

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 159-310-032, 33, 34
County: Contra Costa

A2688

LEASE 4743

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibit C	Mitigation Monitoring Program

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to **CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 255 Glacier Drive
Martinez, CA 94553

LEASE TYPE: General Lease – Public Agency Use

LAND TYPE: Sovereign tide and submerged land

LOCATION: Walnut Creek and Pacheco Creek, near Martinez, Contra Costa County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE: Habitat restoration, flood protection, and public access.

TERM: 20 years; beginning October 22, 2020; ending October 21, 2040, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State’s best interests.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** Two flood control channels.

X **TO BE CONSTRUCTED:** Habitat restoration and public access.

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

**SECTION 2
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED,
REVISED, OR SUPPLEMENTED AS FOLLOWS**

1. Lessee acknowledges that the land described in Exhibit A of the Lease is subject to the Public Trust and is presently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee’s authorized activities and use of the Lease Premises shall not interfere or limit the Public Trust rights of the public.
2. Prior to the start of construction, Lessee shall have all permits and authorizations from all federal, state, and local agencies having jurisdiction over the project.

3. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.
4. Lessor, its officers, agents, and employees shall not be liable for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action, and that Lessee shall indemnify, hold harmless, and, at the option of the Lessor, defend the Lessor, its officers, agents, and employees, against and for any and all liability for any claims, damages, or injuries of any kind and from any cause, arising out of or connected in any way with the proposed action.
5. In issuing this Lease and authorizing the placement, use, and maintenance of the proposed improvements, Lessor is relying on the information and data provided by the Lessee in its application and accompanying materials. It is the responsibility of the Lessee to ensure that the information provided is accurate. If the information and data prove to be false, materially incomplete, or inaccurate, this Lease may be modified, suspended, or revoked, in whole or in part, and/or the Lessor may, in addition, institute appropriate legal proceedings to have the structure modified or removed from the Lease Premises in accordance with Section 3, Paragraph 11 of this Lease.
6. Disturbance of the property under the Commission's jurisdiction shall be kept to a minimum area consistent with the nature and purpose of the event, and that Lessee shall take all necessary and appropriate precautions to prevent littering or pollution on State lands, waterways, and adjoining properties.
7. Lessee shall not disturb or take any endangered species, threatened species, or species of concern during construction.
8. No refueling, maintenance, or repairs to any equipment or vehicles will be permitted on lands subject to the Commission's jurisdiction.
9. At least 24 hours prior to and during the activities, Lessee will post signs and barriers to minimize potential hazards to the public.
10. Within 60 days of the project completion, Lessee shall provide Lessor with post-construction documents including:
 - a. A set of "as built" construction plans, certified (stamped, signed, and dated) by a California registered Civil/Structural Engineer, showing all design changes or other amendments to the construction as originally approved for the project.
 - b. Documents confirming post-construction site cleanup and restoration.
11. Lessee shall construct the authorized improvements substantially as described in Mitigated Negative Declaration SCH #2019099043, adopted by the Board of Directors of the Contra Costa County Flood Control and Water Conservation District on November 19, 2019, and agrees to be bound by and fully carry out, implement, and comply with all mitigation measures and reporting obligations identified as Lessee's, or Responsible Party's responsibility as set forth in the

Mitigation Monitoring Program (MMP) attached hereto as Exhibit C and by this reference made a part of this Lease, or as modified by Lessor as permitted by law.

12. Section 3, General Provisions, Paragraph 9, Insurance, is deleted in its entirety.
13. Section 3, General Provisions, Paragraph 10, Bond, is deleted in its entirety.
14. Lessee acknowledges that the Lease Premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise. To prepare for the potential effects of sea-level rise, including flood damage, erosion damage, tsunamis, and damage from waves and storm-created debris, the Lessee acknowledges and agrees to the following:
 - a. Hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
 - b. Consistent with Section 3, Paragraph 8, the Lessee assumes the risks associated with such potential hazards and agrees to be solely responsible for all damages, costs, and liabilities arising as a result of the impacts of such hazards on the Lease Premises. Any additional maintenance or protection strategies necessitated by such hazards may require additional approval by Lessor pursuant to Section 3, Paragraph 5(a) and be subject to environmental review.

SECTION 3

GENERAL PROVISIONS

1. GENERAL

In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

2. DEFINITIONS

For the purposes of this Lease, the following terms shall be defined as stated below:

“Additions” shall be defined as any use or Improvements other than those expressly authorized in this Lease.

“Alterations” shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

“Breach” shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

“Damages” shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature; all assessments, levies, losses, fines, penalties, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term “Damages” also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

“Default” shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

“Environmental Law” shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with respect to any of the foregoing, including without limitation, the California Environmental Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

“Hazardous Material” shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

“Improvements” shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises. Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

“Lease” shall be defined as this lease contract together with all amendments and exhibits.

“Lease Premises” shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which

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is authorized by this Lease.

“Lessor” shall be defined as the state of California, acting by and through the California State Lands Commission, including the Commissioners, their alternates and designates, the Executive Officer, and the staff of the California State Lands Commission.

“Regulatory Agency” shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

“Repairs” shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

“Residence” shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. “Residence” shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

“Residential Use” shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

3. CONSIDERATION

(a) Absolute Triple Net Lease

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

(b) Rent

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor's failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

(c) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the beginning date. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period.

If the consideration for this Lease is based on a percentage of income, royalties, profits, or any similar business performance indicators, Lessee shall provide Lessor with financial statements and all other documents necessary to determine the relevant basis for income.

(d) Penalty and Interest

Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Annual payments shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

(e) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the State. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party which

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results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

(f) Place for Payment of Rent

All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at the Sacramento Offices of the California State Lands Commission, currently at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, or at any other place or places that Lessor may designate by written notice to Lessee. Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

4. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

5. LAND USE

(a) General

(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

(c) Repairs and Maintenance

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

(i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or Improvements authorized; and

(ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for the

Lessee's intended use; and

(iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.

(iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

(d) Additions, Alterations, and Removal

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

(e) Enjoyment

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

(f) Discrimination

Lessee, in its use of the Lease Premises, shall not discriminate against any person or class of persons on any basis protected by federal, state, or local law, including: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

(g) Residential Use

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

(h) Commercial Use

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

The Lease Premises may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

7. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) Taxes

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest, Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

8. INDEMNITY

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this

Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

9. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on state owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as a "certificate holder" and/or an "additional interest" on the policy. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

10. SURETY BOND

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California, California State Lands Commission as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the modification of the bond or security is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides more notice.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

11. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notwithstanding the foregoing prohibition against transfer and assignment, the Lease may be transferred by Lessee if the transfer is caused by the death of a spouse and the full interest of the deceased spouse is transferred to a surviving spouse; or the transfer is caused by the dissolution of the marriage of Lessee and the full interest of one of the spouses is transferred to the other spouse. In the event of such a transfer, Lessor shall be notified in writing within 30 days of the transfer.

(2) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of Lessee. If Lessee is a publicly traded entity, transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions imposed by a separately negotiated encumbering agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

12. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a Default of this Lease:

- (1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or
- (3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or
- (5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or
- (6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.
- (7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

(d) Remedies

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or
- (3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) Determination of Rental Value

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) Waiver of Rights

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS

(a) Restoration of Lease Premises

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) Environmental Matters

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee

shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) Environmental Indemnity.

Lessee shall indemnify, defend, and hold Lessor and Lessor's, officer, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

16. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect, Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) **Notice**

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) **Consent**

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) **Changes**

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) **Successors**

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) **Joint and Several Obligation**

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) **Captions**

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) **Severability**

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) **Representations**

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) **Gender and Plurality**

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) **Survival of Certain Covenants**

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) **Counterparts**

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) **Delegation of Authority**

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. 4743

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

**CONTRA COSTA COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT**

By: _____

Title: _____

Date: _____

LESSOR:

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: _____
Robert Brian Bugsch

Title: Chief, Land Management Division

Date: _____

Execution of this document was authorized by
the California State Lands Commission on

ATTACH ACKNOWLEDGMENT

(Month Day Year)

EXHIBIT A

LEASE 4743

LAND DESCRIPTION

Seven parcels of State-owned lands lying in Contra Costa County, State of California, more particularly described as follows:

PARCEL 1

A portion of Parcel K as described in Title Settlement Agreement AD 238, filed in Document 96-46532, Official Records, Contra Costa County, State of California, more particularly described as follows:

BEGINNING at the True Point of Beginning of said Parcel K; thence along the first course of said Parcel K N 72°06'00" E 495.00 feet; thence leaving said first course N 18°00'12" W 110.00 feet; thence S 72°06'00" W 495.00 feet to a point on the westerly line of said Parcel K; thence along said westerly line S 18°00'12" E 110.00 feet to the POINT OF BEGINNING.

PARCEL 2

Parcel H as described in Title Settlement Agreement AD 238, filed in Document 96-46532, Official Records, Contra Costa County, State of California.

PARCEL 3

Parcel G as described in Title Settlement Agreement AD 238, filed in Document 96-46532, Official Records, Contra Costa County, State of California.

PARCEL 4

Parcel F as described in Title Settlement Agreement AD 238, filed in Document 96-46532, Official Records, Contra Costa County, State of California.

PARCEL 5

Parcel A as described in Exhibit A of Public Agency Permit W 8922, PRC 4743.9 on file with the California State Lands Commission as Calendar Item 6 at State Lands Commission meeting dated 2/26/1976.

PARCEL 6

Parcel B as described in Exhibit A of Public Agency Permit W 8922, PRC 4743.9 on file with the California State Lands Commission as Calendar Item 6 at State Lands Commission meeting dated 2/26/1976.

PARCEL 7

All those parcels described in Exhibit A of Public Agency Permit PRC 4215.9 on file with the California State Lands Commission as Calendar Item 4 at State Lands Commission meeting dated 5/29/1969.

The sidelines of Parcel 1, as described in said Exhibit A of Public Agency Permit PRC 4215.9 shall be prolonged or shortened so as to commence at the westerly boundary of Parcel B as described in Exhibit A of Public Agency Permit W 8922, PRC 4743.9 on file with the California State Lands Commission as Calendar Item 6 at State Lands Commission meeting dated 2/26/1976.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of Pacheco or Walnut Creek.

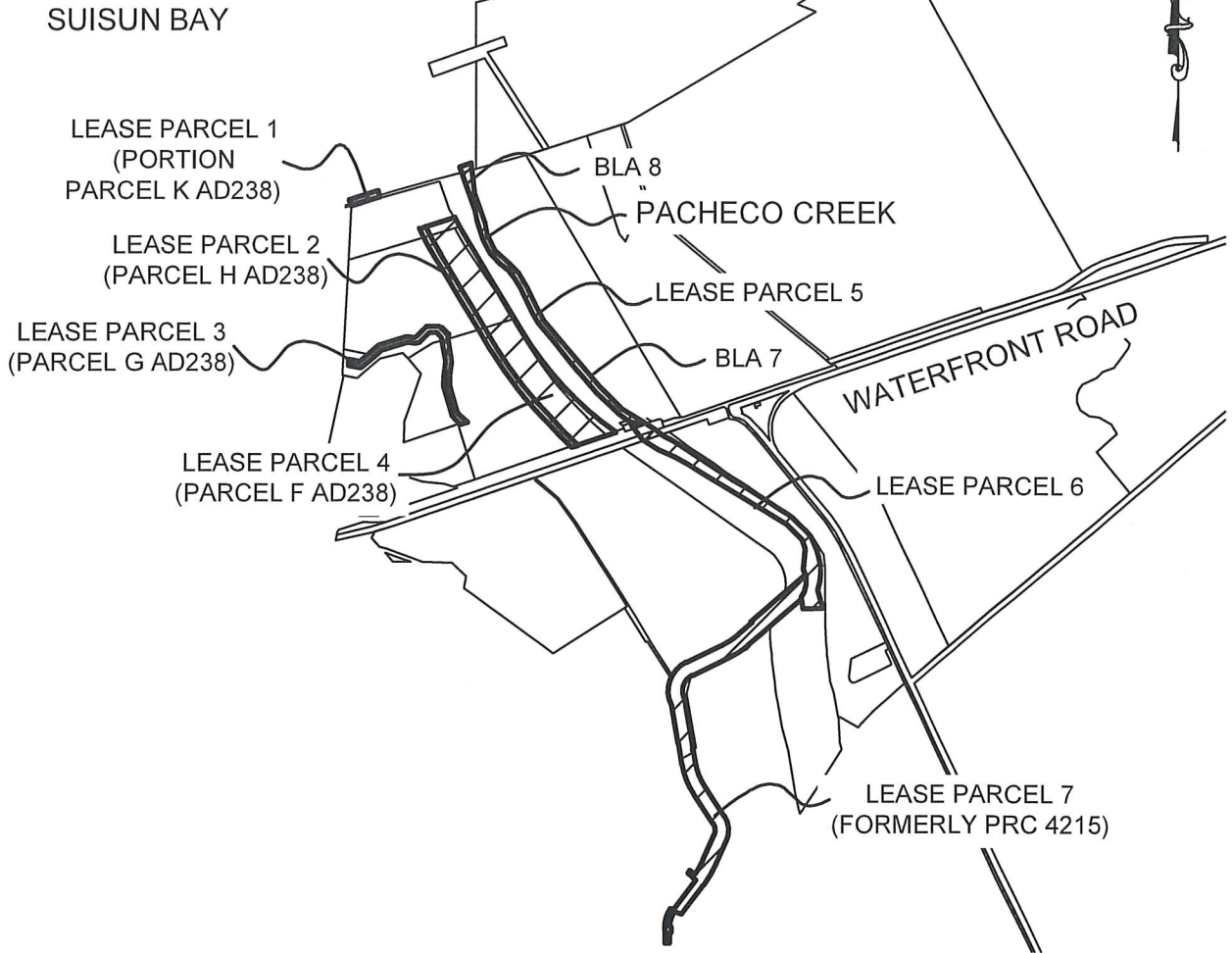
END OF DESCRIPTION

Prepared 10/8/2020 by the California State Lands
Commission Boundary Unit.



NO SCALE

SITE



WALNUT / PACHECO CREEK, MARTINEZ

NO SCALE

LOCATION

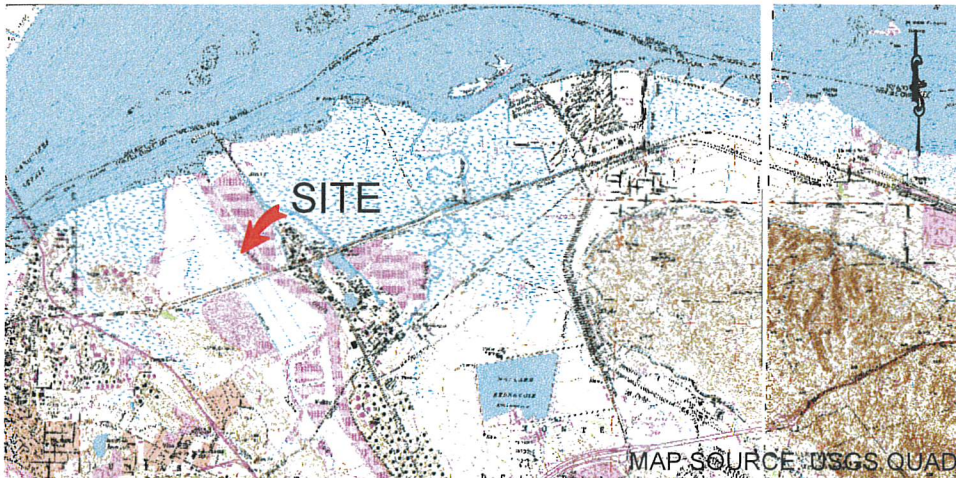


EXHIBIT B

LEASE 4743
 CONTRA COSTA COUNTY
 FLOOD CONTROL & WATER
 CONSERVATION DISTRICT
 GENERAL LEASE -
 PUBLIC AGENCY USE
 CONTRA COSTA COUNTY



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

DJF 10/8/2020

EXHIBIT C
CALIFORNIA STATE LANDS COMMISSION
MITIGATION MONITORING PROGRAM

LOWER WALNUT CREEK RESTORATION PROJECT
(A2688, State Clearinghouse No. 2019099043)

The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Lower Walnut Creek Restoration Project (Project). The CEQA lead agency for the Project is the Contra Costa County Flood Control and Water Conservation District (District).

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:¹

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The lead agency adopted an MND, State Clearinghouse No. 2019099043, adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure, as set forth in the MMRP prepared by the CEQA lead agency and provided in Attachment C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

¹ The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

Table C-1. Project Impacts and Applicable Mitigation Measures

Potential Impact ²	Mitigation Measure (MM) ³	Difference Between CSLC MMP and Lead Agency MMP
AQ-1: The project would result in vehicle emissions and fugitive dust during construction.	MM AQ-1: Implement BAAQMD Basic Construction Mitigation Measures	None
BIO-1: The project would result in potential impacts on western pond turtle.	MM BIO-1: General Construction-related Mitigation Measures MM BIO-2: Avoidance and Minimization Measures for Western Pond Turtle	None
BIO-2: The project would result in potential impacts on special-status birds.	MM BIO-1, MM BIO-3: Avoid and Minimize Impacts to Nesting Birds, Except Rails (see Mitigation Measure BIO-4 for rails)	None
BIO-3: The project would result in potential impacts on California black rail and Ridgway's rail.	MM BIO-1, MM BIO-4: Avoid and Minimize Impacts to California Black Rail and Ridgway's Rail	None
BIO-4: The project would result in potential impacts on salt marsh harvest mouse and Suisun shrew.	MM BIO-1, MM BIO-5: Avoid and Minimize Impacts to Salt Marsh Harvest Mouse and Suisun shrew	None
BIO-5: The project would result in potential impacts on special-status plants.	MM BIO-6: Special-Status Plant Protection	None
BIO-6: The project would result in potential impacts on special-status fish.	MM BIO-7: Construction Work Window for Special-Status Fish MM BIO-8: Protect Water Quality for Fish Habitat MM BIO-9: Fish and Marine Mammal Protection During Pile Driving	None
BIO-7: The project would result in potential impacts on sensitive natural communities.	MM BIO-1, MM BIO-8, MM BIO-10: General Measures to Avoid and Minimize Impacts to Sensitive Natural Communities, Wetlands, and Waters, MM BIO-11: Develop and Implement a Restoration Monitoring and Adaptive Management Program,	None

² Impact numbering corresponds to the Environmental Checklist questions in the MND.

³ See Attachment C-1 for the full text of each MM taken from the MMRP prepared by the CEQA lead agency.

	MM BIO-12: Protection of Submerged Aquatic Vegetation Fish Habitat	
BIO-8: The project would result in potential impacts on wetlands and other waters.	MM BIO-1	None
BIO-9: The project would result in potential construction-related impacts on movement of native resident or migratory fish species or established native resident or migratory wildlife corridors.	MM BIO-1, MM BIO-3, MM BIO-4, MM BIO-7, MM BIO-8	None
CUL-1: The project would result in potential impacts on archaeological resources.	MM CUL-1: Cultural Resources Training and Inadvertent Discovery of Archaeological Resources or Tribal Cultural Resources	None
CUL-2: The project would result in potential impacts on archaeological resources.	MM CUL-2: Inadvertent Discovery of Human Remains	See addition below to MM CUL-2
HAZ-1: The project would result in potential impacts exposure of public and workers to hazardous materials.	MM HAZ-1: Prepare and Implement a Hazardous Materials Dewatering and Management Plan	None
TCR-1: The project would result in potential impacts on tribal cultural resources.	MM CUL-1	None

Additions to existing **MM CUL-2:** Inadvertent Discovery of Human Remains

If human remains are encountered by construction personnel during project implementation, all construction activities within 100 feet shall halt and the contractor shall notify the District. The District shall contact the Contra Costa County Coroner. The Native American Heritage Commission (NAHC) will be contacted within 24 hours if the Coroner determines that the remains are Native American. The NAHC will then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the District for the appropriate means of treating the human remains and any associated funerary objects. California State Lands Commission staff shall be notified of any human remains discovered on lands under the jurisdiction of the Commission so that the Commission may fulfill its responsibilities as the landowner.

ATTACHMENT C-1

**Mitigation Monitoring Program Adopted by the
Contra Costa County Flood Control and
Water Conservation District**

MITIGATION MONITORING AND REPORTING PROGRAM

The following Mitigation Monitoring and Reporting Program (MMRP) identifies the Mitigation Measures that will be implemented as part of the Lower Walnut Creek Restoration Project. The Contra Costa County Flood Control and Water Conservation District (District) or its Contractors under the supervision of the District will be responsible for implementing the following measures. The District will be responsible for monitoring to ensure the following measures are effectively implemented to reduce impacts to less-than-significant levels.

**TABLE D-1
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Air Quality					
<p>Impact AQ-1: The project would result in vehicle emissions and fugitive dust during construction.</p>	<p>Mitigation Measure AQ-1: Implement BAAQMD Basic Construction Mitigation Measures</p> <p>The following applicable Bay Area Air Quality Management District (BAAQMD) Basic Construction Mitigation Measures shall be implemented by construction contractors to reduce emissions of fugitive dust and equipment exhaust:</p> <ul style="list-style-type: none"> • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. • All haul trucks transporting soil, sand, or other loose material off site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 mph within the project area. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. • Post a publicly visible sign with the telephone number and person to contact at the District (or its designee) regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations. 	<p>Prior to and during construction</p>	<p>Contra Costa County Flood Control & Water Conservation District (District); Construction Contractor</p>	<p>BAAQMD and District</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources					
Impact BIO-1: The project would result in potential impacts on western pond turtle.	Mitigation Measure BIO-1: General Construction-related Mitigation Measures <ul style="list-style-type: none"> A qualified biologist will provide Worker Environmental Awareness Training (WEAT) to field management and construction personnel. Communication efforts and training will take place during preconstruction meetings so that construction personnel are aware of their responsibilities and the importance of compliance. WEAT will identify the types of sensitive resources located in the project area and the measures required to avoid impacts on these resources. Materials covered in the training program will include environmental rules and regulations for the specific project and requirements for limiting activities to the construction right-of-way and avoiding demarcated sensitive resource areas. 	Prior to construction	District and Qualified Biologist	District	
	<ul style="list-style-type: none"> If new construction personnel are added to the project, the contractor will ensure the new personnel receive WEAT before starting work. A sign-in sheet of those contractor individuals who have received the training will be maintained by the project proponent. A representative will be appointed during the WEAT to be the contact for any employee or contractor who might inadvertently kill or injure a listed species or who finds a dead, injured, or entrapped individual. The representative's name and telephone number will be provided to the U.S. Fish and Wildlife Service (USFWS) before the initiation of ground disturbance. 	Prior to and during construction	District and Construction Contractor	District and USFWS	
	<ul style="list-style-type: none"> If individuals of listed wildlife species may be present and subject to potential injury or mortality from construction activities, a qualified biologist will conduct preconstruction surveys. If a listed wildlife species is discovered, construction activities will not begin in the immediate vicinity of the individual until USFWS and/or CDFW is contacted and the individual has been allowed to leave the construction area. Minimum qualifications for a qualified biologist will be a four-year college degree in biology or related field and demonstrated experience with the species of concern. Any special-status species observed during surveys will be reported to the USFWS and CDFW so the observations can be added to the CNDDB. 	Prior to construction	District and Qualified Biologist	District, USFWS, and CDFW	
	<ul style="list-style-type: none"> All vehicle operators will limit speed to 15 mph within the project area. 	Prior to and during construction	District, Construction Contractor, and Qualified Biologist	District	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-1: cont.</p>	<ul style="list-style-type: none"> • Because the work area is larger than 1 acre, the project proponent would be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) for construction activities according to the National Pollutant Discharge Elimination System (NPDES) Construction General Permit requirements (State Water Resources Control Board Order 2009-0009-DWQ). The objectives of the SWPPP will be to (1) identify pollutant sources associated with construction activity and project operations that may affect the quality of stormwater and (2) identify, construct, and implement stormwater pollution prevention measures to reduce pollutants in stormwater discharges during and after construction. The project proponents and/or their contractor(s) will develop and implement a spill prevention and control plan as part of the SWPPP to minimize effects of spills of hazardous, toxic, or petroleum substances during construction of the project. Implementation of this measure will comply with state and federal water quality regulations. The SWPPP will be kept on site during construction activity and during operation of the project and will be made available upon request to representatives of the Regional Water Quality Control Board (Regional Water Board). The SWPPP will include but is not limited to: <ul style="list-style-type: none"> a) A description of potential pollutants to stormwater from erosion. b) Management of dredged sediments and hazardous materials present on site during construction (including vehicle and equipment fuels). c) Details of how the sediment and erosion control practices comply with state and federal water quality regulations. d) A description of potential pollutants to stormwater resulting from operation of the project. • The SWPPP will include a hazardous materials management plan (HMMP). The plan will describe the actions that will be taken in the event of a spill. The plan also will incorporate preventive measures to be implemented (such as vehicle and equipment staging, cleaning, maintenance, and refueling) and contaminant (including fuel) management and storage. In the event of a contaminant spill, work at the site immediately will cease until the contractor has contained and mitigated the spill. The contractor will immediately prevent further contamination, notify appropriate authorities, and mitigate damage as appropriate. Adequate spill containment materials, such as oil diapers 	<p>Prior to and during construction</p>	<p>District and Construction Contractor</p>	<p>District and Regional Water Board</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-1: cont.	<p>and hydrocarbon cleanup kits, will be available on site at all times. Containers for storage, transportation, and disposal of contaminated absorbent materials will be provided on the project site.</p> <ul style="list-style-type: none"> • Do not use any hazardous material in excess of reportable quantities, as specified in Title 40 Code of Federal Regulations (CFR) Part 355, Subpart J, Section 355.50, unless approved in advance by the Office of Emergency Services (OES), and will provide to the OES in the annual compliance report a list of hazardous materials contained at a project site in reportable quantities. 	Prior to and during construction	District and Construction Contractor	District	
	<p>Mitigation Measure BIO-2: Avoidance and Minimization Measures for Western Pond Turtle</p> <ul style="list-style-type: none"> • Preconstruction surveys for western pond turtle shall be conducted by a qualified biologist prior to clearing and grubbing, equipment staging, excavation or other construction-related activity or vegetation management activities requiring the use of heavy equipment (e.g., bobcat), within 150 feet of Walnut Creek and Pacheco Creek, as specified below: <ul style="list-style-type: none"> o Prior to conducting preconstruction surveys, the qualified biologist shall prepare a relocation plan that describes the appropriate survey and handling methods for western pond turtle and identify nearby relocation sites where individuals would be relocated if found during the preconstruction surveys. The relocation plan shall be submitted to CDFW for review prior to the start of construction activities. The animal shall be relocated to equivalent or better western pond turtle habitat relative to where it was found. o Preconstruction surveys shall be conducted within 5 days prior to, and again immediately prior to activities described in the first bullet, above, to identify any presence of western pond turtle. o The qualified biologist shall monitor areas described in the first bullet above, to identify and relocate western pond turtle as necessary. If western pond turtle is observed within the construction area, the qualified biologist shall relocate the individual according to the relocation plan above. 	Prior to construction	District and Qualified Biologist	District	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-2: The project would result in potential impacts on special-status birds.</p>	<p>See Mitigation Measure BIO-1: General Construction-related Mitigation Measures above.</p> <p>Mitigation Measure BIO-3: Avoid and Minimize Impacts to Nesting Birds, Except Rails (see Mitigation Measure BIO-4 for rails)</p> <p>Project staging, project construction, vegetation removal (e.g., clearing and grubbing), vegetation management activities requiring heavy equipment, or tree trimming shall be performed outside of the bird nesting season (February 1st through August 31st) to avoid impacts to nesting birds; if these activities must be performed during the nesting bird season, a qualified biologist shall be retained to conduct a pre-construction survey in the project construction and staging areas for nesting birds and verify the presence or absence of nesting birds no more than 14 calendar days prior to construction activities or after any construction breaks of 14 calendar days or more. Surveys shall be performed for the project construction and staging areas and suitable habitat within 250 feet of the project construction and staging areas in order to locate any active passerine (perching bird) nests and within 500 feet of the project construction and staging areas to locate any active raptor (birds of prey) nest. If nesting birds and raptors do not occur within 250 and 500 feet of the Project area, respectively, then no further action is required if construction begins within 14 calendar days.</p> <p>If active nests are located during the pre-construction bird nesting surveys, no-disturbance buffer zones shall be established around nests, with a buffer size established by the qualified biologist. Typically, these buffer distances are between 50 feet and 250 feet for passerines and between 300 feet and 500 feet for raptors. These distances may be adjusted depending on the level of surrounding ambient activity and if an obstruction, such as a building or structure, is within line-of-sight between the nest and construction. Reduced buffers may be allowed if a full-time qualified biologist is present to monitor the nest and has authority to halt construction if bird behavior indicates continued activities could lead to nest failure. Buffered zones shall be avoided during construction-related activities until young have fledged or the nest is otherwise abandoned.</p>	<p>Prior to and during construction</p>	<p>District and Qualified Biologist</p>	<p>District</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-3: The project would result in potential impacts on California black rail and Ridgway's rail.	See Mitigation Measure BIO-1: General Construction-related Mitigation Measures above.				
	<p>Mitigation Measure BIO-4: Avoid and Minimize Impacts to California Black Rail and Ridgway's Rail</p> <ul style="list-style-type: none"> • To minimize or avoid the loss of individual California black rail and Ridgway's rail, construction activities, including vegetation management activities requiring heavy equipment, adjacent to tidal marsh areas (within 500 feet [150 meters] or a distance determined in coordination with U.S. Fish and Wildlife (USFWS) or the California Department of Fish and Wildlife (CDFW), shall be avoided during the breeding season from February 1 through August 31. 	Prior to and during construction	District and Construction Contractor	District, USFWS, and CDFW	
	<ul style="list-style-type: none"> • If areas within or adjacent to rail habitat cannot be avoided during the breeding season (February 1 through August 31), protocol-level surveys shall be conducted to determine rail nesting locations. The surveys will focus on potential habitat that could be disturbed by construction activities during the breeding season to ensure that rails are not breeding in these locations. <p>Survey methods for rails will follow the <i>Site-Specific Protocol for Monitoring Marsh Birds</i>, which was developed for use by USFWS and partners to improve bay-wide monitoring accuracy by standardizing surveys and increasing the ability to share data (Wood et al. 2017). Surveys are concentrated during the approximate period of peak detectability, January 15 to March 25 and are structured to efficiently sample an area in three rounds of surveys by broadcasting calls of target species during specific periods of each survey round. Call broadcast increase the probability of detection compared to passive surveys when no call broadcasting is employed. This protocol has since been adopted by Invasive Spartina Project (ISP) and Point Blue Conservation Science to survey Ridgway's rails at sites throughout San Francisco Bay Estuary. The survey protocol for Ridgway's rail is summarized below.</p> <ul style="list-style-type: none"> o Previously used survey locations (points) should be used when available to maintain consistency with past survey results. Adjacent points should be at least 200 meters apart along transects in or adjacent to areas representative of the marsh. Points should be located to minimize disturbances to marsh vegetation. Up to 8 points can be located on a transect. 	Prior to and during construction	District and Qualified Biologist	District, USFWS	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-3: cont.</p>	<ul style="list-style-type: none"> o At each transect, three surveys (rounds) are to be conducted, with the first round of surveys initiated between January 15 and February 6, the second round performed February 7 to February 28, and the third round March 1 to March 25. Surveys should be spaced at least one week apart and the period between March 25 to April 15 can be used to complete surveys delayed by logistical or weather issues. A Federal Endangered Species Act Section 10(a)(1)(A) permit is required to conduct active surveys. o Each point on a transect will be surveyed for 10 minutes each round. A recording of calls available from USFWS is broadcast at each point. The recording consists of 5 minutes of silence, followed by a 30-second recording of Ridgway's rail vocalizations, followed by 30 seconds of silence, followed by a 30-second recording of California black rail, followed by 3.5 minutes of silence. • If no breeding Ridgway's rails or black rails are detected during surveys, or if their breeding territories can be avoided by 500 feet (150 meters), then project activities may proceed at that location. 				
	<ul style="list-style-type: none"> • If protocol surveys determine that breeding Ridgway's rails or black rails are present in the project area, the following measures would apply to project activities conducted during their breeding season (February 1- August 31): <ul style="list-style-type: none"> o A USFWS- and CDFW-approved biologist with experience recognizing Ridgway's rail and black rail vocalizations will be on site during construction activities occurring within 500 feet (150 meters) of suitable rail breeding habitat. o All biologists accessing the tidal marsh will be trained in Ridgway's rail and black rail biology and vocalizations, and will be familiar with both species of rail and their nests. 	<p>Prior to and during construction</p>	<p>District, Qualified Biologist, USFWS- and CDFW-approved biologist</p>	<p>District, USFWS, and CDFW</p>	
	<ul style="list-style-type: none"> o If a Ridgway's rail or black rail vocalizes or flushes within 10 meters, it is possible that a nest or young are nearby. If an alarmed bird or nest is detected, work will be stopped, and workers will leave the immediate area carefully and quickly. An alternate route will be selected that avoids this area, and the location of the sighting will be recorded to inform future activities in the area. o All crews working in the marsh during rail breeding season will be trained and supervised by a USFWS- and CDFW-approved rail biologist. 	<p>During construction</p>	<p>District, Construction Contractor, USFWS- and CDFW-approved rail biologist</p>	<p>District, USFWS, and CDFW</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-3: cont.	<ul style="list-style-type: none"> o If any activities will be conducted during the rail breeding season in Ridgway's rail- or black rail-occupied marshes, biologists will have maps or GPS locations of the most current occurrences on the site and will proceed cautiously and minimize time spent in areas where rails were detected. 	Prior to and during construction	District and Qualified Biologist	District	
	<ul style="list-style-type: none"> o All personnel walking in the marsh will be required to limit time spent within 50 meters of an identified Ridgway's rail or black rail calling center to half an hour or less. 	Prior to, during, and post-construction	District, Construction Contractor, and qualified biologist	District	
	<ul style="list-style-type: none"> • For vegetation management activities in suitable habitat for Ridgway's rail or black rail, the following measures will be implemented: <ul style="list-style-type: none"> o Only herbicides to be used will be EPA-certified for use in/adjacent to aquatic environments. o Vegetation management activities will be limited to areas outside of tidal marsh and non-tidal pickleweed marsh habitats. 	Prior to, during, and post-construction	District and Vegetation Management Contractor	District	
Impact BIO-4: The project would result in potential impacts on salt marsh harvest mouse and Suisun shrew.	See Mitigation Measure BIO-1 above.				
	Mitigation Measure BIO-5: Avoid and Minimize Impacts to Salt Marsh Harvest Mouse and Suisun shrew <ul style="list-style-type: none"> • A USFWS and CDFW-approved biologist, with knowledge and experience with salt marsh harvest mouse habitat requirements, will conduct pre-construction surveys for the species and identify and mark suitable salt marsh harvest mouse marsh habitat prior to project initiation. 	Prior to construction	District, USFWS- and CDFW-approved biologist	District, USFWS, and CDFW	
	<ul style="list-style-type: none"> • Ground disturbance to suitable salt marsh harvest mouse habitat (including, but not limited to pickleweed, and emergent salt marsh vegetation including bulrush and cattails) will be avoided to the extent feasible. Where salt marsh harvest mouse habitat cannot be avoided - such as for channel excavation, access routes and grading, or anywhere else that vegetation could be trampled or crushed by work activities - vegetation will be removed from the ground disturbance work area plus a 10-foot buffer around the area, as well as any access routes within salt marsh harvest mouse habitat, utilizing mechanized hand tools or by another method approved by the USFWS and CDFW. Vegetation height shall be maintained at or below 5 inches above ground. Vegetation removal in salt marsh harvest mouse habitat will be conducted under the supervision of the USFWS- and CDFW-approved biologist. 	Prior to construction	District, USFWS- and CDFW-approved biologist	District, USFWS, and CDFW	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-4: cont.</p>	<ul style="list-style-type: none"> To protect salt marsh harvest mouse from construction-related traffic, access roads, haul routes, and staging areas within 200 feet of salt marsh harvest mouse habitat will be bordered by temporary exclusion fencing. The fence should be made of a smooth material that does not allow salt marsh harvest mouse to climb or pass through, of a minimum above-ground height of 30 inches, and the bottom should be buried to a depth of at least 6 inches so that mice cannot crawl under the fence. Any supports for the salt marsh harvest mouse exclusion fencing (e.g., t-posts) will be placed on the inside of the project area. The last 5 feet of the fence shall be angled away from the road to direct wildlife away from the road. A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse experience will be on site during fence installation and will check the fence alignment prior to vegetation clearing and fence installation to ensure no salt marsh harvest mice are present. Salt marsh harvest mouse marsh habitat that must be accessed by mini-excavators or other vehicles to complete project construction (e.g., excavating connector channels to Lower Walnut Creek) will be protected through use of low ground pressure (LGP) equipment, wooden or PVC marsh mats, or other method approved by USFWS and CDFW following vegetation removal (see 3rd bullet, above). 	<p>Prior to and during construction</p>	<p>District, Construction Contractor, USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse experience</p>	<p>District, USFWS, and CDFW</p>	
	<ul style="list-style-type: none"> Construction activities related to restoration and recreational infrastructure, as well as ongoing Operations and Maintenance activities will be scheduled to avoid extreme high tides when there is potential for salt marsh harvest mouse to move to higher, drier grounds, such as ruderal and grassland habitats. Extreme high tides would be in excess of six feet as predicted for the nearest tide gauge, Point Chicago tide gauge. All construction equipment and materials will be staged on existing roadways and away from suitable wetland habitats when not in use. 	<p>Prior to and during construction; During Operations and Maintenance</p>	<p>District, Construction Contractor</p>	<p>District</p>	
	<ul style="list-style-type: none"> Vegetation shall be removed from all non-marsh areas of disturbance (driving roads, grading and stockpiling areas) to discourage presence of salt marsh harvest mouse. 	<p>Prior to and during construction</p>	<p>District, Construction contractor</p>	<p>District</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-4: cont.	<ul style="list-style-type: none"> A USFWS- and CDFW-approved biologist with previous salt marsh harvest mouse monitoring and/or surveying experience will be on site during construction activities occurring in suitable habitat. The biologist will document compliance with the project permit conditions and avoidance and conservation measures. The USFWS- and CDFW-approved biologist has the authority to stop project activities if any of the requirements associated with these measures is not being fulfilled. If salt marsh harvest mouse is observed in the work area, construction activities will cease in the immediate vicinity of the salt marsh harvest mouse. The individual will be allowed to leave the area before work is resumed. If the individual does not move on its own volition, the USFWS-approved biologist would contact USFWS (and CDFW if appropriate) for further guidance on how to proceed. 	During Construction	District, USFWS- and CDFW- approved biologist with previous salt marsh harvest mouse monitoring and/or surveying experience	District, USFWS, and CDFW	
	<ul style="list-style-type: none"> If the USFWS- and CDFW-approved biologist has requested work stoppage because of take of any of the listed species, or if a dead or injured salt marsh harvest mouse is observed, the USFWS and CDFW will be notified within one day by email or telephone. 	During Construction	District, USFWS- and CDFW- approved biologist with previous salt marsh harvest mouse monitoring and/or surveying experience	District, USFW, and CDFW	
	<ul style="list-style-type: none"> For vegetation management activities in suitable habitat for salt marsh harvest mouse and Suisun shrew, the following measures shall be implemented: <ul style="list-style-type: none"> Only herbicides to be used will be EPA certified for use in/adjacent to aquatic environments. Work in upland habitat within 100 feet of salt marsh harvest mouse and Suisun shrew habitat will be scheduled to avoid extreme high tides when there is potential for salt marsh harvest mouse and Suisun shrew to move to higher, drier grounds, such as ruderal and grassland habitats. Extreme high tides would be in excess of six feet as predicted for the nearest tide gauge, Port Chicago tide gauge. 	Prior to, during, and after construction	District, and Vegetation Management Contractor; Construction contractor	District	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-5: The project would result in potential impacts on special-status plants.</p>	<p>Mitigation Measure BIO-6: Special-Status Plant Protection</p> <p>To ensure protection of special-status plants, the following measures will be implemented.</p> <ul style="list-style-type: none"> • Prior to the start of construction, a qualified biologist shall conduct a properly-timed special-status plant survey for Suisun marsh aster, delta tule pea, soft bird's beak, Mason's liliopsis, Bolander's water hemlock, delta mudwort, Congdon's tarplant, pappose tarplant, Marin knotweed, San Joaquin spearscale, Santa Cruz tarplant, Contra Costa goldfields and long-styled sand spurrey within the species' suitable habitat within the un-surveyed portions within the project work limits. This includes portions of the State Lands Commission parcel and the Suisun Properties parcel in the North Reach, the Acme landfill parcel in the Middle Reach, and the Conco parcel in the South Reach. The survey will follow the CDFW <i>Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened, and Endangered Plants and Natural Communities</i>. • If special-status plant species occur within the project work limits, then the biologist will establish an adequate buffer area for each plant population to exclude activities that directly remove or alter the habitat of, or result in indirect adverse impacts on, the special-status plant species. • A qualified biologist will oversee installation of a temporary, plastic mesh-type construction fence (Tensor Polygrid or equivalent) at least 4 feet (1.2 meters) tall around any established buffer areas to prevent encroachment by construction vehicles and personnel. The qualified biologist will determine the exact location of the fencing. The fencing will be strung tightly on posts set at maximum intervals of 10 feet (3 meters) and will be checked and maintained weekly until all construction is complete. The buffer zone established by the fencing will be marked by a sign stating: <ul style="list-style-type: none"> o "This is habitat of [list rare plant(s)], and must not be disturbed. This species is protected by [the ESA of 1973, as amended/CESA/California Native Plant Protection Act]." 	<p>Prior to construction</p>	<p>District and Qualified Biologist</p>	<p>District</p>	
	<ul style="list-style-type: none"> • No construction activity, including grading, shall be allowed until condition number 3 is satisfied. 	<p>Prior to construction</p>	<p>District and Qualified Biologist</p>	<p>District</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-5: cont.	<ul style="list-style-type: none"> If direct impacts cannot be avoided, the District shall prepare a plan for minimizing the impacts by one or more of the following methods: 1) salvage and replant plants at the same location following construction; 2) salvage and relocate the plants to a suitable off-site location with long-term assurance of site protection; 3) collect seeds or other propagules for reintroduction at the site or elsewhere; or 4) payment of fees in lieu of preservation of individual plants, to be used for conservation efforts elsewhere. 	Prior to construction	District and Qualified Biologist	District	
	<ul style="list-style-type: none"> If indirect impacts to special-status plants due to restoration-related introduction of tidal hydrology to non-tidal areas cannot be avoided, the District shall prepare a plan for minimizing the impacts by one or more of the following methods: 1) if the special-status plant population is likely to survive the hydrologic modification (based on an assessment by the District's biologist), monitor the at-risk special-status plant population over 5 years after the hydrologic modification, along with a reference population, to verify that there have been no adverse indirect impacts to the population. If at any point within the 5-years of monitoring, the population is determined to be at risk from project impacts based on monitoring results, then implement (2); 2) if the special-status plant population is not likely to survive the hydrologic modification, then: 1) salvage and relocate the plants to a suitable location on site; or 2) salvage and relocate the plants to a suitable off-site location with long-term assurance of site protection; or 3) collect seeds or other propagules for reintroduction at the site or elsewhere; or, 4) payment of fees in lieu of preservation of individual plants, to be used for conservation efforts elsewhere. 	Prior to construction	District and Qualified Biologist	District	
	<ul style="list-style-type: none"> The success criterion for any seeded, planted, and/or relocated plants shall be full replacement at a 1:1 ratio after five years. Monitoring surveys of the seeded, planted, or transplanted individuals shall be conducted for a minimum of five years, to ensure that the success criterion can be achieved at year 5. If it appears the success criterion would not be met after five years, contingency measures may be applied. Such measures shall include, but not be limited to: additional seeding and planting; altering or implementing weed management activities; or, introducing or altering other management activities. 	Post-construction	District and Vegetation Management Contractor	District	
	<ul style="list-style-type: none"> Any special-status plant species observed during surveys will be reported to the USFWS and CDFW and submitted to the CNDDB. 	Prior to construction	District and Qualified Biologist	District, USFWS, and CDFW	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-6: The project would result in potential impacts on special-status fish.</p>	<p>Mitigation Measure BIO-7: Construction Work Window for Special-Status Fish To minimize or avoid the loss of individual special-status fish species, in water work shall be limited to September 1 – November 30. If in water work cannot be avoided during this period, measures outlined in Mitigation Measures BIO-8 and BIO-9 shall also be implemented.</p>	<p>During construction</p>	<p>District and Construction Contractor</p>	<p>District</p>	
	<p>Mitigation Measure BIO-8: Protect Water Quality for Fish Habitat Prior to the start of construction of the tidal connector channels, the District shall isolate the work area from Lower Walnut and Pacheco Creeks using a silt curtain with a floating boom installed at the confluence of the new tidal channels and the creeks. Installation of the silt curtain shall contain turbidity and sediment resulting from construction activity, exclude fish from access to the active construction area, and allow water to pass between the connector channels and the creeks with the tides. The curtain shall span the width of the connector channel and shall be at least 6 feet tall to maintain a fish barrier at high tide. The curtain will consist of permeable filter fabric supported by a line of floats on the water surface and a line of weights on the channel bottom. The curtain shall be monitored and maintained regularly.</p>	<p>Prior to construction</p>	<p>District and Construction Contractor</p>	<p>District</p>	
	<p>Mitigation Measure BIO-9: Fish and Marine Mammal Protection During Pile Driving Prior to the start of any in-water construction that would require pile driving, the project sponsor shall prepare a National Marine Fisheries Service (NMFS)-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan shall be implemented during construction. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities (if required based on projected in-water noise levels), and describe best management practices to reduce impact pile-driving in the aquatic environment to an intensity level less than 183 dB (sound exposure level, SEL) impulse noise level for fish at a distance of 33 feet, and 160 dB (root mean square pressure level, RMS) impulse noise level or 120 dB (RMS) continuous noise level for marine mammals at a distance of 1,640 feet. The plan shall incorporate, but not be limited to, the following best management practices:</p> <ul style="list-style-type: none"> • All in-water construction shall be conducted within the established environmental work window between June 1 and November 30, designed to avoid potential impacts to fish species. 	<p>Prior to and during construction</p>	<p>District and Construction contractor</p>	<p>District, NMFS</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-6: cont.	<ul style="list-style-type: none"> • To the extent feasible vibratory pile drivers shall be used for the installation of all support piles. Vibratory pile driving shall be conducted following the U.S. Army Corps of Engineers "Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California." USFWS and NMFS completed Section 7 consultation on this document, which establishes general procedures for minimizing impacts to natural resources associated with projects in or adjacent to jurisdictional waters. • A soft start technique to impact hammer pile driving shall be implemented, at the start of each work day or after a break in impact hammer driving of 30 minutes or more, to give fish and marine mammals an opportunity to vacate the area. • If during the use of an impact hammer, established NMFS pile driving thresholds are exceeded, a bubble curtain or other sound attenuation method as described in the NMFS-approved sound attenuation monitoring plan shall be utilized to reduce sound levels below the criteria described above. If NMFS sound level criteria are still exceeded with the use of attenuation methods, a NMFS-approved biological monitor shall be available to conduct surveys before and during pile driving to inspect the work zone and adjacent waters for marine mammals. The monitor shall be present as specified by the NMFS during impact pile driving and ensure that: <ul style="list-style-type: none"> o The safety zones established in the sound monitoring plan for the protection of marine mammals are maintained. o Work activities are halted when a marine mammal enters a safety zone and resumed only after the animal has been gone from the area for a minimum of 15 minutes 				
Impact BIO-7: The project would result in potential impacts on sensitive natural communities.	See Mitigation Measure BIO-1: General Mitigation Measures above. See Mitigation Measure BIO-8: Protect Water Quality for Fish Habitat above.				
	<p>Mitigation Measure BIO-10: General Measures to Avoid and Minimize Impacts to Sensitive Natural Communities, Wetlands, and Waters</p> <ul style="list-style-type: none"> • The District's construction contractor(s) shall implement the following general avoidance and minimization measures to protect sensitive natural communities, wetlands, and waters during construction: 	Prior to and during construction	District and Construction Contractor	District	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
<p>Impact BIO-7: cont.</p>	<ul style="list-style-type: none"> • Work areas shall be delineated with stakes and flagging prior to construction to avoid sensitive natural resources outside of the project area. Any construction-related disturbance outside of these boundaries, including driving, parking, temporary access, sampling or testing, or storage of materials, shall be prohibited without explicit approval of the District and biologist. • The introduction of exotic plant species shall be avoided through physical or chemical removal and prevention. Measures to prevent the introduction of exotic plants into the project site via vehicular sources shall include vehicle cleaning for vehicles coming to the site and leaving the site. Earthmoving equipment shall be cleaned prior to transport to the project area. Weed-free rice straw or other certified weed-free straw shall be used for erosion control. • Construction equipment shall not be stored in sensitive natural communities, wetlands, or waters. • Only herbicides to be used will be USEPA certified for use in/adjacent to aquatic environments. <p>Mitigation Measure BIO-11: Develop and Implement a Restoration Monitoring and Adaptive Management Program The District will develop and submit a Monitoring and Adaptive Management Plan to be implemented during the monitoring period to assure desired outcomes. The plan will be submitted to the CDFW, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and BCDC prior to the start of construction. Elements of this plan shall be based upon final project design and construction documents. The plan shall include description of protocols for monitoring vegetation and geomorphology to evaluate project performance, monitoring schedule, performance criteria and thresholds that would trigger adaptive management actions, and reporting. An annual report shall be prepared and provided to the above-listed regulatory agencies in each year that post-construction monitoring is conducted.</p>	<p>Prior to and post-construction</p>	<p>District</p>	<p>District, BCDC, Regional Water Board, U.S. Army Corps of Engineers, and CDFW</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Biological Resources (cont.)					
Impact BIO-7: cont.	<p>Mitigation Measure BIO-12: Protection of Submerged Aquatic Vegetation Fish Habitat</p> <p>Prior to the start of construction or other habitat restoration and conversion activities, a USFWS-approved biologist shall conduct a pre-construction survey for submerged aquatic vegetation (SAV) (e.g., sago pondweed) at the shoreline of the North Reach. Locations of SAV shall be mapped in GIS, and the biologist shall establish an adequate buffer area to exclude activities that would directly remove or alter the habitat of, or result in indirect adverse impacts on, the SAV. Buffers shall be shown on maps and construction drawings to ensure avoidance. If construction work cannot avoid the SAV buffers, a biologist will be on site during in-water work to ensure that the SAV is avoided. No construction activity, including grading, will be allowed until the above steps are completed. If direct impacts cannot be avoided, the District shall consult with the CDFW to devise a plan for minimizing the impacts by one or more of the following methods: 1) salvage and replant native SAV at the same location following construction; 2) salvage and relocate the native SAV to a suitable off-site location with long-term assurance of site protection; 3) collect seeds or other propagules of native SAV for reintroduction at the site or elsewhere; or 4) payment of fees in lieu of preservation of individual native SAV plants, to be used for conservation efforts elsewhere. In the event that non-native species of SAV are impacted during construction, impacts would be offset using native species such as sago pondweed (<i>Stuckenia pectinata</i>). Any native SAV observed during surveys will be reported to the USFWS and CDFW.</p>	Prior to construction	District and USFWS-approved biologist	District, USFWS, and CDFW	
Impact BIO-8: The project would result in potential impacts on wetlands and other waters.	See Mitigation Measure BIO-1: General Mitigation Measures and BIO-10: General Measures to Avoid and Minimize Impacts to Sensitive Natural Communities, Wetlands, and Waters above.				
Impact BIO-9: The project would result in potential construction-related impacts on movement of native resident or migratory fish species or established native resident or migratory wildlife corridors.	See Mitigation Measures BIO-1: General Mitigation Measures, BIO-3: Avoid and Minimize Impacts to Nesting Birds, Except Rails, BIO-4: Avoid and Minimize Impacts to California Black Rail and Ridgway's Rail, BIO-7: Construction Work Window for Special Status Fish, and BIO-8: Protect Water Quality for Fish Habitat above.				

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Cultural Resources					
<p>Impact CUL-1: The project would result in potential impacts on archaeological resources.</p>	<p>Mitigation Measure CUL-1: Cultural Resources Training and Inadvertent Discovery of Archaeological Resources or Tribal Cultural Resources Prior to authorization to proceed, a Secretary of the Interior-qualified archaeologist will conduct a training program for all construction and field workers involved in site disturbance. On-site personnel shall attend a mandatory pre-project training that will outline the general archaeological sensitivity of the area and the procedures to follow in the event an archaeological resource and/or human remains are inadvertently discovered.</p>	<p>Prior to construction</p>	<p>District and Secretary of the Interior-qualified archaeologist</p>	<p>District</p>	
	<p>If prehistoric or historic-era archaeological resources or tribal cultural resources are encountered by construction personnel during project implementation, all construction activities within 100 feet shall halt and the contractor shall notify the Contra Costa County Flood Control & Water Conservation District (District). Prehistoric archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil ("middens") containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); battered stone tools, such as hammerstones and pitted stones. Historic-era materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. <u>Should any cultural resources on state lands be discovered during construction of the proposed Project, the District shall consult with the Commission. The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the California State Lands Commission.</u></p>	<p>During construction</p>	<p>District, Secretary of the Interior-qualified archaeologist, and Construction Contractor</p>	<p>District</p>	
	<p>The District shall retain a Secretary of the Interior-qualified archaeologist to inspect the findings within 24 hours of discovery. If it is determined that the project could damage a historical resource as defined by CEQA, construction shall cease in an area determined by the archaeologist until a mitigation plan has been prepared, approved by the District, and implemented to the satisfaction of the archaeologist (and Native American representative if the resource is prehistoric). In consultation with the District, the archaeologist (and Native American representative if the resources is prehistoric) shall determine when construction can commence.</p>	<p>During construction</p>	<p>District and Secretary of the Interior-qualified archaeologist</p>	<p>District, Native American representative</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Cultural Resources (cont.)					
Impact CUL-1: cont.	The mitigation plan shall recommend preservation in place, as a preference, or, if preservation in place is not feasible, data recovery through excavation. If preservation in place is feasible, this may be accomplished through one of the following means: (1) modifying the construction plan to avoid the resource; (2) incorporating the resource within open space; (3) capping and covering the resource before building appropriate facilities on the resource site; or (4) deeding resource site into a permanent conservation easement. If preservation in place is not feasible, a qualified archaeologist shall prepare and implement a detailed treatment plan to recover the scientifically consequential information from and about the resource, which shall be reviewed and approved by the District (and Native American representative) prior to any excavation at the resource. Treatment for most resources would consist of (but would not necessarily be not limited to) sample excavation, artifact collection, site documentation, and historical research, with the aim to target the recovery of important scientific data contained in the portion(s) of the significant resource to be impacted by the project. The treatment plan shall include provisions for analysis of data in a regional context, reporting of results within a timely manner, curation of artifacts and data at an approved facility, and dissemination of reports to local and state repositories, libraries, and interested professionals.				
Impact CUL-2: The project would result in potential impacts on archaeological resources.	Mitigation Measure CUL-2: Inadvertent Discovery of Human Remains If human remains are encountered by construction personnel during project implementation, all construction activities within 100 feet shall halt and the contractor shall notify the District. The District shall contact the Contra Costa County Coroner. The Native American Heritage Commission (NAHC) will be contacted within 24 hours if the Coroner determines that the remains are Native American. The NAHC will then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the District for the appropriate means of treating the human remains and any associated funerary objects.	During construction	District and Construction contractor, Contra Costa County Coroner	District, Contra Costa County Coroner, and NAHC	

**TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM**

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Hazards and Hazardous Materials					
<p>Impact HAZ-1: The project would result in potential impacts exposure of public and workers to hazardous materials.</p>	<p>Mitigation Measure HAZ-1: Prepare and Implement a Hazardous Materials Dewatering and Management Plan</p> <p>The project proponent or its contractor(s) shall develop and implement a Hazardous Materials Dewatering and Management Plan establishing procedures to manage potentially contaminated fluids encountered as part of the construction of the project to minimize potential impacts to the public or environment from hazardous materials. The Plan shall identify proper protocols to test and handle potentially hazardous materials. The Plan shall identify potential licensed disposal facilities and their acceptance criteria; the chemicals to be analyzed to comply with those acceptance criteria, which shall include at a minimum TPH as gasoline, diesel, and motor oil, and BTEX compounds. The Plan shall identify the proper protocols for the following three dewatering fluid disposal options:</p> <ul style="list-style-type: none"> • Groundwater with petroleum hydrocarbons could be discharged to the CCCSD under their Special Discharge Permit, providing the contaminant concentrations are within the Special Discharge Permit acceptance criteria and coverage under this permit is acquired prior to the discharge. The detected levels of diesel and motor oil were within the acceptance criteria of 10,000 ug/L diesel or motor oil range petroleum hydrocarbons acceptance criteria of the Central Contra Costa Sanitary District (CCCSD) Special Discharge Permit (Special Limitations for Groundwater Remediation Projects). • Groundwater with petroleum hydrocarbons could be pumped into trucks or portable storage containers and transported to an off-site licensed disposal facility permitted to accept the waste. • Groundwater with petroleum hydrocarbons could be treated on site under the RWQCB's <i>General Waste Discharge Requirements for Discharge or Reclamation of Extracted and Treated Groundwater</i> (RWQCB Order No. R2-2017-0048, NPDES Permit No. CAG912002). The pumped groundwater would be pumped into a settling tank to drop the sediments out of solution, and pumped through a treatment system (e.g., granular activated carbon [GAC] to decrease the concentration of TPH as diesel to less than 50 ug/L and TPH as motor oil to less than 100 ug/L. The effluent would be analytically tested to verify that treatment has achieved the effluent limitations. Upon successful treatment, the water could be discharged to the ground. 	<p>Prior to and during construction</p>	<p>District, Central Contra Costa County Sanitary District, and Construction Contractor</p>	<p>District, Central Contra Costa County Sanitary District</p>	

TABLE D-1 (CONTINUED)
MITIGATION MONITORING AND REPORTING PROGRAM

Impact	Mitigation, Avoidance, and Minimization Measures	Implementation Timing	Implementation Responsibility	Verification Responsibility	Compliance Verification Date
Tribal Cultural Resources					
Impact TCR-1: The project would result in potential impacts on tribal cultural resources.	See Mitigation Measure CUL-1: Cultural Resources Training and Inadvertent Discovery of Archaeological Resources or Tribal Cultural Resources above.				