95814  Attn: Chief, Regulatory Division  Telephone: (916) 557-2520  Fax: (916) 916-557-7803  E-Mail: <a href="mailto:Zachary.M.Simmons@usace.army.mil">Zachary.M.Simmons@usace.army.mil</a></p>
USEPA	<p>Leana Rosetti  U.S. Environmental Protection Agency  Region IX  75 Hawthorne Street  San Francisco, CA 94105  Attn: Director, Water Division  Telephone: (415)- 947-8707  Fax: (415)- 947-3549  E-Mail: <a href="mailto:Rosetti.Leana@epa.gov">Rosetti.Leana@epa.gov</a></p>

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

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

10. **Amendments.** This Recipient Agreement may be amended only by a written amendment, signed by the Parties and the Landowner. CDFW will consult with the IRT prior to signing any such amendment. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Recipient Agreement may not be amended via electronic mail.

11. **Default and Termination.**

a. If any Party ("Notifying Party") determines that any other Party ("Defaulting Party") has failed to satisfy any obligation under the Recipient Agreement or applicable federal, state, or local law, the Notifying Party may pursue the remedies set forth below:

(1) **Minor Default.** In the event of a non-material default ("Minor Default"), the Notifying Party may issue to the Defaulting Party a written notice of default ("Notice of Default"), which shall clearly explain the nature of the default and outline recommended actions, if any, to cure the default. The Defaulting Party shall have ninety (90) days to cure the Minor Default, unless the Notice of Default indicates there is an urgent need to cure and expressly provides for a shorter cure period. If the Defaulting Party determines the Minor Default cannot be cured within ninety (90) days or the stated cure period, the Defaulting Party shall provide the Notifying Party with written notice requesting additional time, which request the Notifying Party shall not unreasonably deny. The Defaulting Party shall provide the Notifying Party with written notice once the Minor Default has been cured. If the Notifying Party determines the Defaulting Party has not cured the Minor Default to the Notifying Party's reasonable satisfaction, the Notifying Party may either provide a second Notice of Default pursuant to this subsection or terminate the Recipient Agreement for cause pursuant to Section 11.c.

(2) **Major Default.** In the event of a default of a material term of the Recipient Agreement or a significant violation of federal, state, or local law ("Major Default"), the Notifying Party may issue a Notice of Default and follow the procedure outlined in Section 11.a.1. In the alternative, if the Notifying Party determines the Major Default cannot be cured to the Notifying Party's reasonable satisfaction, the Notifying Party may terminate the Recipient Agreement for cause pursuant to Section 11.c.

b. Stop-Payment Notice. In the event the Recipient has committed a Major Default or failed to cure a Minor Default to CDFW's reasonable satisfaction after receiving a Notice of Default, in addition to any other remedies CDFW, after consulting with the IRT, may issue a written stop-payment notice ("Stop Payment Notice") to the Foundation. A Stop Payment Notice will instruct the Foundation either to suspend or reduce Endowment Payments to the Recipient until the Foundation is otherwise notified in writing by CDFW. The Foundation shall be entitled to rely on any Stop Payment Notice received from CDFW, and shall be obligated to follow the directions contained therein. The Foundation shall not be liable in any manner to the Recipient or to any other person by virtue of following the direction of CDFW contained in any Stop Payment Notice.

Prior to issuing a Stop Payment Notice, CDFW shall provide the Recipient and the Foundation with written notice of its intent to stop payment. Within ten (10) days of receipt of such notice, either the Recipient or the Foundation may request, in writing, a meeting to resolve the dispute prior to issuance of the Stop Payment Notice. In the event it receives a request for a meeting pursuant to this subsection, CDFW shall not issue a Stop Payment Notice except as provided below. The dispute resolution meeting shall include CDFW's Director or a Deputy Director, a designated representative from each IRT member agency, the Foundation's Impact-Directed Environmental Accounts Vice President or Director, and the Recipient's Vice President, and shall take place, either in person or by telephone conference, within ten (10) days of CDFW's receipt of the request for the meeting. If the meeting does not result in resolution of the dispute or if the Recipient's Vice President fails to make himself/herself available for a meeting within the ten-day period, CDFW, after consulting with the IRT, shall be entitled to issue the Stop Payment Notice.

c. Termination.

(1) Termination for Cause. Any Party may terminate this Recipient Agreement for cause if any other Party has committed a Major Default or failed to cure a Minor Default to the Notifying Party's reasonable satisfaction after receiving a Notice of Default. The Notifying Party shall provide all other Parties written notice of its intent to terminate the Recipient Agreement for cause. Within ten (10) days of receipt of such notice, any Party may request, in writing to all other Parties, a meeting to resolve the dispute prior to termination. The dispute resolution meeting shall include CDFW's Director or a Deputy Director, a designated representative from each IRT member agency, the Foundation's Impact-Directed Environmental Accounts Vice President or Director, and the Recipient's Vice President and shall take place, either in person or by telephone conference, within ten (10) days of the Notifying Party's receipt of the request for the meeting. If the meeting does not result in resolution of the dispute or if the representative of the Defaulting Party fails to make himself/herself available for a meeting within the ten-day period, the CDFW, after consulting with the IRT, shall be

entitled to terminate the Recipient Agreement thirty (30) days from the date of the dispute resolution meeting or the end of the ten-day period to meet, whichever is later.

(2) Termination without Cause. Any Party seeking to terminate this Recipient Agreement without cause shall provide written notice of its intent to terminate and shall offer to meet and confer with any other Parties within sixty (60) days of receipt of such notice. If no other Parties respond to the offer to meet and confer, the Recipient Agreement shall automatically terminate, subject to Section 11.d., one hundred twenty (120) days after the date of the notice of intent to terminate. If one or more Parties request to meet and confer, the Party seeking to terminate shall meet with all other interested Parties to explain the reason for the termination and discuss alternatives, if any, to terminating the Recipient Agreement. If the Parties are unable to resolve the matter, the Recipient Agreement shall automatically terminate one hundred twenty (120) days after the date of the meeting.

(3) Termination of the MOA. This Recipient Agreement shall terminate concurrently with termination of the MOA. The Party terminating the MOA (i.e. CDFW or the Foundation) shall provide all other Parties and the IRT with a copy of the notice terminating the MOA and notice of the termination of this Recipient Agreement at the time it issues the notice of termination of the MOA.

d. Transfer of Duties upon Termination.

(1) Unless otherwise specified in writing by CDFW, upon issuance of any termination that will terminate the Recipient's stewardship over the Bank Property, the Recipient shall: (i) stop performance of all Land Management Activities; (ii) promptly return to the Foundation any unspent and unobligated portion of any Endowment Payment; and (iii) in an orderly fashion, transfer custody, control, or other power necessary for stewardship of the Property to an entity identified by CDFW, after consulting with the IRT. The CDFW will notify the IRT of any such transfer. Such transfer shall occur no later than thirty (30) days after the Recipient is informed by CDFW in writing of the entity that should receive custody, control, or other power necessary for stewardship of the Bank Property.

(2) With respect to any termination that will terminate the Foundation's participation in the management of the Endowment Amount, the termination is not effective unless and until the Foundation has transferred in an orderly fashion the custody, control, or other power necessary for the investment, management, and administration of the Endowment Amount to an entity identified in writing by CDFW, after consulting with the IRT.

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

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

14. **Compliance with Laws; Indemnification.**

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

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

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

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

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

16. **Access to Recipient Records.** CDFW and the Foundation, or any of their duly authorized representatives, shall, upon three days prior notice, have access to any books, documents, papers and records of the Recipient that are directly pertinent to this Recipient Agreement for purposes of making audits, examinations, excerpts or



transcription. The Recipient shall keep all books, documents, papers, or records for at least five years after their preparation.

17. **No Third-Party Rights.** This Recipient Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a party to this Recipient Agreement.

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

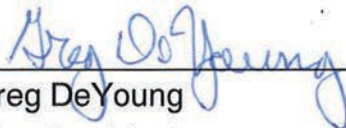
19. **MOA Conflicts.** In the event a conflict arises between the terms of this Recipient Agreement and the MOA, the Parties will meet and confer to resolve the issue to the mutual satisfaction of the Parties.

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

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

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

**Westervelt Ecological Services**

  
\_\_\_\_\_  
Greg DeYoung  
Vice President  
Tax ID #: 20-5180010

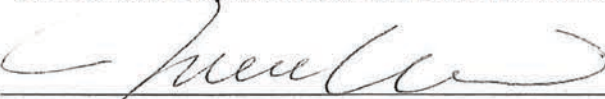
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Date

**National Fish and Wildlife Foundation**

Midelle Olson for  
\_\_\_\_\_  
Timothy J. DiCintio  
Senior Vice President, Impact-Directed Environmental  
Accounts

11/9/15  
\_\_\_\_\_  
Date

**California Department of Fish and Wildlife**

  
\_\_\_\_\_  
Name: Julie Vance  
Regional Manager, Central Region

11/9/15  
\_\_\_\_\_  
Date

**Approved as to Form and Content Only:**

**U. S. Fish and Wildlife Service**

  
\_\_\_\_\_  
Jennifer M. Norris  
Field Supervisor, Sacramento Fish and Wildlife Office

Nov 11, 2015  
\_\_\_\_\_  
Date

EXHIBIT A-1  
Map of Bank Property

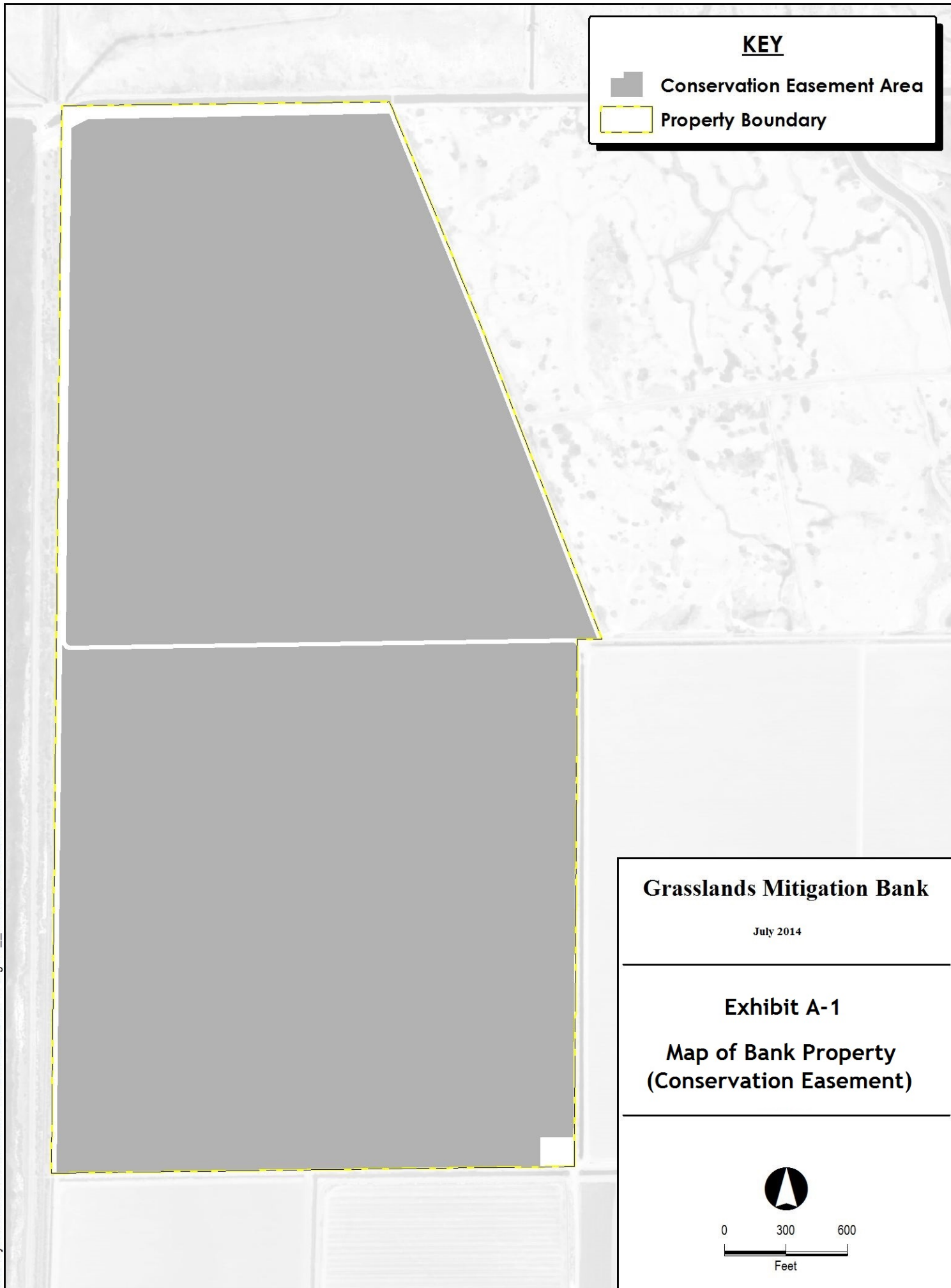


EXHIBIT A-2  
Legal Description of Bank Property

Westervelt Conservation Easement  
Exhibit A-2 Legal Description of Bank Property

**PARCEL ONE:**

Beginning at the northwest corner of Section 20, Township 9 South, Range 10 East, M.D.B.&M.; thence S.89°45½'E., 1604.50 feet; thence along the center line of the Patman Grade, a forty foot road reservation, S.21°16½'E., 1241.30 feet and S.10½°E., 1585.10 feet; thence leaving the Patman Grade, N.89°46'W., 2668.57 feet to the west quarter corner of said Section 20; thence N.01°28'E., 2641.00 feet to the point of beginning.

**PARCEL TWO:**

That portion of the southwest quarter of Section 20, Township 9 South, Range 10 East, M.D.B.&M., as shown on the unrecorded map of Miller & Lux Subdivision of Section 20, more particularly described as follows:

Commencing at the west quarter corner of said Section 20; thence N.02°04'25"E. 60.00 feet along the west line of said Section 20 to the TRUE POINT OF BEGINNING for this description; thence continuing along the west line of said Section 20, N.02°04'25"E. 2582.15 feet to the west quarter corner of said Section 20; thence along the quarter section line, S.89°10'10"E. 2547.75 feet; thence S.01°49'50"W. 2580.59 feet; thence N.89°11'58"W. 2558.73 feet to the point of beginning.

The above described Parcel Two is the same as Adjusted Parcel 1 as shown in the Certificate of Compliance recorded in Document 2012-031626, Merced County Records.

The above contains: 281.24 acres, more or less. (Gross)

**EXCLUSIONS:**

**EXCLUSION ONE:**

That portion PARCEL ONE above described being the area west of the east line of the road easement as granted to Chin and Lli, Volume 3982, Official records, Page 995, Merced County Records and north of the north line of the Recirculation Ditch, described as follows:

Beginning at the west quarter corner of Section 20; thence along the west line of said Section, N.02°03'13"E. 2641.63 feet to the northwest corner of Section 20; thence along the north line of Section 20, S.89°09'13"E. 1604.68 feet to the centerline of Patman Grade; thence along said centerline, S.20°40'13"E. 56.15 feet to the north line of the Recirculation Ditch projected easterly; thence along the northerly line of the Recirculation Ditch, the following:

1. N.43°26'38"W. 14.29 feet
2. N.71°51'04"W. 20.33 feet
3. N.85°56'41"W. 30.93 feet
4. N.87°20'27"W. 44.23 feet
5. N.88°49'18"W. 72.44 feet

6. N.89°31'28"W. 81.17 feet
7. N.89°44'56"W. 437.37 feet
8. N.88°46'40"W. 117.65 feet
9. S.88°47'37"W. 74.56 feet
10. N.88°54'21"W. 172.10 feet
11. N.89°21'40"W. 342.12 feet
12. N.85°54'08"W. 23.74 feet
13. S.84°30'08"W. 67.39 feet
14. S.76°01'34"W. 16.78 feet
15. S.67°03'24"W. 46.17 feet
16. S.60°34'12"W. 21.44 feet

17. S.43°52'34"W. 17.52 feet to the east line of the road easement referenced above; thence along said east line, along a 130.00 foot radius curve southerly, whose radius point bears S.77°49'35"W., through a central angle of 14°21'18", an arc distance of 32.57 feet; thence S.02°10'53"W. 2494.43 feet; thence along a 25.00 foot radius curve to the left, through a central angle of 62°21'08", an arc distance of 27.21 feet to the south line of PARCEL ONE and the south line of the northwest quarter of Section 20; thence along said line, N.89°10'10"W. 57.59 feet to the point of beginning.

The above EXCLUSION includes portions of the Road Easement above referenced and the Drainage and Maintenance Access Easement, described in Document # 2013-039634, Merced County Records, being the west 25 feet of the above described as they lay within PARCEL ONE.

#### EXCLUSION TWO:

That portion of PARCEL TWO, described as follows:

Beginning at the southeast corner of the above described PARCEL TWO; thence along the south line of PARCEL TWO, N.89°11'58"W. 147.58 feet; thence N.01°49'50"E. 147.58; thence S.89°11'58"E. 147.58 feet to the east line of PARCEL TWO above described; thence along said east line, S.01°49'50"W. 147.58 feet to the point of beginning. (Note: Portion of this exclusion falls within the Road as described in EXCLUSION FIVE.)

#### EXCLUSION THREE:

That portion of Patman Grade within PARCEL ONE above described, being the west twenty feet of the forty foot wide road reservation as described in PARCEL ONE above.

#### EXCLUSION FOUR:

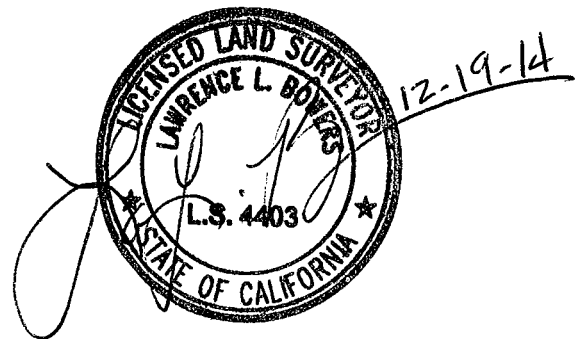
The Drainage and Maintenance Access Easement, described in Document # 2013-039634, Merced County Records, being the west 25 feet of the above described that lays within PARCEL TWO above described.

EXCLUSION FIVE:

That portion of PARCELS ONE AND TWO that lies within the Road Easement granted to Chin and Lli, Volume 3982, Official records, Page 995, Merced County Records, described as follows:

Commencing at the west quarter corner of Section 20; thence along the quarter section line, S.89°10'10"E. 30.77 feet to the westerly line of the road easement and the TRUE POINT OF BEGINNING for this description; thence continuing along the quarter section line, S.89°10'10"E. 27.21 feet to the easterly line of the road easement; thence along a 25.00 foot radius curve southeasterly, whose radius point bears N.29°04'17"E., through a central angel of 29°04'17", an arc distance of 12.68 feet; thence along the northerly line of said easement, S.89°14'32"E. 2459.25 feet; thence along a 35.00 of radius curve to the right, through a central angle of 32°13'19", an arc distance of 19.68 feet to the east line of PARCEL TWO above described; thence along said east line, S.01°49'50"W. 2575.22 feet to the southeast corner of said PARCEL TWO; thence along the south line of PARCEL TWO, N.89°11'59"E. 9.03 feet to the west line of the Road Easement; thence along said west line, N.01°57'50"E. 2545.40 feet; thence along a 15.00 foot, to the left, through a central angle of 91°12'22", an arc distance of 23.88 feet; thence long the southerly line of said easement, N.89°14'32"W. 2459.25 feet; thence along a 45.00 foot radius curve to the right, through a central angle of 61°00'04" and arc distance of 47.91 feet to the point of beginning.

The Conservation Easement contains: 273.55 acres, more or less. (Net)



December 17, 2014

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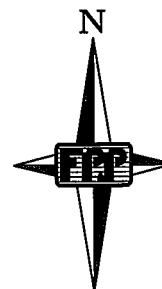
EXHIBIT B

WESTERVELT CONSERVATION EASEMENT

1 of 4

POINT OF BEGINNING  
PARCEL ONE  
N.W. CORNER SECTION 20

DETAIL A  
SEE SHEET 2



1" = 600'

EXCLUSION ONE

20' 40'

CL PATMAN GRADE

PARCEL ONE

EXCLUSION THREE

POINT OF BEGINNING  
PARCEL TWO  
W 1/4 CORNER  
SECTION 20

DETAIL  
SEE SHEET 3

DETAIL  
SEE SHEET 3

EXCLUSION FIVE  
(ROAD)



PARCEL TWO  
(ADJUSTED PARCEL 1)

EXCLUSION FOUR  
(DRAINAGE EASEMENT)

S.W. CORNER  
SECTION 20

S.W. CORNER  
PARCEL TWO

EXCLUSION TWO

S.E. CORNER  
PARCEL TWO

DETAIL  
SEE SHEET 4

DETAIL  
SEE SHEET 4

# EXHIBIT B WESTERVELT CONSERVATION EASEMENT 2 of 4

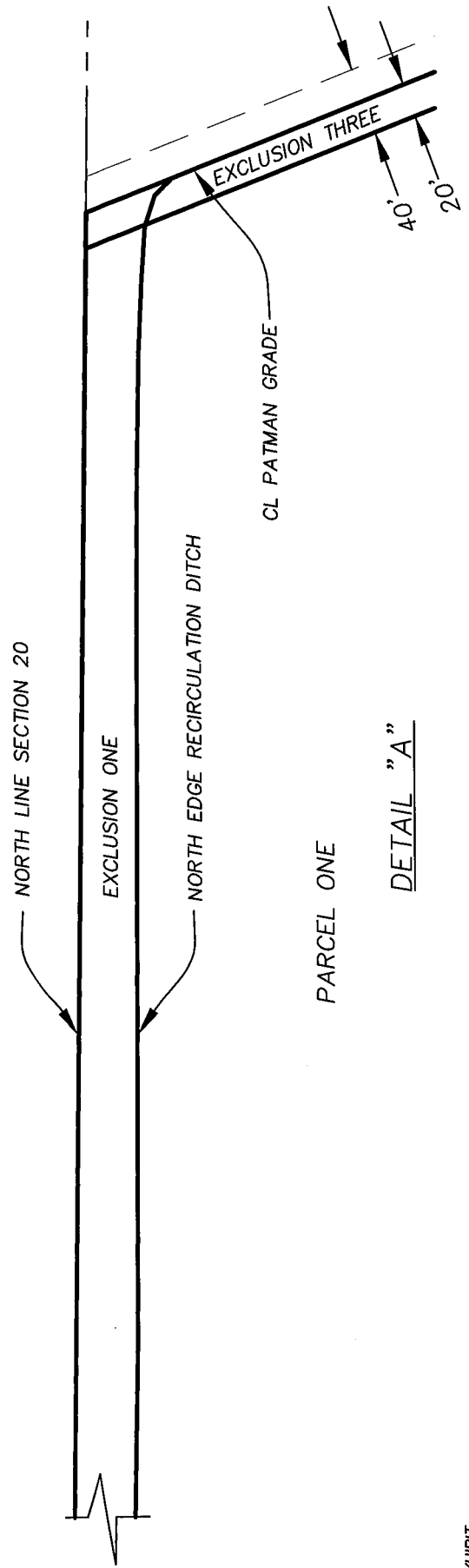
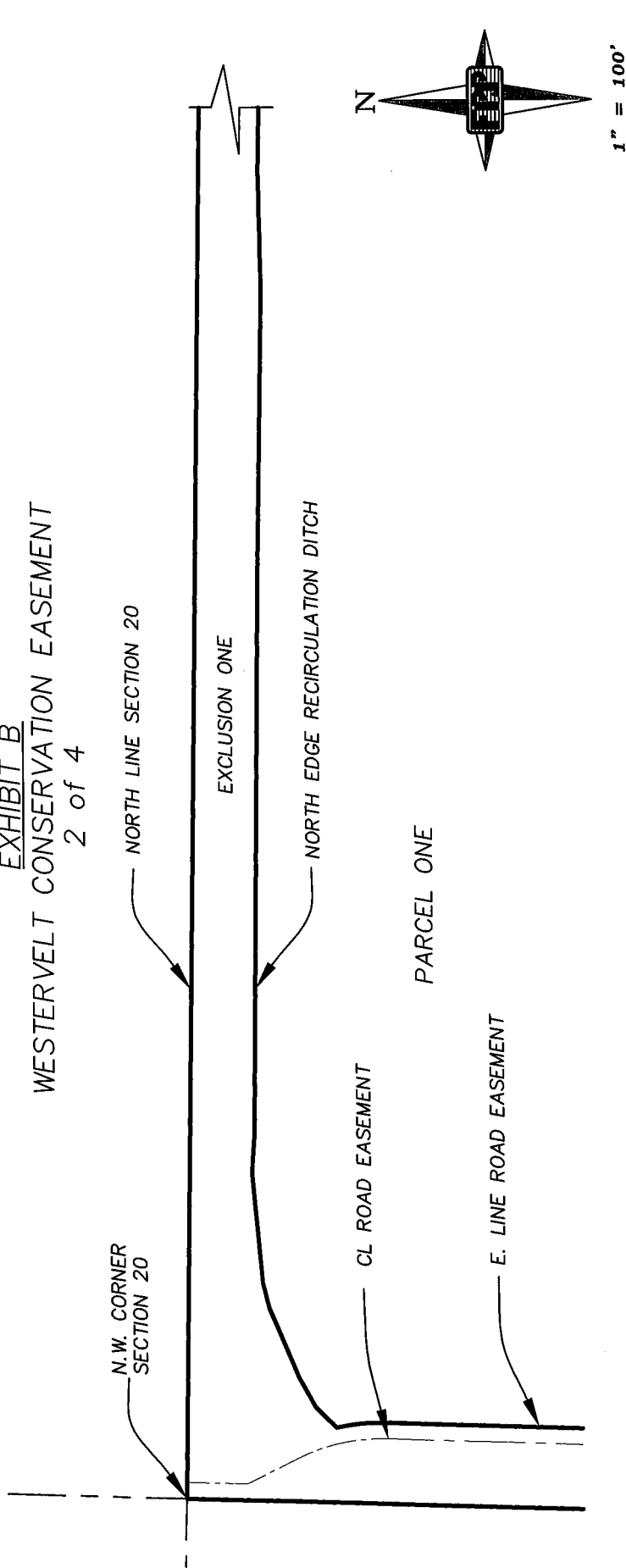


EXHIBIT B  
WESTERVELT CONSERVATION EASEMENT  
3 of 4

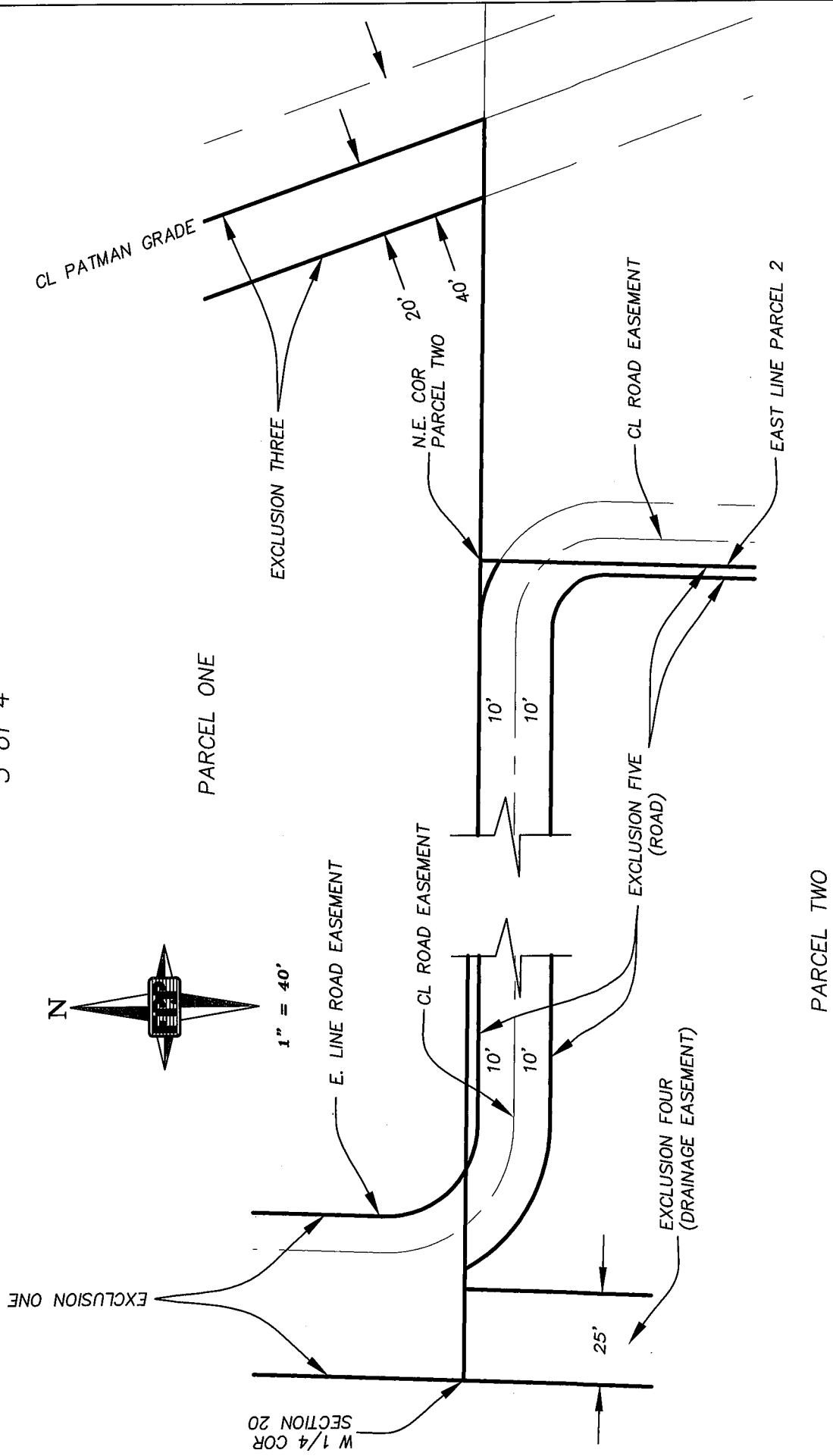
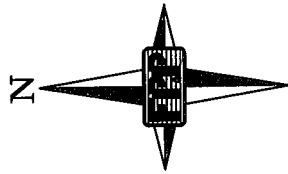


EXHIBIT B  
WESTERVELT CONSERVATION EASEMENT  
4 of 4



1" = 40'

PARCEL TWO

25'

EXCLUSION FOUR  
(DRAINAGE EASEMENT)

S.W. COR  
PARCEL TWO

S.E. CORNER PARCEL TWO

S.W. COR  
SECTION 20

SOUTH LINE SECTION 20

CL ROAD EASEMENT  
E. LINE PARCEL TWO

EXCLUSION FIVE  
(ROAD)

EXCLUSION TWO

EXHIBIT B-1  
Long-Term Management Plan for Bank Property

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**Appendices**

**Appendix A. Grazing Plan**

# **I Introduction**

## **A Purpose of Establishment**

The Grasslands Mitigation Bank (“Bank” or “Bank Property”) is established to provide compensation for impacts to Waters of the United States and habitats of the giant garter snake (“GGS”)(*Thamnophis gigas*) located in the San Joaquin Valley of California. It will be managed in perpetuity as a preserve for wetlands and for GGS.

## **B Purpose of this Long-Term Management Plan**

The purpose of this long-term management plan (“Management Plan”) is to ensure the Bank is managed, monitored, and maintained in perpetuity. This Management Plan establishes objectives, priorities, and tasks involved in monitoring, managing, maintaining, and reporting on the Bank’s restored habitat and is a binding and enforceable instrument, incorporated by reference into the Conservation Easement covering the Bank.

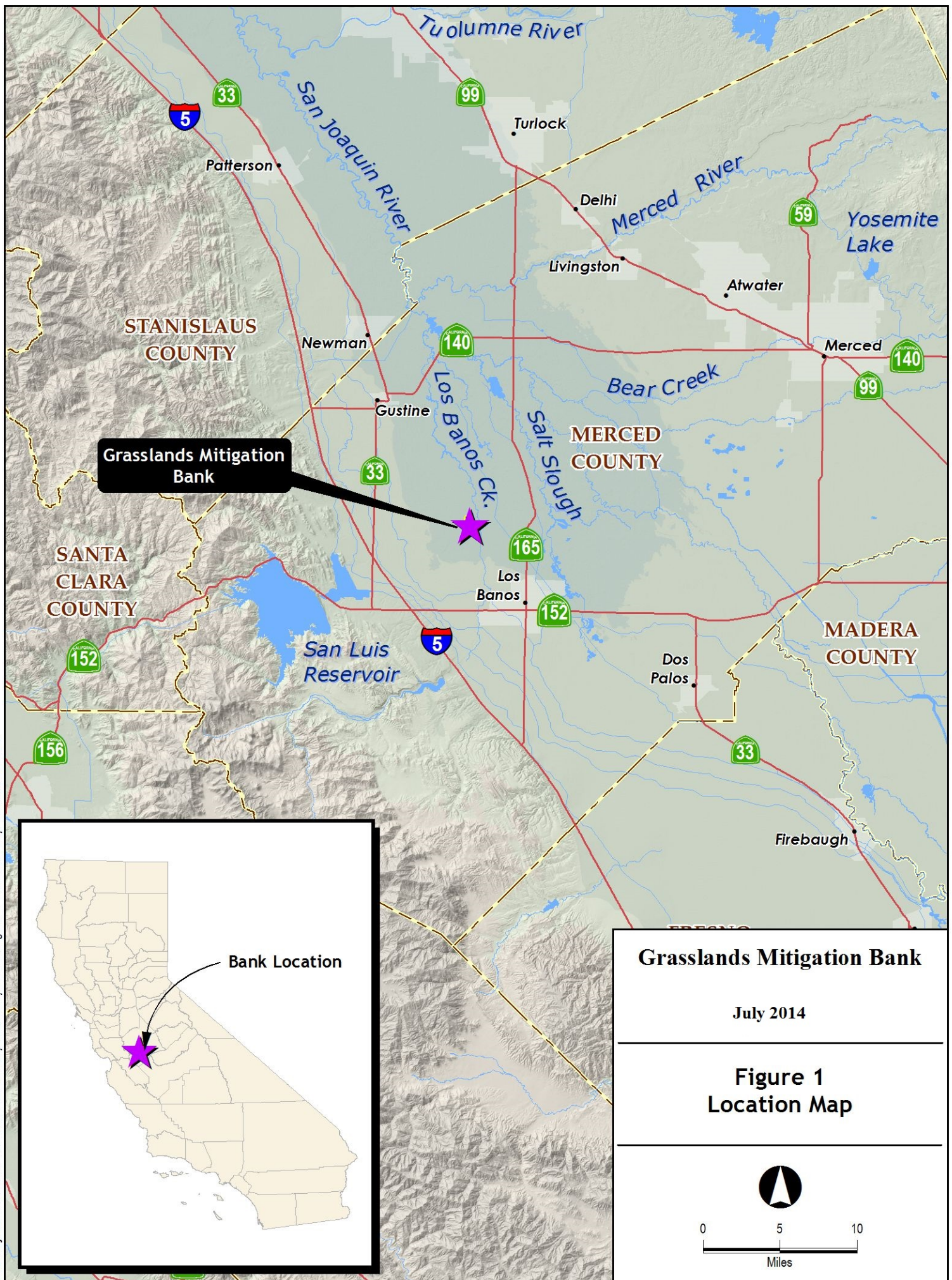
Specifically:

1. The Management Plan serves as a guide for appropriate public and private uses of the Property.
2. The Management Plan serves as a descriptive inventory of fish, wildlife, and plants that occur on or use the Property.
3. The Management Plan provides an overview of the Bank operation and maintenance requirements, including all actions required of the Bank Manager to achieve the Bank’s management goals. It also serves as a budget planning aid for the long-term management endowment (“Endowment Fund”).
4. The Management Plan provides guidance for the Bank Property stewardship in perpetuity.

## **C Bank Manager and Responsibilities**

The property owner, Westervelt Ecological Services (WES), is the long-term land manager (“Bank Manager”). WES, and any subsequent Bank Manager if transferred, shall implement this Management Plan, managing and monitoring the Bank in perpetuity to preserve its habitat and conservation values in accordance with the Bank Enabling Instrument and the Conservation Easement. Long-term management tasks shall be funded through the Endowment Fund. The Bank Manager shall be responsible for providing an annual report to the U.S. Army Corps of Engineers (“USACE”), the United States Environmental Protection Agency (“USEPA”), the U.S. Fish and Wildlife Service (“USFWS”) and the California Department of Fish and Wildlife (“CDFW”) (collectively the “Signatory Agencies” or the “IRT”). The annual report will detail the time period covered and provide a description of the management and monitoring tasks accomplished during the preceeding year.





The Bank Manager's responsibilities include but are not be limited to:

- Maintaining gates and signage
- Coordinating trash removal
- Managing water levels
- Managing upland and wetland vegetation conditions
- Conducting non-native plant management when necessary, using qualified personnel
- Conducting and/or coordinating grazing of the Property
- Reviewing monitoring data and coordinating with or making recommendations to the Signatory Agencies for any adaptive management actions
- Performing general inspections of the Property
- Coordinating an annual biological inspection by a qualified biologist ("Monitoring Biologist")
- Arranging for any corrective action necessary to ensure the sustainability of the habitat at the Bank, as required by this Management Plan

The Monitoring Biologist will be a professional botanist, biologist, or restoration ecologist familiar with California flora and fauna, and will have a working knowledge of jurisdictional wetland hydrology and vegetation as well as management of marsh and upland habitats for GGS. The functions of the Monitoring Biologist will be performed by WES staff.

Overall, duties of the Monitoring Biologist may include but are not limited to:

- Monitoring wetland functions and water delivery system
- Evaluating the presence and extent of introduced non-native (exotic) plant and animal species and recommending management, if needed
- Conducting monthly and annual inspections, collecting data on the Property, and preparing reports required by this Management Plan
- Evaluating site conditions and recommending management actions to the Bank Manager
- Assisting in the review or planning of restoration activities, use of the Bank Property for education, or other tasks

A change of either Bank Manager or Monitoring Biologist will be made in consultation with the Signatory Agencies at the time of the change. If the Bank Manager or the Monitoring Biologist is changed, the outgoing and incoming personnel will tour the Property together, and the former will advise the latter of trends, problem areas, and any administrative difficulties.

## **II Property Description**

### **A *Setting and Location***

The location map (**Figure 1**) shows the Property location in Merced County, within the San Joaquin Valley of California. Due to the Property's rural character and lack of dwelling, there is no street address. Access to the Property is via a legally recorded easement from Sarbo Road

through the neighboring property (**Figure 2**). The Merced County Assessor's parcel numbers are 070-140-012 (129.96 acres), 070-140-033 (122.48 acres), and 070-140-036 (28.8 acres). The center of the Property is at approximately 37 degrees, 8 minutes north latitude and 120 degrees, 4 minutes west longitude. The Property lies within the Grasslands Ecological Area and adjacent to Volta Wildlife Area (**Figure 3**), where the last remaining viable population of GGS within the San Joaquin Valley is located.

## ***B History and Land Use***

The Property was formerly part of the massive Miller and Lux cattle empire, and was previously in hay and forage crop production. The southern parcels of the Property have been in continuous hay and forage crop production since 1967. The northern parcel was maintained as managed wetlands until sometime between 1971 and 1984, when it was leveled for agriculture (**Figure 4**). Seasonal hunting for waterfowl and pheasants was likely a historic use, but there are no clubhouse structures or improvements such as residential or agricultural buildings on the Property. There are unimproved perimeter farm roads of native soil, unlined irrigation canals, and corrugated metal and plastic culverts serving water management needs for hay cultivation.

Development of a mitigation bank for wetlands and wetland-dependent species on the Property is highly compatible with the surrounding properties and adds significantly to the large continuous block of habitat developed or preserved in the San Joaquin Basin. Due to the protected status of the Volta Wildlife Area, no change in its current use is anticipated.

## ***C Cultural Resources***

The Cultural Resources Survey and Report (**Exhibit J to the BEI**) indicates that there are no significant cultural resources on the Property. Any potential for use by Native Americans would likely have been primarily for transit and temporary resource use.

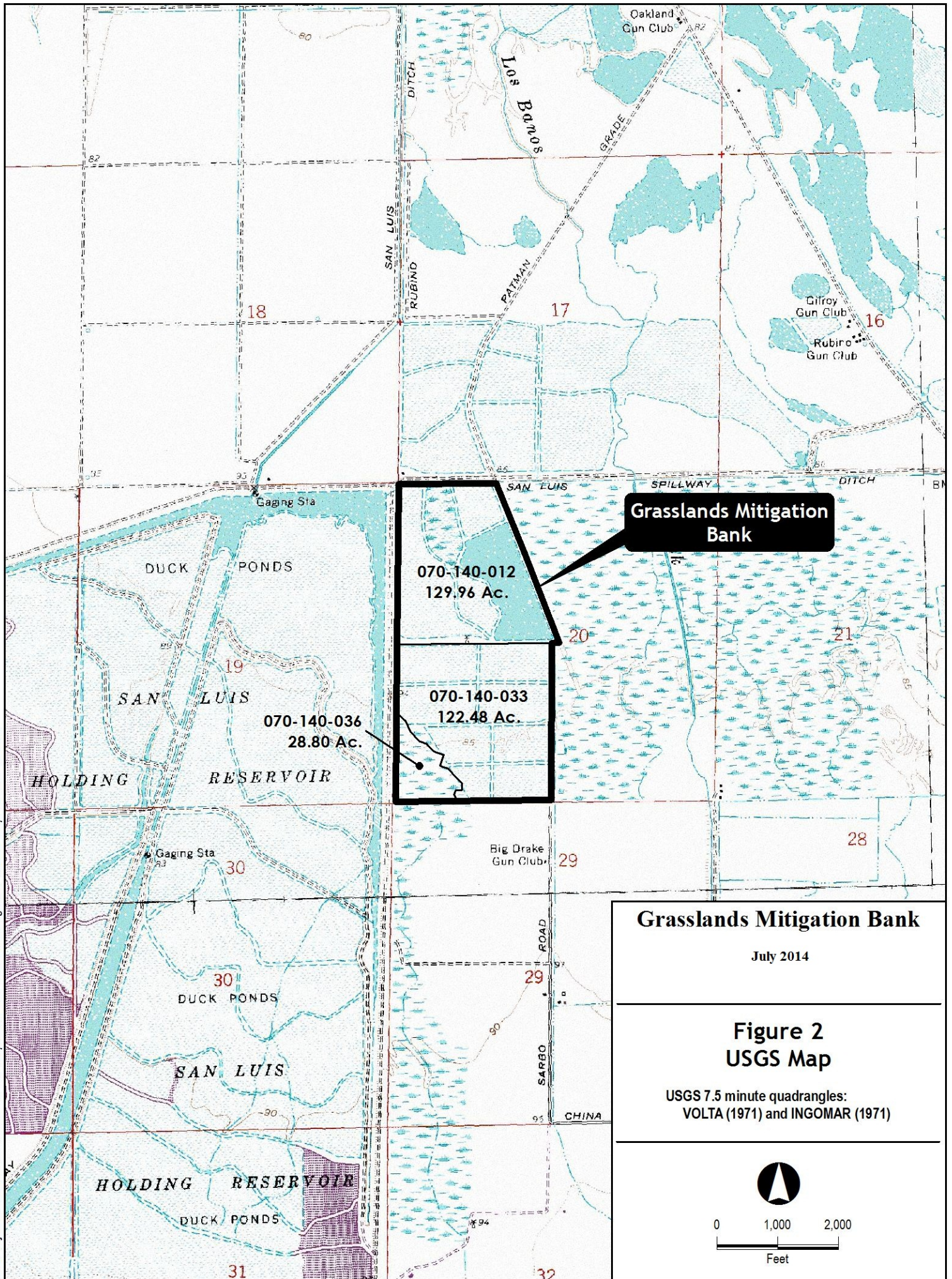
## ***D Hydrology and Topography***

The Property is located within the Los Banos Creek Watershed, a historic floodplain basin, and basin rim landform now largely converted to agriculture that drains the western portion of the Property and agricultural land to the south are drained through a ditch along the western edge of the Property (the ditch itself along the western edge of the property is not within the Bank and is maintained cooperatively between the Property Owner and neighboring agricultural operations) and exiting through a pipe in the northwest corner that has an outfall on the CDFW property to the north.

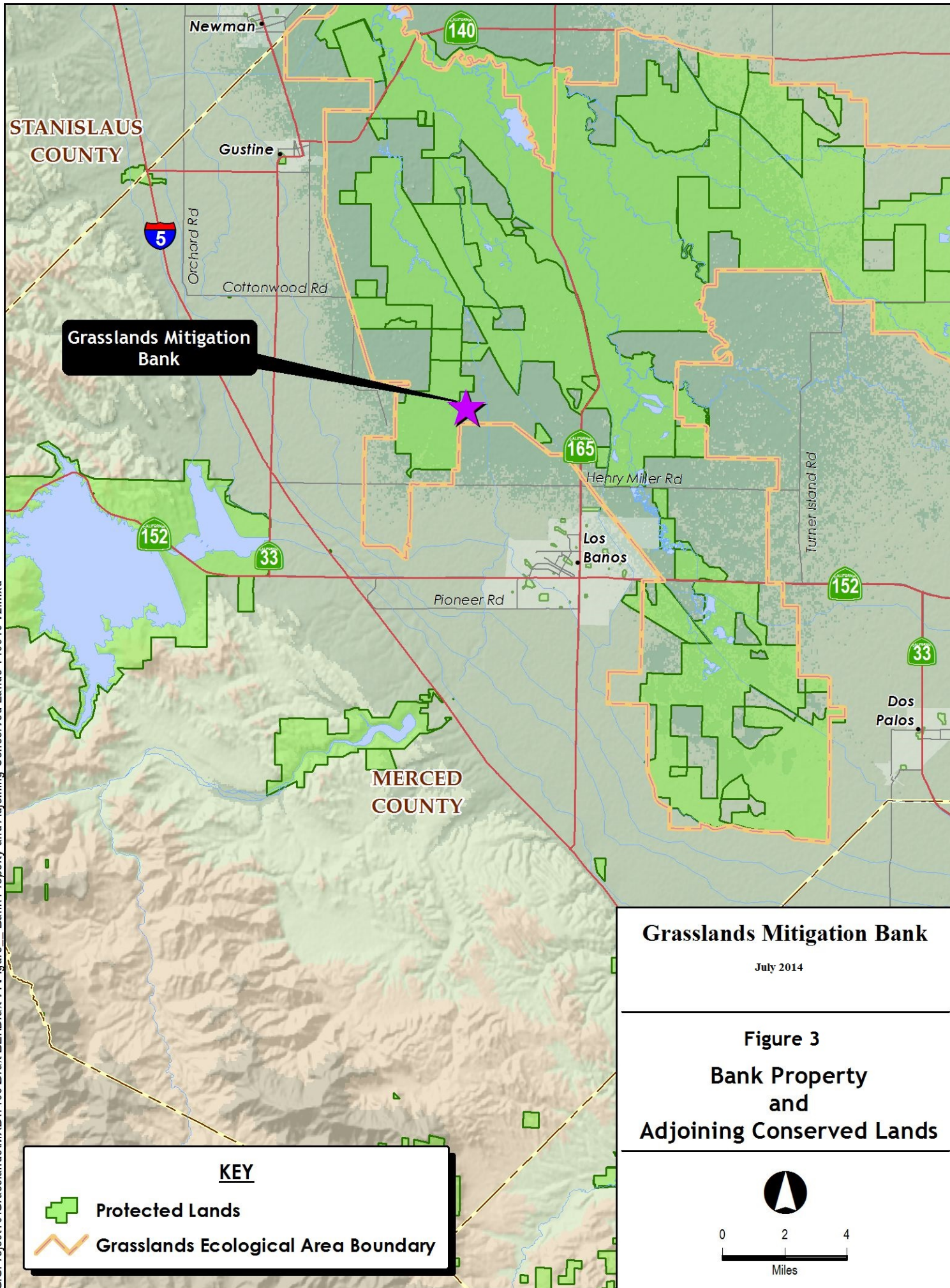
## ***E Soils***

According to the 1990 Soil Survey of Merced County - Western Part, California, four soil map units occur within the Property (**Figure 5**). The majority of the Property consists of Triangle clay, alkali (less than 2% slopes) (map unit 257), which is a deep, very poorly drained wide-cracking hydric soil formed in mixed alluvium in basin rims and low alluvial fans of valleys. The northern portion of the Property is mapped as this map unit; however, observations suggest that

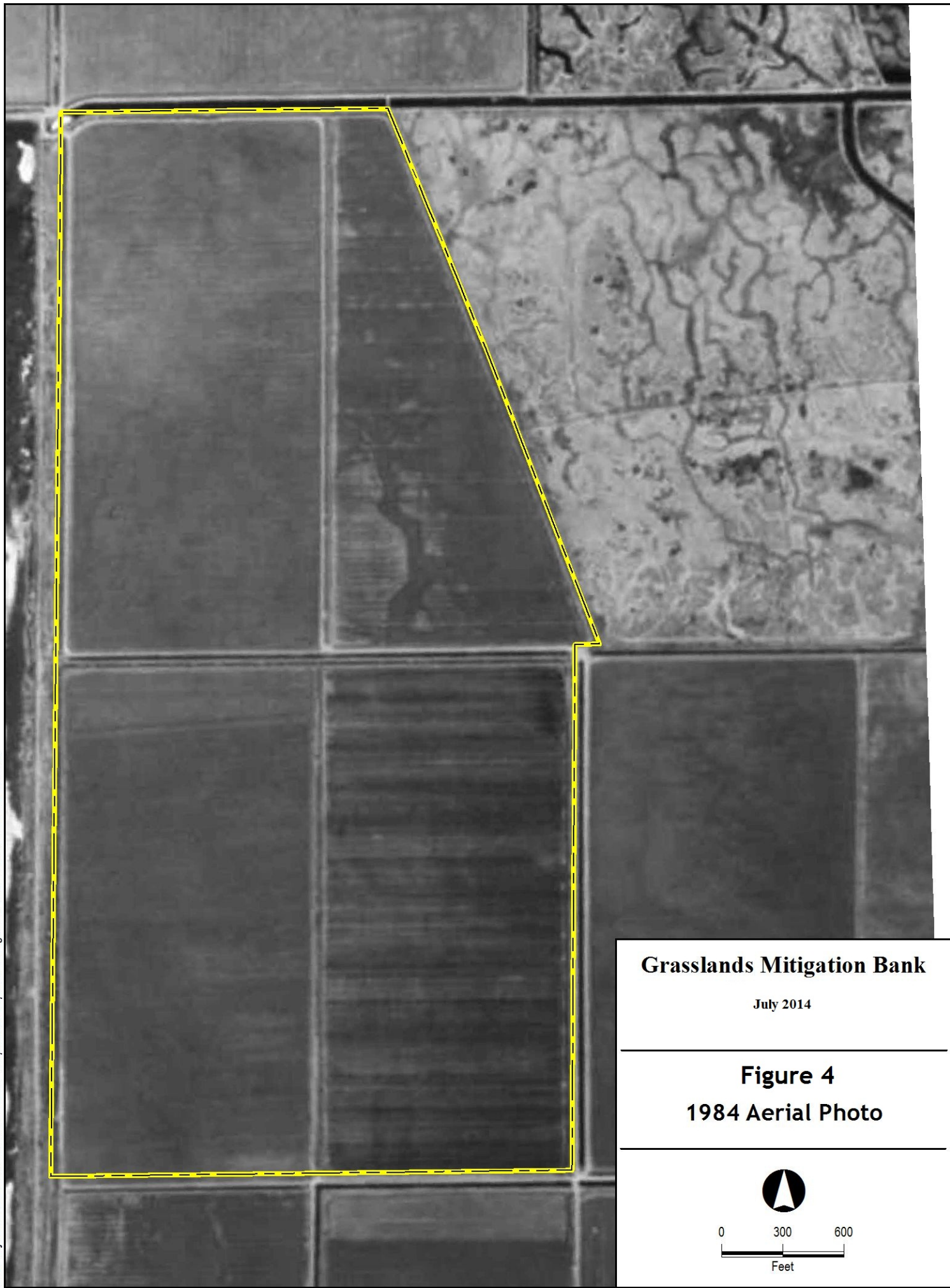
















this soil type may be more extensive on the Property than mapped (i.e., the soil appears to extend further south than mapped). A typical profile includes 0 to 15 inches of olive gray clay, 15 to 34 inches dark olive gray clay, 34 to 42 inches pale yellow clay loam, 42 to 61 inches very pale brown clay loam, and 61 to 70 inches very pale brown clay loam with yellowish brown and dark brown mottles. Agnal, Britto, Checker, Marcuse, Santanela, and Turlock are minor components also found within this unit.

Trulae silty clay (slope 0 to 2 %) (map unit 258) is mapped in the southern half of the Property and is a somewhat poorly drained, partially hydric soil found adjacent to basin floors and toeslope. The parent material is alluvium derived from sedimentary rock. The typical profile of Trulae silty clay is 0 to 5 inches grayish brown silty clay, 10 to 15 inches brown silty clay, 15 to 45 inches brown clay, and 45 to 63 inches light brownish clay loam. Triangle, Woo, Triangle (sodic), Turlock, and Volta are minor components also found within this unit.

Turlock sandy loam and Turlock loam are also mapped onsite; however, these soils are of minor extent onsite. These are deep, poorly drained soils with a high percentage of sodium in the subsoil, formed in alluvium from mixed sources in basin rims and alluvial fans. The typical profile of Turlock series soils is 0 to 3 inches grayish brown sandy loam, 3 to 4 inches olive gray loam, 4 to 11 inches olive gray clay loam, 11 to 25 inches olive gray clay loam with mottles, 25 to 36 inches grayish brown clay loam, 36 to 55 inches pale yellow clay loam, and 55 to 60 inches pale yellow silty clay loam. Kesterson, Triangle, Santanela, Agnal, and Triangle (sodic) are minor components also found within this unit.

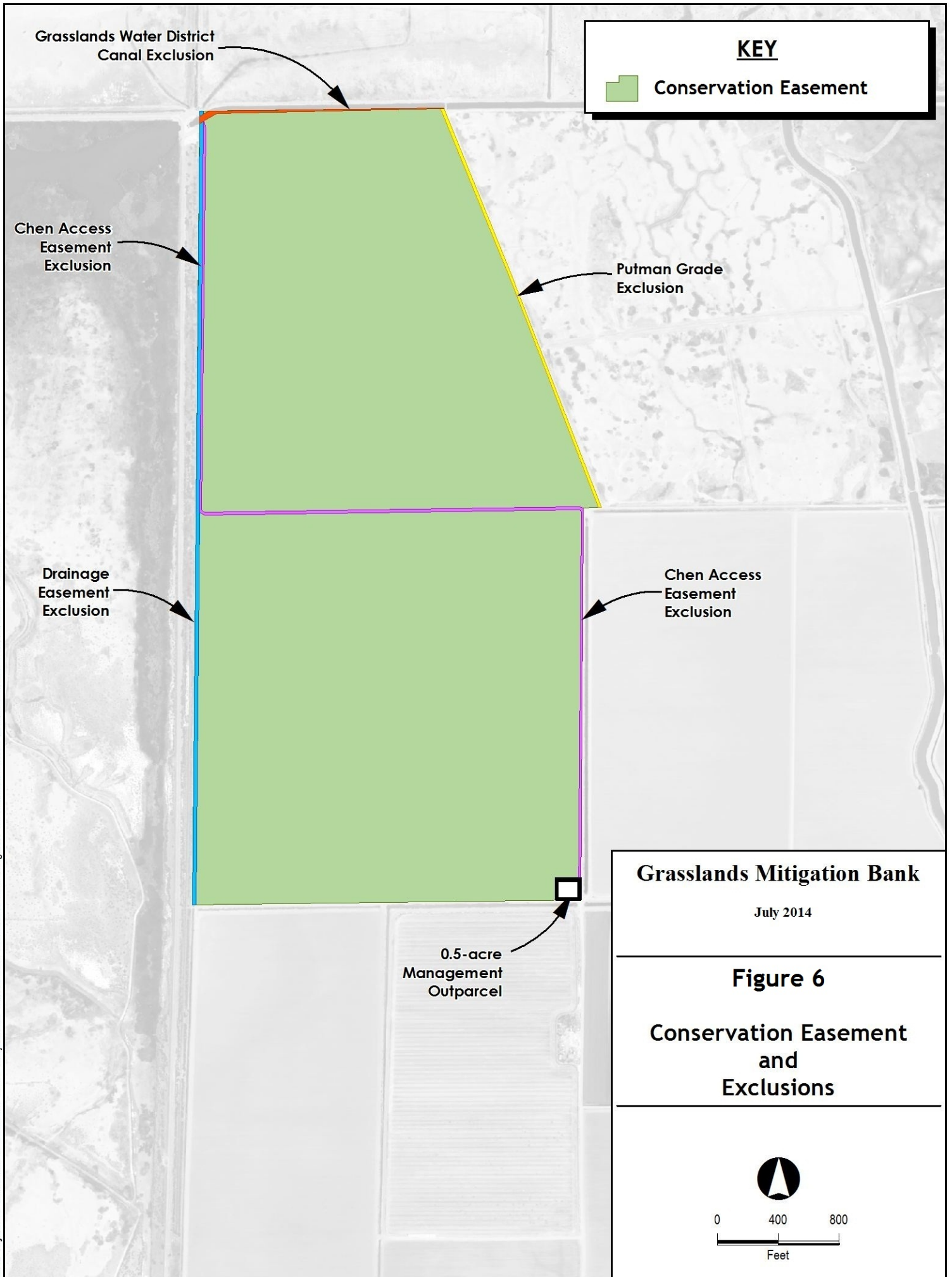
## ***F Existing Easements and Mineral Rights***

A total of four easements and exclusions affect the conservation values of the Property (**Figure 6**). Two easements are listed on the title report and are associated with the northerly 129.96-acre parcel. The eastern boundary of this parcel is identified as “Patman Grade,” which at one time connected the Santa Fe Grade and China Camp Road. Currently, this section of the Patman Grade is “orphaned” and no longer connected to any public road. This area is excluded from the Bank and Conservation Easement Area. The other easement affecting the northerly parcel is the “Chen” easement, which was developed to provide access to ownerships north of the Property. It does not appear that this access has ever been utilized, and almost all of the property benefitting from this easement has been sold to CDFW and is now within the boundaries of the Volta Wildlife Area. As current owners of the properties associated with this easement CDFW has right to use this easement; however, use of this easement is unlikely because CDFW has alternative all-weather access through the boundaries of the wildlife area.

A third easement that affects all three parcels was recorded when WES purchased the Property. This easement was established at the request of the seller, allowing the seller to maintain the drainage ditch running along the western boundary of the Bank Property. None of these easement areas are included within the boundary of the Bank Property or are proposed for crediting or inclusion in the Conservation Easement area.

Although not listed specifically on the Property title report as an easement, the Grassland Water District (GWD) canal and Canal banks running along the north border of the Property are maintained by the GWD and are not included within the Bank or Conservation Easement Area.





WES owns the mineral rights to the Property (see deed within **Exhibit E-2 Property Assessment and Warranty Attachment 3 - Summary and Explanation of Encumbrances**).

## ***G Adjacent Land Uses***

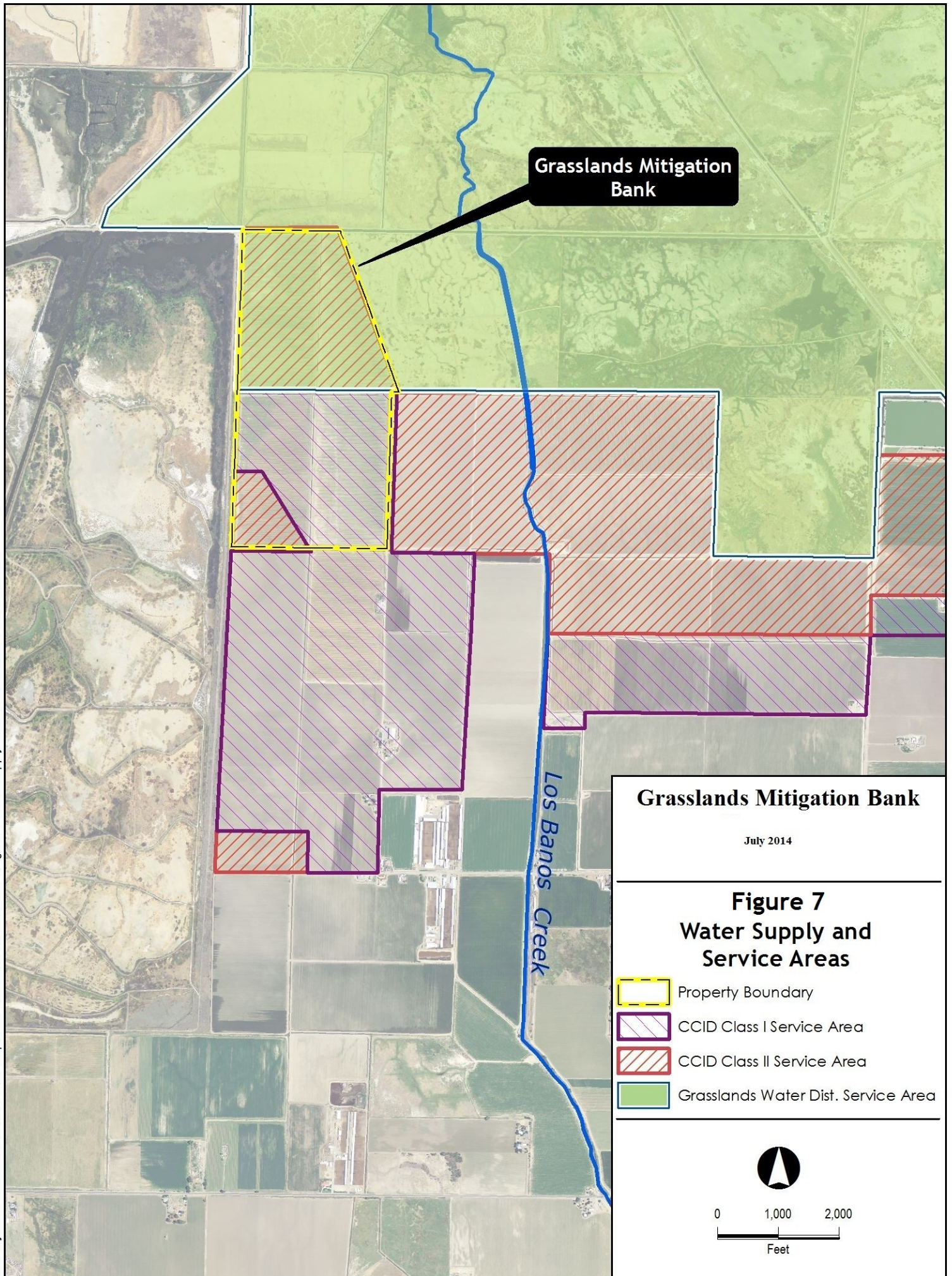
The Property is bounded by extensive blocks of protected lands managed for wildlife habitat, including the Volta Wildlife Area operated by the CDFW, located immediately adjacent to the property on the west and north borders. The Property is buffered on two sides by existing protected habitat and on the remaining two sides by compatible agricultural operations. Development of a mitigation bank for wetlands and wetland-dependent species on the Property is highly compatible with the surrounding properties. The Property and surrounding parcels are all currently zoned A-2 (Exclusive, Agriculture). It is expected that the adjoining land will remain as it currently exists, in either agricultural production or in open space uses. If agricultural lands are converted to another use, their soils, remoteness from urban areas, and location within the 100-year floodplain would dictate that they would not be converted to urban or other uses incompatible with the proposed Bank.

## ***H Water Rights and Supply***

The Property lies within the boundaries of both the GWD and the Central California Water District (CCID) (**Figure 7**). As members of both water districts, the parcels retain rights to a portion of the water rights and contracts held by the respective districts. The CCID can supply water to both the southern and northern parcels. The larger of the southern parcels lies within CCID's Class I Service Area, and is eligible for water delivery each year. The smaller southern parcel and the northern parcel lie within the CCID Class II Service area and were eligible for water delivery in 34 of the last 37 years (all but the most extreme drought years). Table 2 details the history of water availability through CCID between 1977 and 2014 for each class of Service Area within the Property.

The GWD provides surface water only to the northern parcel of the Property and this water supply is available primarily during the fall and winter months, but some supply is available in most years during the summer months. This water is made available through the Bureau of Reclamation's Refuge Water Supply Program and utilizes the CVP diversions from the Delta for its source.







### **III Habitat and Species Descriptions**

#### **A Biological Resources Survey of Bank Property**

There are numerous species associated with the upland and wetland habitat features in the surrounding properties and planned for the Property. Bird species include white-faced ibis (*Plegadis chihi*), great egret (*Casmerodius albus*), great blue heron (*Ardea herodias*), marsh wren (*Cistothorus palustris*), red-winged blackbird (*Agelaius phoeniceus*), tricolored blackbird (*Agelaius tricolor*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*), ring-necked pheasant (*Phasianus colchicus*), mallard (*Anas platyrhynchos*), cinnamon teal (*Anas cyanoptera*), ruddy duck (*Oxyura jamaicensis*), Canada goose (*Branta canadensis*), snow goose (*Chen caerulescens*), Ross's goose (*Chen rossii*), and other waterfowl, wading birds, and migratory shorebirds. Mammal species include ground squirrels, coyote (*Canis latrans*), raccoons (*Procyon lotor*), striped skunks (*Mephitis mephitis*), muskrat (*Ondatra zibethicus*), beavers (*Castor canadensis*), and various small rodent species.

#### **B Summary of Bank Property Development Plan**

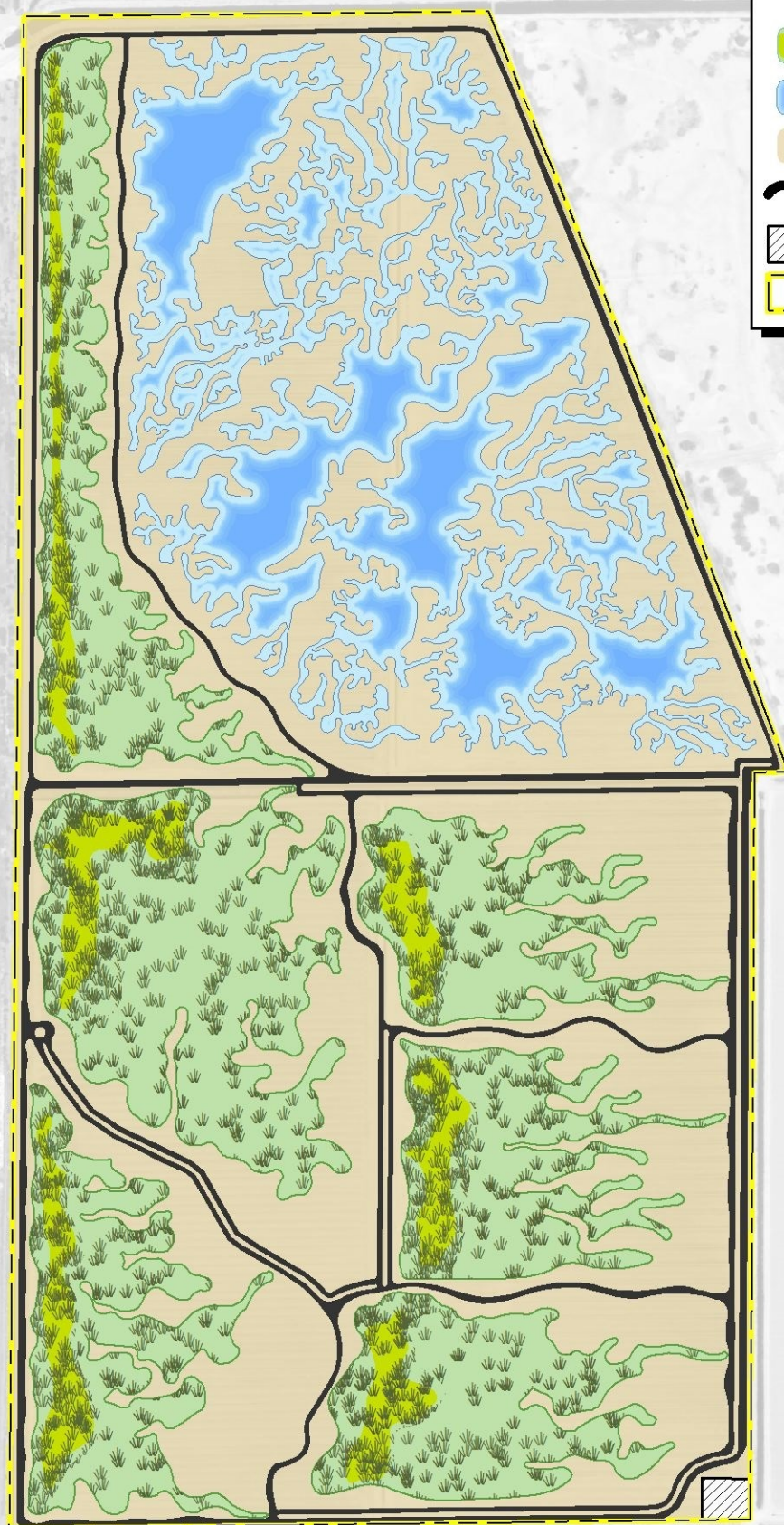
Habitat types developed within the Bank include a matrix of emergent marsh and uplands designed for use by GGS (collectively, "GGS Habitats"), and seasonally inundated wetlands relying on precipitation and a shallowly perched water table for their hydrology ("Seasonal Wetlands") (**Figure 8**). To create the proposed habitat features, portions of the existing agricultural field were leveled to create the habitat complex. Leveling consists of cutting the existing channels and depressions in the marsh, and then using the fill to create berms and mounds. New water control structures were installed to allow adjustments in the water level in the emergent marsh for the purpose of vegetation control. A total of 180.00 acres of GGS Habitat consists of approximately 90 acres of emergent marsh (a matrix of perennial and annual wetland plants and open water areas) and approximately 90 acres of uplands.

Forty six (46.00) acres of Seasonal Wetlands (Palustrine emergent marsh persistent seasonally flooded– PEM1C) that rely solely on precipitation for their hydrology are developed in the 90-acre northeast portion of the Bank. These wetlands receive no supplemental water from pumps or irrigation ditches and will rely on seasonal rainfall and surface drainage to create wetland hydrology. Analysis of reference wetlands indicates that when performance standards are met, these created wetlands will be likely to contain an array of salt-tolerant plants such as saltbush (*Atriplex* spp.), saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), alkali weed (*Cressa truxillensis*), iodine bush (*Allenrolfea occidentalis*), pickleweed (*Salicornia* spp.) greasewood (*Sarcobatus vermiculatus*), seep weed (*Sueda* spp.), alkali sacaton grass (*Sporobolus airoides*), swamp timothy (*Crypsis schoenoides*), and rabbitsfoot grass (*Polypogon monspeliensis*).

#### **C Endangered and Threatened Species**

##### *Special-status plant species*

Prior to restoration the Bank did not support suitable habitat for any of the special-status plants



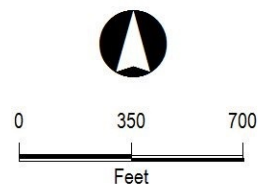
**KEY**

- Emergent Marsh/Open Water
- Seasonal Wetlands
- Uplands
- Watershed Break Line
- 0.5-acre Management Outparcel
- Property Boundary

## Grasslands Mitigation Bank

July 2014

**Figure 8**  
**Conceptual Plan**



reported from the region by the CNDDDB, USFWS, or CNPS (**Exhibit H-4**) and no special-status vascular plant species have been documented on the property. Prior to restoration, field edges and operational areas supported several common ruderal non-native plant species.

#### *Special-status wildlife species*

Several endangered, threatened, and rare species are known to occur in the vicinity of the Property, including Swainson's hawk (*Buteo swainsoni*), western burrowing owl (*Athene cunicularia*), and GGS. A GGS survey was conducted by Eric Hansen September 18–29, 2010, prior to habitat restoration. Although no GGS were trapped, the report indicates that the location of the Bank, adjacent to the Volta Wildlife Area GGS population, makes it ideal for colonization by the species once restoration of GGS habitat has occurred. A wintering western burrowing owl was observed onsite in 2013 prior to habitat restoration.

The habitat requirements for GGS are described below. The information in this section is summarized from in the Draft Giant Garter Snake Recovery Plan and the USFWS Giant Garter Snake Species Account. Habitat requirements consist of 1) adequate water during the GGS's active season (early spring through midfall) to provide food and cover; 2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat during the active season; 3) grassy sites and openings in waterside vegetation for basking; and 4) higher elevation uplands for cover and refuge from flood waters during the GGS's dormant season in the winter. GGS inhabits small mammal burrows and other soil crevices above prevailing flood elevations throughout its winter dormancy period. GGS typically select burrows with sunny exposure along south and west facing slopes.

## **IV Management and Monitoring**

The overall goal of long-term management is to maintain the long-term viability of the Bank for providing natural wetland functions of Seasonal Wetlands and GGS life cycle functions within the GGS Habitats, which will often coincide and complement each other. The routine monitoring and maintenance tasks included within this Management Plan are intended to assure the viability of the Bank in perpetuity.

The approach to the long-term management of the Bank's biological resources is to conduct annual site examinations and periodic monitoring of selected elements to determine stability and ongoing trends of the preserved and restored Seasonal Wetlands and GGS Habitats. Annual monitoring will assess the Bank's condition, invasion of exotic or non-native species, vegetation densities, infrastructure condition, and/or other aspects that may warrant management actions. While it is not anticipated that major remedial actions will be needed, an objective of this Management Plan is to conduct monitoring to identify any issues that arise and, using adaptive management, to determine what actions might be appropriate.

Adaptive management, an approach to natural resource management, incorporates changes to management practices, including corrective actions as determined to be appropriate in discussion with the Signatory Agencies and Bank Manager. Adaptive management includes those activities necessary to address the effects of climate change, fire, flood, or other natural events, or unforeseen future changes to the landscape. Before considering any adaptive management

changes to the Management Plan, the Signatory Agencies will consider whether such actions will help ensure the continued viability of Bank's biological resources.

## **A     *Habitat Management and Species Elements***

The restored habitat types at Bank Property include 1) Seasonal Wetlands (including upland buffer) and 2) GGS Habitats (emergent marsh and uplands). Restoration activities for the Bank habitat types are described in detail in the Habitat Development Plan (**Exhibit C-1**). Management objectives and tasks are described below for each habitat type and species. The Bank Manager shall implement the following:

### **Element A.1             Seasonal Wetlands and GGS Habitats**

**Objective A.1:** Monitor and manage the Bank's Seasonal Wetlands and GGS Habitats to preserve and protect the biological integrity and purpose of the Bank.

#### **Task A.1.1:** Monthly and Annual Monitoring Surveys and Inspections

##### *Inspection for General Conditions*

Monthly site visits will occur for the purpose of monitoring the conditions of the Bank. These inspections will occur concurrently with routine water management activities. During at least one of the surveys, defined as the annual walk-through survey, qualitative monitoring of the general condition of these habitats will be conducted. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, and erosion will be noted, evaluated, and mapped during a site examination in the late spring/early summer. Notes to be made will include observations of wildlife and plant species encountered, general extent of wetlands water quality, and any occurrences of erosion, and weed invasion.

##### *Photo Points*

The Bank Manager will establish permanent photo points and prepare a site map showing the locations and direction of view. A total of not fewer than five sites within the restored Seasonal Wetlands and not fewer than five sites within the GGS Habitats will be identified and permanently marked in the field during the Interim Management Period. Photos will be taken in late spring after the Seasonal Wetlands have dried. Photos will be taken at least every year from the beginning of the long-term management period.

##### *Water Control System*

The water control system for distribution of water to the GGS aquatic habitats consists of the ditches, berms, and water control structures, including flashboard risers, weirs, and canal gates. Flashboard risers and canal gates and other water control facilities must be properly functioning for habitat management to be successful. Each month, the Bank Manager will inspect the water control structures and gates for signs of wear and tear or vandalism. Berms will be

inspected for excessive erosion or beaver and muskrat burrows. These inspections may happen concurrently with site visits conducted for other purposes (i.e., water depth maintenance).

#### *Fences, Gates, and Signage*

The Bank Manager will monitor and maintain gates, fencing, and signage to prevent casual trespass, allow necessary access, and facilitate grazing regime and management. During each monthly inspection, the Bank Manager will record the condition of gates, fencing, and signage. The Bank Manager will record the location and type of and recommendations to implement any repair or replacement, if applicable.

#### *Mosquitos*

The Merced County Mosquito Abatement District (“District”) currently operates a mosquito control program in the vicinity of the Property. The Bank Manager will work with the District as needed to coordinate mosquito control efforts and minimize disturbance to Seasonal Wetlands and GGS Habitats. Some methods, such as the addition of mosquitofish (*Gambusia affinis*) into the emergent marsh, may even enhance the GGS prey base. In addition, a number of the Bank design features, such as water level control and interspersed channels through the emergent marsh, should minimize mosquito breeding conditions or facilitate water level manipulation to disrupt the mosquito life cycle.

#### *Non-Native Invasive Plants and Animals*

Each annual walk-through survey (or supplemental survey) will include a qualitative assessment (e.g., visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, occurring in either wetlands or uplands of the Bank Property. Actions to control invasive species will be evaluated and prioritized. Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat. For the purposes of this Management Plan, plants and animals native to the Bank Property will be defined as those believed by the scientific community to have been present in the Central Valley prior to the settlement of Europeans.

The following sources may be used for guidance on management of those species: The California Department of Food and Agriculture list of “noxious weeds” that are subject to regulation or quarantine by county agricultural departments; the *Jepson Manual* (Baldwin et al. 2012); the University of California State Integrated Pest Management Program list of “exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas”; and the California Invasive Plant Council (CAL-IPC) List A and Red Alert Lists.

### **Task A.1.2: Removal of Invasive Plants**



If necessary, invasive pest plants will be controlled by hand removal, mechanical equipment, biological controls, or herbicides. Control methods will be initiated with the expansion and/or new establishment of invasive plant populations (with an overall rating of “High” by CalIPC) by greater than one acre. Herbicides will be applied only in adherence to the most current United States Environmental Protection Agency (USEPA) labels for each specific product and in accordance with California Department of Pesticide Regulations, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and other state and federal legislation. The IRT will be notified 48 hours prior to any herbicide application.

Upland areas may require control of invasive non-native plant species such as Russian thistle (*Salsola tragus*) or Mexican fireweed (*Kochia scoparia*). Invasive wetland plants may include water primrose (*Ludwigia hexapetala*) among others. Observations of managed wetlands and uplands at the Volta Wildlife area as well other private managed duck clubs in the area suggest that invasive plants are generally not a significant problem because of the pervasive moderately to strongly alkaline soils and generally arid climate.

Should an invasive plant problem arise, the specific control option will be selected by the Bank Manager using best professional judgment and accepted integrated pest management approaches to select the option estimated to cause the least amount of impact to GGS and result in the highest probability of success. The Bank Manager from time to time may consult with a licensed Pest Control Advisor (PCA) to develop control or eradication programs. For budgeting purposes, this activity is expected to occur every five years. Herbicide application will follow the recommendations of a California licensed PCA familiar with managed marsh settings.

## **Element A.2      Giant Garter Snake Habitats**

A portion of the Bank is being established to compensate for impacts to GGS and its habitat, as well as contribute to the recovery of the species.

Management activities based on the most current GGS and habitat management practices will be reviewed to maximize the Bank’s value for GGS. Any new techniques that can be reasonably implemented within constraints of the Bank (i.e., within the constraints of the restoration design and annual endowment funding) will be implemented. At least once per year, the Monitoring Biologist will coordinate with the USFWS, CDFW, and/or other species experts to discuss the current GGS research, management, and regulations. The Monitoring Biologist will discuss the applicability of any new information to the Bank Property and if adaptive management needs to be considered. This coordination may occur through phone conversation, meeting, email, or other written correspondence.

**Objective A.2.1:** Manage all habitat types represented within the GGS credited portions of the Bank Property to benefit all life stages of GGS, including foraging,

breeding, thermoregulation, and estivation.

#### **Task A.2.1: Water Supply**

Water is supplied to the Bank Property via delivery system from Los Banos Creek by both GWD and CCID. The Bank Property is eligible to receive up to 100% of its allocation for summer and winter water from these water districts. The Bank Manager will maintain water in the emergent marsh the entire year if feasible given precipitation and winter water delivery availability.

#### **Task A.2.2: Water Management**

The Bank Manager will visit the Property at least once a month (twice a month in summer) to maintain proper water depth. Proper water management should minimize the amount of active vegetation management required at the Property. Because water in the marsh habitats is lost to evapotranspiration (evaporation plus plant transpiration), seepage, and outflow, periodic water input may be needed to maintain water at design depths.

Complete drawdowns of selective emergent marsh units will occur on a rotating basis to dry these areas out, manage vegetation, and recycle nutrients. These drawdowns will also remove carp and predatory fish populations (such as largemouth bass) from within the drawn down marsh units. During these drawdowns, sediment removal and vegetation mowing or disking water may occur if necessary to maintain the proper mix of open water and emergent vegetation. The habitat complex will be drawn down in phases (i.e., one or two management units at a time) to ensure availability of flooded habitat during the maintenance period.

Muskrats and beavers may live in the adjacent canals and ditches close to the Property and will likely colonize the Property; They have the potential to damage water control structures, especially berms and flashboard risers, thus affecting the ability of the Bank Manager to control water levels in the emergent marsh habitats. Beavers burrow into berms, construct dams, and plug water control structures. Muskrats also burrow in levees and eat tule and cattail roots. If the Bank Manager determines that beavers or muskrats are negatively impacting the Bank Property habitat structure or water management regime, the Bank Manager may implement a control program.

If necessary, the following tasks will be undertaken: 1) obtaining a depredation permit from CDFW and (2) body-trapping or shooting beavers and muskrats, focused during the early portion of the breeding season, between February and the end of April. Trapping or shooting may occur other times of year, if necessary under appropriate depredation permits issued by CDFW. For budgeting purposes, this task is expected to occur once every ten years and funds for these activities will be provided from the Endowment Fund contingency.

### **Task A.2.3: Replacement or Repair of Water Control Facilities.**

Under expected wear and tear, water control and delivery facilities (screw gates, culverts, berms, etc.) will periodically need to be replaced. If the Bank Manager determines a water control facility needs to be replaced or refurbished, the Bank Manager will complete the work during the GGS active period.

From time to time the supply and/or drainage canals between habitat cells may need cleaning to remove sediment or excessive vegetation. Additionally, pond bottoms may periodically need recontouring to restore proper water depths. Spoil material from these activities will be stockpiled onsite for use during berm or water control structure repair and/or replacement. The spoil materials from removal of sediment or vegetation will only be placed in uplands, away from canal banks or wetland edges where GGS are most likely to occur.

Although the berms are designed to be permanent structures, there may be some occasions in the future when repairs are necessary. Repair may be necessary when berm integrity has been compromised by erosion or excessive burrowing by fossorial mammals. When berm repair is necessary, the adjacent aquatic habitat will be drawn down and all GGS maintenance precautions will be followed. To the extent feasible, other marsh management activities requiring drawdown (e.g., mowing, disking, or grazing) will also be conducted at this time so that additional drawdowns are not required in the near future. As mentioned, berm repair is expected to occur infrequently, however; for the purposes of budgeting, this Management Plan assumes a total of 100 feet of berm repair is necessary every ten years. All maintenance activities conducted on water control system will follow the GGS avoidance measures detailed below.

### **Task A.2.4: Vegetation Management.**

Based upon the best professional judgment of the Bank Manager, portions of the Bank Property will be grazed, disked, or mowed to maintain basking areas for GGS and prevent excessive emergent plant densities in the GGS aquatic habitat areas. It is expected that portions of the Bank Property will be treated each year, resulting in a mosaic of habitat that is optimal for GGS.

Several options are available to manage vegetation height, density, and arrangement within the GGS Habitats, including grazing, mowing, and disking. Each year the Bank Manager (using best professional judgment) will select the option resulting in the least amount of impact to GGS and with the highest probability of success. The Bank Manager will follow the GGS maintenance precautions listed below. It is expected mowing will occur once or twice a year on the perimeter berms, depending on growing conditions, and will typically occur prior to February 1 or after August 15, thus avoiding the primary nesting season for ground-nesting birds. If mowing or disking are necessary during the nesting

season, then nest surveys will be conducted prior to commencing vegetation management activities.

No trees or woody vegetation will be planted in the uplands or wetlands, but woody vegetation may naturally establish itself along portions of the upland-wetland habitat edge. Techniques for managing vegetation include mowing, hand removal, grazing, and/or herbicide application.

#### *Maintenance Precautions*

Management and maintenance activities described in this Management Plan are covered by approval of the BEI and its attachments by the Signatory Agencies. To avoid impacts to GGS and minimize habitat disturbance, precautions will be implemented for all maintenance activities. These precautions are described below.

The following precautions will be implemented on all maintenance activities to avoid impacts to GGS and its habitat:

- 1) Channels/open water (channel) cleaning will not be conducted unless absolutely necessary.
- 2) When channel cleaning is necessary, vegetation will be maintained on both sides of the greatest extent practicable, or if not possible to maintain vegetation on both sides of the channel, vegetation must always be maintained on one bank.
- 3) Movement of heavy equipment will be restricted to the perimeter berm with the dirt road to the greatest extent possible to minimize habitat disturbance
- 4) Excavation activities will be conducted between May 1 and October 1 during the snake's active period. If excavation is needed outside of this window, the Signatory Agencies must be consulted.
- 5) Before channels are excavated, the channel will be dried out for a minimum of two weeks.
- 6) Annual maintenance activities along channels, such as mowing and disking, will maintain buffer strips of standing vegetation along the ditch.
- 7) Mowing herbaceous vegetation growing along berms from the top of the bank down to the water line will be avoided to greatest extent practicable except when management of noxious weeds is called for (note: additional precautions for ground-nesting birds are included under the maintenance elements of this Management Plan).
- 8) If mowing is used beyond the top of the channel banks, the height of the

vegetation after mowing will be at least 4 inches (note: additional precautions for ground-nesting birds are included under the maintenance elements of this Management Plan).

9) Use of aquatic herbicides to control aquatic vegetation will be minimized to the greatest extent practicable, and use shall be consistent with manufacturers' recommendations and all applicable laws and regulations.

10) Driving over or in close proximity to snakes that are observed on site will be avoided at all times.

## ***B Site Security and Public Access***

The Property is in a remote location, at least two miles from the nearest public road. Deep, steep-banked irrigation canals surround the Property and their width and depth are not easily passable. The Property is not directly adjoined by public roads, and is only accessible via easement across private property by travelling on farm roads and field borders linking this property to the public roads. These field access routes are gated to prevent easy access to the Bank.

### **Element B.1 Trash and Trespass**

The intent of this mitigation bank is to maintain the habitats of the area in perpetuity. Pedestrian access to the Property will be minimal due to its location remote from any public road. Trespass will be discouraged through signage, outreach activities, and education of adjacent landowners. To prevent management disruptions and harm or harassment of GGS, the Bank Manager will maintain perimeter drains and gates that prevent easy access to the site. The Property should remain free of trash and other debris that harms the aesthetic value and ecological function of the site. Proper control of access and the remote location of the site will limit the amount of trash on the Property.

**Objective B.1.1:** Monitor sources of trash and trespass. Collect and remove trash, repair vandalized structures, and rectify trespass impacts.

#### **Task B.1.1: Trash Removal**

Collect and remove trash and repair and rectify vandalism and trespass impacts on site visits.

#### **Task B.1.2: Replacement of Gates and Fences**

Replace gates and fencing as necessary to maintain security at the Property. Gates and fences are located at all access points to the Bank Property

#### **Task B.1.3: Replacement of Signs**

Replace signs and posts as necessary to maintain security at the Property. No Trespassing signs are to be located at every access point and along borders no further than 600 feet apart.

## **C     *Agricultural Use Element***

**Objective C.1:** Maintain grazing as a compatible use of the Property and as a valuable cover management tool within the Property.

Wetlands and uplands in restored landscapes within the Central Valley of California can be extremely productive, generating annual herbaceous growth that, unless managed, rapidly becomes dense with old and dead growth. Periodic grazing can reduce this tendency, and creates soil conditions that contribute to proper plant germination and a proper mix of open water areas and emergent vegetation.

### **Task C.1:** Coordinate with Grazing Lessee

The Bank Manager will coordinate with a grazing lessee for spring and summer grazing within the Property at appropriate stocking rates and intervals adjusted for economic viability for the lessee and ecological benefit to the Bank.

## **D     *Outreach and Recreational Use Elements***

### **Element D.1     Hunting**

**Objective D.1:** Ensure hunting practices at the Property are compatible with the land stewardship goals of maintaining and enhancing habitat for GGS and wetlands.

The hunting season for upland birds and waterfowl occurs during the winter dormancy period for GGS while GGS are estivating and below ground level. Waterfowl hunting season typically begins the third weekend in October of each year, extending through January of the same winter migratory season. Occasional conservation hunts are allowed to extend through February. Pheasant season typically runs from mid-November through December each year. The hunting program for the Property will not be open to the general public. All hunters are guests of WES staff and will be informed of the presence of GGS and the necessary precautions to avoid disturbing or harming the species. All hunting at the Property will follow CDFW and USFWS regulations regarding open seasons and species to be taken, daily limits, shooting hours, use of nontoxic shot, shell and gauge restrictions, and collection of spent shotgun hulls after each hunt.

Use of trained bird hunting dogs is encouraged as a conservation measure. Hunting dogs reduce the avoidable crippling and loss of birds and will be under the control of their owners at all times.

WES staff will make sure all hunters have valid hunting licenses and are aware of the purpose of the Bank and the necessary precautions to be taken while on the site. Hunting activities are funded by each individual hunter and are not funded out of the long-term management endowment.

## **Element D.2      Educational and Scientific Use**

Due to the remote location of the Bank Property, currently, no formal education or interpretive program is planned at the Bank Property. However, at the discretion of the Bank Manager and with permission of the Signatory Agencies, access can be provided for educational and scientific opportunities. These opportunities include public or private school classes, Boy Scouts, Girl Scouts, YMCA, or other youth group educational visits and research. Educational visits by school age children will be limited to 30 visitors per tour. These opportunities will not be funded out of the long-term management endowment. Individuals or groups using the Property for educational purposes will coordinate their use with the Bank Manager. If the educational activities will be passive in nature, such as an occasional walk through the Bank to discuss plants and animals of the Bank habitats, then the consent of the Bank Manager is sufficient. If active use of the Bank Property is proposed, or regular but passive use of the Property is proposed, review and approval by the Signatory Agencies is required. To avoid repeated inquiries with the agencies, a use plan could be developed by the interested organization for one-time approval. Interpretive trails and benches are not proposed on the Property. Eight hours of time for the Land Manager are included in the endowment calculation for these site visits. These site visits typically occur concurrently with other site visits for management and monitoring activities.

**Objective D.2:** Support educational and scientific use of the Bank Property to increase understanding of the value of habitat and management for GGS.

### **Task D.2.1:** Coordination of Educational and Scientific Site Visits

The Bank Manager will coordinate educational and scientific use as appropriate and with approval of the agencies.

## ***E      Biological Monitoring Elements***

### **Element E.1      Giant Garter Snake**

**Objective E.1:** Determine GGS occupancy at the Bank Property.

To assist with adaptive management, a qualified biologist with an approved 10(A)(1)(a) permit will regularly monitor the occurrence of GGS at the Bank. Monitoring efforts can provide information about the efficacy of the Bank design or a particular management action.

The Monitoring Biologist will review results of the GGS surveys with the Signatory Agencies. An apparent increase or decrease of GGS occurring at the Bank may not be related to the Bank design or management. Changes in regional land use, disease, climate conditions, sampling design, or stochastic events may also cause apparent fluctuations in population size or distribution. Review of the Bank monitoring data with data from other GGS monitoring efforts will help determine if the results are site-specific or indicative of a range-wide change.

#### **Task E.1.1: Quantitative GGS Monitoring**

The Bank Manager will monitor GGS at the Bank every five years in perpetuity. GGS monitoring will utilize up-to-date sampling methods tailored toward gathering information on GGS abundance, demographics, habitat selection, and spatial distribution within the site. Data gathered will be compatible with ongoing population and habitat utilization modeling efforts currently being developed throughout the range of the species by GGS experts. All GGS trapping efforts will be conducted by a qualified biologist with an approved 10(A)(1)(a) permit. The results of the monitoring will be used to estimate local population size and to assess the effectiveness and success of the habitat development and management activities and to identify adjustments that may need to be made to habitat management practices. Water quality parameters, including electroconductivity, pH, and turbidity, will be measured during GGS monitoring events conducted every five years. Additionally, the Bank will be enrolled in the Long-Term Irrigated Lands Regulatory Program being run by the State Water Resources Control Board, and will contribute to the water quality monitoring program required of all landowners in the San Joaquin Valley watershed.

### **Element E.2      Vegetation (Seasonal Wetlands and GGS Habitats)**

**Objective E.2:** Monitor vegetation structure and composition at the Bank Property.

Vegetation structure is a key component of each habitat type. Vegetation monitoring is intended to be of a general nature to determine if the desired plant species and associated habitat features are persisting under the current management practices.

#### **Task E.2.1: Quantitative Vegetation Survey**

The Bank Manager will monitor vegetation and map the extent of Seasonal Wetlands and GGS habitats within the Bank Property every five years. As part of vegetation monitoring a low-level aerial photograph will be taken of the Bank Property in late-spring or summer to document vegetation growth within the Bank Property habitats. In the event that open source or public domain aerial photography is available during the monitoring year and the photographic quality and timing is suitable for monitoring purposes, the Bank Manager may elect to



utilize these photographs in lieu of a site-specific aerial photograph. For each wetland unit, the Monitoring Biologist will conduct a relevé plot (Mueller-Dombois and Ellenberg 1974) within each plant community, identifying all plant species, and estimating percent cover of each plant species present. Monitoring will occur in the late spring or summer of each year in which GGS monitoring occurs (i.e., every five years). Vegetation communities and seasonal wetland extent will also be mapped and quantified thorough aerial photograph interpretation.

#### **Task E.2.2: High-Resolution Aerial Photograph**

The Bank Manager will acquire an aerial photograph of the Property every ten years. A baseline of low-level aerial photographs will be taken during the Interim Management Period to track habitat development and monitor hydrology of the Bank. Timing of the aerial photos will be targeted in late spring, following drawdown of Seasonal Wetlands. In the event that open source or public domain aerial photography is available during the monitoring year and the photographic quality and timing is suitable for monitoring purposes, the Bank Manager may elect to utilize these photographs in lieu of a site-specific aerial photograph.

## ***F Reporting and Administration***

### **Element F.1 Annual Report**

**Objective F.1:** Provide annual report that addresses all management and monitoring tasks conducted and general site conditions to the Signatory Agencies and any other appropriate parties.

The reporting period will be from September 1 of each year through August 31<sup>st</sup> of the following year. The annual report will be due November 30 each year. This reporting period and due date will allow for inclusion of hydrological monitoring of the Seasonal Wetlands, which takes place in late winter and spring; vegetative surveys, which take place in early summer; and any GGS surveys that may take place during June, July, and August.

#### **Task F.1.1: Annual Report**

The Bank Manager will prepare an annual report including a summary and circulate the report to the Signatory Agencies and other parties by November 30 of each year.

The annual report will include, at a minimum, the following components:

- A description of funds received and expended for management of the Bank during the previous year
- Status of biological resources at the Bank
- Results of biological monitoring or studies conducted on the Bank

- Description of all management actions taken at the Bank
- Descriptions of any problems encountered in managing the Bank
- Description of anticipated management actions for the coming year, including any habitat enhancement measures deemed to be warranted
- Description of any changes in the monitoring or management program that appear to be warranted based on monitoring results to date

## **V Transfer, Replacement, Amendments, and Notices**

### ***A Transfer***

Any subsequent transfer of responsibilities under this Management Plan to a different Bank Manager shall be requested by the Bank Manager in writing to the Signatory Agencies, shall require written approval by the Signatory Agencies, and shall be incorporated into this Management Plan by amendment. Any subsequent Property Owner assumes the Bank Manager responsibilities described in this Management Plan and as required in the Conservation Easement, unless otherwise amended in writing by the Signatory Agencies.

### ***B Replacement***

If the Bank Manager fails to implement the tasks described in this Management Plan and is notified of such failure in writing by the Signatory Agencies, the Bank Manager shall have 90 days to remedy such failure. If failure is not remedied within 90 days, the Bank Manager shall meet with the Signatory Agencies to resolve the failure. Such meeting shall occur within 30 days, or a longer period if approved by the Signatory Agencies. Based on the outcome of the meeting, the Signatory Agencies may request in writing a replacement Bank Manager by amendment of this Management Plan. If Bank Manager fails to designate a replacement Bank Manager, then such public or private land or resource management organization acceptable to the Signatory Agencies and Property Owner may enter onto the Bank Property in order to fulfill the purposes of this Management Plan.

### ***C Amendments***

The Bank Manager may meet and confer with the Signatory Agencies from time to time, upon the request of any of the Parties, to discuss how the Management Plan could be revised to better meet the management objectives and preserve the habitat and conservation values of the Bank Property. Any proposed changes to the Management Plan shall be discussed with the Signatory Agencies, the Conservation Easement holder, and the Bank Manager. Any proposed changes will be designed with input from all Parties. Amendments to the Management Plan shall be approved by the Signatory Agencies in writing and shall be implemented by the Bank Manager.

If the Signatory Agencies determine and state in writing that continued implementation of the Management Plan would jeopardize the continued existence of a state or federally listed species, any necessary written amendment to this Management Plan, determined by Signatory Agencies as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Bank Manager.

## **D Notices**

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

Bank Manager and Property Owner

Westervelt Ecological Services  
600 North Market Blvd., Ste. 3  
Sacramento, CA 95834  
Telephone: (916) 646-3644  
Fax: (916) 646-3675

IRT, BEI Signatory Agencies:

U.S. Army Corps of Engineers, Sacramento District  
Attn: Chief, Regulatory Section  
1325 J St., Rm. 1480  
Sacramento, CA 95814  
Telephone: (916) 557-2520  
Fax: (916) 557-6877

U.S. Environmental Protection Agency, Region IX  
Attn: Director, Water Division  
75 Hawthorne St.  
San Francisco, CA 94105  
Telephone: 415-947-8707  
Fax: 415-947-3549

U.S. Fish and Wildlife Service, Sacramento Field Office  
Attn: Field Supervisor  
2800 Cottage Way, Rm. 2605  
Sacramento, CA 95825  
Telephone: (916) 414-6600  
Fax: (916) 414-6712

California Department of Fish and Wildlife, Central Region Office  
Attn: Regional Manager  
1234 E. Shaw Ave.  
Fresno, CA 93710  
Telephone: (559) 243-4005 ext. 151  
Fax: (559) 243-4022

## **VI Funding and Task Prioritization**

### ***A Funding***

The attached Long-Term Management Endowment Analysis summarizes the anticipated costs of long-term management for the Bank. The Endowment Analysis is based on present-day costs for all tasks outlined above with a 10% contingency and current annual estimated capitalization rate of 3.5%. The National Fish And Wildlife Foundation will hold the Endowment Fund principal and interest monies in a dedicated account, which consists of monies that are paid into it in trust pursuant to law, and with interest earned dispersed to fulfill the purposes for which payments into it are made. These interest monies will fund the long-term management and monitoring activities on the Property in a manner consistent with this Management Plan.

### ***B Task Prioritization***

The Bank Manager is only responsible for completing the management tasks detailed in this plan and commensurate with funding available from the Endowment Fund. If insufficient funding appears likely to affect the Bank Manager's ability to implement the management tasks as described, the Bank Manager, along with the Signatory Agencies shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate habitat function; and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the Signatory Agencies, and must be authorized by the Signatory Agencies in writing.

## REFERENCES

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## **Attachment A**

### **Grazing Management Plan**

#### **Goals**

Healthy native grass- and forb-dominated ecosystems often require ongoing reduction of vegetative biomass to maintain the diversity and density of native plant species. The accumulation of dead plant material (thatch) can reduce the habitat value of wild areas for wildlife species by minimizing structural diversity (different heights, density, and cover of vegetation). Historically, vegetation levels in Central Valley wildland complexes were maintained through wildfire and by grazing of native ungulates such as antelope and elk. The predominance of naturalized non-native annual grasses and forbs throughout many of California's lowland habitats in combination with the near extirpation of native ungulates has irreversibly altered the ecological functionality of these areas. Active land management, including grazing, is currently required to periodically reduce thatch accumulation in native perennial grassland as well as non-native annual grassland and, in some instances, to minimize encroachment or expansion of invasive plant species. In addition, focused grazing efforts can be used within GGS perennial wetland units to help maintain a mixture of emergent cover and open water for giant garter snake loafing and foraging in lieu of mechanical or fire-based habitat management treatments. Livestock grazing may also be used within the Seasonal Wetland habitat to control thatch levels in the uplands or the Seasonal Wetlands themselves. Therefore, a livestock grazing program will be implemented on the Bank Property to maintain healthy, functioning ecosystems on site. Specific goals to achieve the habitat objectives of the Bank Property include:

- Initiating grazing once vegetation is well established on the newly restored site (3 to 5 years following construction)
- Implementing and evaluating alternatives in duration, intensity, and timing of grazing to reduce thatch and maintain appropriate vegetation height and density for GGS habitat utilization
- Implementing and evaluating alternatives in duration, intensity, and timing of grazing to reduce thatch and maintain appropriate watershed conditions in the Seasonal Wetland habitat.
- Maintaining a mixture of open water and emergent cover in GGS wetland units when grazing is used to manage emergent marsh vegetation
- Maintaining close-growing ground cover in uplands in both Seasonal Wetland habitat and GGS habitat units (between 3 and 12 inches)
- Maintaining native plant diversity within the Bank Property
- Reducing the presence of invasive plant species in the wetland and upland areas
- Evaluating the grazing plan in regard to maintaining or improving the Bank Property biological goals the growing season following a livestock grazing treatment to determine if adjustments to livestock type, grazing intensity, or timing need to be made.

The required annual grazing monitoring, coupled with monitoring of the habitats and sensitive species, will provide feedback as to whether or not the grazing plan is working and will provide a basis for decision making regarding the grazing management.

### **Implementation Practices**

Livestock grazing for habitat management requires the proper balancing of animal numbers, type, seasonal timing, and grazing intensity to achieve the desired effect on the landscape. Elimination of grazing in absence of other disturbance mechanisms (e.g., fire, mowing) allows the accumulation of thatch, which could lead to a reduction of plant diversity, hinder species movement, and reduce populations of ground squirrels, which may reduce availability of estivation habitat for GGS. Overgrazing can pose a threat to the habitat in that it may facilitate invasion of exotic pest-plant species and could reduce upland vegetation cover to the extent that it may expose GGS to increased predation. Extreme overgrazing (i.e., depletion of all vegetative cover) can lead to erosion and sedimentation.

Management of restored perennial grassland has traditionally relied on grazing on a short-duration, high-intensity cycle that can most uniformly remove thatch, mimicking the historic effects of large migrating herds of native ungulates, whereas management of non-native annual grassland focuses on moderate-intensity grazing over the growing period of annual grasses (roughly October through early May in this part of Merced County). However, given the primary management objective of managing the Bank Property for GGS and Seasonal Wetland habitat, the grazing management program will be altered to help minimize trampling effects that could adversely affect GGS individuals or estivation locations. Experience at the Sutter Basin Conservation Bank in spring 2013 and 2014 suggests that desirable results can be achieved through a low-intensity, moderate-duration grazing regime beginning in late winter/early spring using yearling steer cattle (750 to 900 lb) rather than cow (1,200 lb+) and calf (45 to 750 lb) pairs.

Because of the relatively arid conditions in the region of the Bank Property, grazing practices on the Bank Property will be similar to those normally associated with annual-grass-dominated rangeland. However, unlike traditional annual grassland management, early winter grazing will be avoided due to the potential risk of damage to wetland berms or GGS refugia. To provide optimal basking areas for GGS, vegetation height in the uplands will be maintained between 3 and 12 inches, preferably with many areas between 3 and 6 inches. Vegetation height in the GGS wetlands will be maintained in a mosaic pattern rather than uniform height to improve habitat for prey species while maintaining sufficient open areas for GGS foraging.

Adjustments to the grazing practices on the Bank Property will be addressed in the annual report submitted by November 30 of each year.

The timing of livestock introduction will largely be determined by climatic conditions. However, to limit potential overutilization of wetland vegetation by livestock, the livestock should not be introduced to the site until after the germination and first tillering of annual grasses in upland areas. For the Bank Property, stocking rates and animal weight class will need to be determined

based on anticipated forage yield of the upland vegetation and not overall yield of the site as a whole. Livestock will be removed from the site when the vegetation height goals are met or when upland grasses begin to become unpalatable, causing livestock to preferentially feed at the marsh/upland interface where potential GGS conflicts may be greatest during the GGS emergence period (i.e., midspring).

If exotic invasive weeds become a problem, livestock, preferably goats, may be placed on site later in the season in an attempt to remove some of the later-maturing summer annual weeds. Stocking rate will vary on livestock type utilized; however, it is likely that goats or sheep will be the preferred livestock because they are more likely to target summer annual weeds and produce a more random pattern of utilization, resulting in a greater diversity of vegetative cover conditions.

Several sample points will be used to assess vegetation height throughout the grazed portions of the habitat. A minimum of 10 sample points will be established on the Bank Property, with at least one sample point in each marsh management unit (i.e., cell). Sample point locations will be marked with GPS and will be revisited each year the site is grazed to ensure consistency in monitoring assessment. To ensure the grazing is improving habitat viability as well as managing weed invasion and thatch accumulation, biological monitoring will assess the effects of grazing as described in the biological monitoring efforts section of the preceding Long-Term Management Plan.

### **Adaptive Management**

Grazing management and stocking rates and duration will be adjusted on an annual basis when grazing is planned to meet the overall goal of supporting the biological objectives of the Bank Property. Grazing management for this property will be driven by observed species trends and seasonal fluctuations in precipitation timing and extent. Depending on weather patterns, more or less livestock may be necessary, or livestock could be moved on site earlier or stay later than stated above. Should additional methodologies be required to adequately graze the Bank Property, adaptive management will allow for unforeseen stocking or grazing measures to be implemented. Significant deviations from the grazing proposed in this plan would be presented in the monitoring reports and coordinated with the Signatory Agencies as necessary.



EXHIBIT B-2  
Endowment Assessment for Bank Property

Management Plan Action		Cost Unit	Hourly Rates										Fixed Costs		Total	Occurrence Cycle in Years	Secured Stewardship
			Land Mgr. (\$125)		Sr. Tech (\$90)		Tech (\$75)		Field Crew (\$35)		Ad staff (\$50)		Cost	Qty			Endowment
			Hr	Cost	Hr	Cost	Hr	Cost	Hr	Cost	Hr	Cost					
Section I - Introduction (No Action)					-		-		-		-						
Section II - Property Description (No Action)					-		-		-		-						
Section III - Habitat and Species Description (No Action)					-		-		-		-						
Section IV - Management and Monitoring				-	-		-		-		-						
A HABITAT TYPES AND SPECIES ELEMENTS																	
	Element A.1 Seasonal Wetlands and GGS Habitats			-		-		-		-		-					
	Task A.1.1: Annual and Monthly Surveys and Inspections	Hourly and Capital	24	3,000	24	2,160		-		-		-			\$ 5,160	1	\$ 147,429
	Task A.1.2: Removal of Invasive Plants	Hourly and Capital	2	250	4	360			16	560			\$30	10.0	\$ 1,470	5	\$ 7,832
	Element A.2 Giant Garter Snake Habitat														\$ -		\$ -
	Task A.2.1: Water Supply and Delivery (Cost/acre/year)	Capital											\$14	840.0	\$ 11,760	1	\$ 336,000
	Task A.2.2: Water Management	Hourly	2	250	8	720		-	57	1,995		-		1.0	\$ 2,965	1	\$ 84,714
	Task A.2.3: Replacement/Repair of WaterControl Facilities	Hourly and Capital	4	500		-	8	600		-		-	\$5,000	8.0	\$ 41,100	15	\$ 60,857
	Task A.2.4: Ditch Cleaning (500' per year, each year)	Hourly and Capital							16	560			\$250	2.0	\$ 1,060	1	\$ 30,286
	Task A.2.5: Vegetation Management	Hourly and Capital	2	250	4	360	-	-	8	280		-	\$1,400	1.0	\$ 2,290	1	\$ 65,429
B SITE SECURITY AND ACCESS ELEMENT								-									
	Element B.1 – Trash and Trespass							-									
	Task B.1.1: Trash Removal	Capital				-		-	2	70	-	-	\$50	1.0	\$ 120	1	\$ 3,429
	Task B.1.2: Replacement of Gates and Fencing	Hourly and Capital					3	225	12	420			\$400	4.0	\$ 2,245	25	\$ 1,647
	Task B.1.3: Replacement of Signs	Hourly and Capital							8	280			\$5	10.0	\$ 330	10	\$ 804
C AGRICULTURAL USE ELEMENT																	
	Task C.1.1 Contract with Grazing Lessee	Hourly															
D OUTREACH AND RECREATIONAL USE ELEMENTS																	
	Element D.1 Hunting (no funds used from Endowment)																
	Element D.2 Educational and Scientific Use																
	Task D.2.1: Coordination of Educational and Scientific Use	Hourly	8	1,000	3	270		-		-		-			\$ 1,270	1	\$ 36,286
E BIOLOGICAL MONITORING ELEMENTS																	
	Element E.1 Giant Garter Snake			-		-		-		-		-					
	Task E.1.1: Quantitative GGS Monitoring (Trapping Contract)	Capital											\$17,250	1.0	\$ 17,250	5	\$ 91,909
	Element E.2 Vegetation (GGS Habitats and Seasonal Wetlands)																
	Task E.2.1: Quantitative Vegetation Survey (includes High Resolution Aerial Photograph)	Hourly and Capital	4	500		-	24	1,800		-		-	\$600	1.0	\$ 2,900	5	\$ 15,451
F ANNUAL REPORTING AND ADMINISTRATION																	
	Task F.1: Annual Report	Hourly	4	500	16	1,440	8	600		-	2	100	\$0.10	100.0	\$ 2,650	1	\$ 75,714
	Site Administration	hourly	8	1,000											\$ 1,000	1	\$ 28,571
	Misc Supplies Expense	Capital											\$250.00	1.0	\$ 250	1	\$ 7,143
	Misc Mileage	Capital											\$0.56	2880.0	\$ 1,613	1	\$ 46,080

Stewardship subtotal	\$1,039,580
10.0% Contingency	\$103,958
3.5% CAP Rate	
Grand Total	\$1,143,538

EXHIBIT B-3  
Endowment Payment Schedule

**EXHIBIT B-3 ENDOWMENT PAYMENT SCHEDULE**  
**Grasslands Mitigation Bank**  
**1-Jul-15**

**LEGEND**

<b>2024</b>	<b>FIRST CALENDER YEAR OF WORK WITH ENDOWMENT FUNDS ("YEAR 1")</b>		Endowment Calculations	\$1,039,580	<b>BASE ENDOWMENT AMOUNT</b>
			Intentionally Left Blank	\$103,958	<b>10% CONTINGENCY</b>
<b>2023</b>	<b>CALENDAR YEAR OF FIRST PAYMENT REQUEST TO NFWF (between July 1 and November 15 of the calendar year prior to "YEAR 1")</b>		Headings and Reference Info.		
			Anticipated Payment Schedule	\$1,143,538	<b>FULL ENDOWMENT AMOUNT</b>

**PAYMENT SCHEDULE YEARS 1-40 (each line adds up from left to right)**

YEAR	EVERY YEAR	EVERY 5 YEARS	EVERY 10 YEARS	EVERY 15 YEARS	EVERY 25 YEARS	PAYMENT SCHEDULE *
Year 1	\$30,138.00					\$30,138.00
Year 2	\$30,138.00					\$30,138.00
Year 3	\$30,138.00					\$30,138.00
Year 4	\$30,138.00					\$30,138.00
Year 5	\$30,138.00	\$21,620.00				\$51,758.00
Year 6	\$30,138.00					\$30,138.00
Year 7	\$30,138.00					\$30,138.00
Year 8	\$30,138.00					\$30,138.00
Year 9	\$30,138.00					\$30,138.00
Year 10	\$30,138.00	\$21,620.00	\$330.00			\$52,088.00
Year 11	\$30,138.00					\$30,138.00
Year 12	\$30,138.00					\$30,138.00
Year 13	\$30,138.00					\$30,138.00
Year 14	\$30,138.00					\$30,138.00
Year 15	\$30,138.00	\$21,620.00		\$41,100.00		\$92,858.00
Year 16	\$30,138.00					\$30,138.00
Year 17	\$30,138.00					\$30,138.00
Year 18	\$30,138.00					\$30,138.00
Year 19	\$30,138.00					\$30,138.00
Year 20	\$30,138.00	\$21,620.00	\$330.00			\$52,088.00
Year 21	\$30,138.00					\$30,138.00
Year 22	\$30,138.00					\$30,138.00
Year 23	\$30,138.00					\$30,138.00
Year 24	\$30,138.00					\$30,138.00
Year 25	\$30,138.00	\$21,620.00			\$2,245.00	\$54,003.00

\* All disbursements will be adjusted for inflation by NFWF upon payment per the Recipient Agmt.

**EXHIBIT B-3 ENDOWMENT PAYMENT SCHEDULE**  
**Grasslands Mitigation Bank**  
**1-Jul-15**

**ENDOWMENT CALCULATIONS**

CATEGORY HEADING	SPECIFIC ACTIVITY (Briefly Describe)	EVERY YEAR	EVERY 5 YEARS	EVERY 10 YEARS	EVERY 15 YEARS	EVERY 25 YEARS
Monitoring	Task A.1.1: Monthly Inspections	\$5,160.00				
Invasive/Exotic Species	Task A.1.2: Removal of Invasive Plants		\$1,470.00			
Habitat Maintenance	Task A.2.1 Water Supply and Delivery	\$11,760.00				
Habitat Maintenance	Task A.2.2: Water Management	\$2,965.00				
Habitat Maintenance	Task A.2.3: Replacement/Repair of Water Control Facilities				\$41,100.00	
Habitat Maintenance	Task A.2.4: Ditch Cleaning	\$1,060.00				
Vegetation Management	Task A.2.5: Vegetation Management	\$2,290.00				
Trash and Trespass	Task B.1.1: Trash Removal	\$120.00				
Fences and Gates	Task B.1.2: Replacement of Gates and Fencing					\$2,245.00
Fences and Gates	Task B.1.3: Replace Signage			\$330.00		
Operations	Task D.2.1: Coordinate Educational and Scientific Use	\$1,270.00				
Monitoring	Task E.1.1: Quantitative GGS Monitoring (Contract)		\$17,250.00			
Monitoring	Task E.1.2: Quantitative Vegetation Survey		\$2,900.00			
Operations	Task F.1: Annual Report	\$2,650.00				
Operations	Site Administration	\$1,000.00				
Operations	Miscellaneous Supplies	\$250.00				
Mileage	Mileage	\$1,613.00				
TOTALS FOR EACH PERIOD:		\$30,138.00	\$21,620.00	\$330.00	\$41,100.00	\$2,245.00

EXHIBIT C  
Master Mitigation Account Memorandum of Agreement ("MOA")



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

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

**I. PURPOSES**

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

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

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

## II. AUTHORITY

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

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

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

### **III. DEFINITIONS**

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

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

#### **IV. CDFG RESPONSIBILITIES**

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

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

## **V. FOUNDATION RESPONSIBILITIES**

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

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

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



4. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the CDFG Account with other funds held or managed by the Foundation that are subject to identical investment purposes and restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the CDFG Account commingled in this manner shall at all times remain subject to the investment guidance specified by the CDFG for such funds. In addition, notwithstanding this authorization, and in accordance with Section V(2) above, the Foundation shall ensure that funds in the CDFG Account shall at all times be distinguishable within the Foundation's internal account system from the balances of all other accounts maintained or managed by the Foundation.
5. The Foundation shall administer the CDFG Account consistent with Section VII, below.
6. If requested by the CDFG, under separate agreements with the CDFG, the Foundation shall prepare one or more specialized requests for proposals (each an "RFP") for Projects to be selected by the CDFG and funded by the CDFG Account.
7. The Foundation shall pay Recipients' requests for disbursements in accordance with the procedures set forth in the respective Recipient Agreements or, if no Recipient Agreement exists, as otherwise specified by the CDFG in writing.
8. The Foundation will transfer money from the CDFG Account to the CDFG as payment for performance of Projects by the CDFG in accordance with payment procedures provided by the CDFG pursuant to Section IV(3).
9. If requested by the CDFG, the Foundation shall participate with the CDFG in annual technical reviews to evaluate the progress and results of Projects funded by the CDFG Account. The Foundation will also take appropriate steps to terminate or cancel a Project if directed to do so by the CDFG.

## **VI. STANDARD OPERATING PROCEDURES**

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

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

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

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

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

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

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

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

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

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

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

## VII. GENERAL ACCOUNT ADMINISTRATION

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

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

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

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

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

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

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

### **VIII. LIMITATIONS ON FOUNDATION'S LIABILITY**

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

### **IX. FIDUCIARY OBLIGATIONS OF FOUNDATION**

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



## **X. TERM, TERMINATION, AND TRANSFER OF AGREEMENT**

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

## **XI. CONTACT INFORMATION/COMMUNICATIONS**

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

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

If to the CDFG:

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

CDFG Alternate:

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

If to the Foundation:

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

Foundation Alternate:

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

## **XII. MISCELLANEOUS PROVISIONS**

1. The Foundation may not assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the CDFG, which the CDFG may withhold. The CDFG may assign its rights to a successor agency without the consent of the Foundation provided that the successor agency is legally obligated to assume or otherwise assumes the CDFG's obligations hereunder.
2. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).
3. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee or representative of the other Party.

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

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

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

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

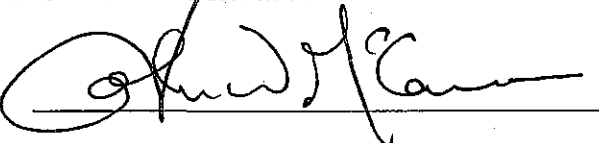
8. Any waiver by either Party of any term or provision of this Agreement must be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any other event or circumstance.

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

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

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

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

By: 

John McCamman, Director

Date: Nov 23, 2010

**NATIONAL FISH AND WILDLIFE FOUNDATION**

By: 

Jeff Trandahl, Executive Director

Date: Nov 17, 2010

## **EXHIBIT A**

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

## **CALIFORNIA DEPARTMENT OF FISH AND GAME**

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

#### **Definitions**

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

## **Broad Philosophy**

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

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

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

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



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

### **Overall Objectives**

This IPS is designed to:

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

### **Risk and Return Objectives**

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

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

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

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

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

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

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

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

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

### **Asset Allocation Guidelines**

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

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

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

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

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

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

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

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

#### **Guidelines for Equities and Real Assets**

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

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

#### **Guidelines for Fixed Income**

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

#### **Guidelines for Alternative Investments**

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

### **Guidelines for Cash**

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

### **Ongoing Monitoring**

#### **Performance Objectives**

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

#### **Guidelines for Transactions**

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



### **Monitoring of Objectives and Results**

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

## **EXHIBIT B**

### **Foundation Investment Policy Statement Governing Cash Management**

#### **NATIONAL FISH AND WILDLIFE FOUNDATION IMPACT-DIRECTED ENVIRONMENTAL ACCOUNTS**

#### **INVESTMENT POLICY FOR CASH RESERVES**

**As of July 1, 2010**

#### **Definitions**

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

#### **Broad Philosophy**

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

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

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

### **Responsibilities of the Committee**

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

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

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

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

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

### **Responsibilities of the Manager**

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

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

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

### **Investment Policy Guidelines**

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

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

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

### **Investment Universe**

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

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

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

### **Investment Objectives and Evaluation**

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

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

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

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

### **Evaluation and Review**

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

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

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

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

This First Addendum (the "First Addendum") to the Master Mitigation Account Memorandum of Agreement between the California Department of Fish and Game and the National Fish and Wildlife Foundation, dated November 23, 2010 (the "Agreement"), is entered into between the California Department of Fish and Game (the "CDFG") and the National Fish and Wildlife Foundation (the "Foundation") (together, the "Parties" and individually, a "Party") as of the date of the signature of the second Party to sign (such date, the "Effective Date"), pursuant to Section VII(6) of the Agreement. All capitalized terms used but not otherwise defined in this First Addendum shall have the respective meanings assigned to such terms in the Agreement.

Specifically, the Parties hereby memorialize their agreement that the Foundation shall establish, maintain, and operate additional Sub-Accounts within the CDFG Account to receive funds required under CDFG permits, consents, authorizations, and/or related approvals, which funds are designated to pay for the first three years (or other initial period) of long-term maintenance or management of compensatory mitigation lands. These Sub-Accounts shall be called Initial and Capital Sub-Accounts for Long-Term Maintenance or Management Measures ("I&C Sub-Accounts").

The following terms and conditions shall apply to the I&C Sub-Accounts:

1. In accordance with Section VII(2) of the Agreement, the I&C Sub-Accounts shall be subject to a one-time Per Sub-Account Deposit Fee of three thousand dollars (\$3,000).
2. Funds in the I&C Sub-Accounts shall be invested and managed by the Foundation in accordance with the Foundation's investment policy statement governing cash management as set forth in the Agreement.
3. Each I&C Sub-Account shall be subject to an Annual Fee equal to the greater of one percent (1%) of the balance of the I&C Sub-Account or one thousand dollars (\$1,000). The Foundation shall assess and collect the Annual Fee either quarterly or annually, in either case at the Foundation's election, during each year the respective I&C Sub-Accounts are in existence. The Foundation shall collect the Annual Fee by deducting it from the balance of the respective I&C Sub-Accounts.
4. The Foundation shall not be required to make more than one single annual disbursement to a Recipient of funds from an I&C Sub-Account. Disbursements shall be in annual amounts specified by CDFG and shall be made by the Foundation to the specified Recipient pursuant to a Recipient Agreement approved by the CDFG for the performance



of appropriate long-term maintenance and management measures as determined by the CDFG.

- a. If an I&C Sub-Account is not accompanied by Endowment Sub-Account, the Recipient Agreement may only be in the form of a direct invoice
  - b. If an I&C Sub-Account is accompanied by Endowment Sub-Account, the Recipient Agreement may be in the form of: 1) a direct invoice; or 2) a separate governing written agreement between the Foundation and the Recipient, as determined by the CDFG.
5. For I&C Sub-Accounts pertaining to lands for which the CDFG is the land manager, the Foundation and the CDFG may agree to different terms regarding the administration of the I&C Sub-Account, including, but not limited to the Annual Fee. Any such different terms will be memorialized in a written instrument delivered by the CDFG to and agreed to by the Foundation.
  6. The provisions of this First Addendum shall apply retroactively to July 1, 2011.
  7. Except as expressly stated in this First Addendum, the provisions of the Agreement shall apply to the I&C Sub-Accounts.

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

CALIFORNIA DEPARTMENT OF FISH AND GAME

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

Charlton Bonham, Director

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

3.6.12

NATIONAL FISH AND WILDLIFE FOUNDATION

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

Jeff Trandahl, Executive Director

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

3.9.12