RECORDING REQUESTED BY:

Muir Heritage Land Trust
PO Box 2452
Martinez, CA 94553

AND WHEN RECORDED MAIL TO:

Muir Heritage Land Trust
PO Box 2452
Martinez, CA 94553

MUIR HERITAGE LAND TRUST

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made and entered this 13 day of MAY, 2014, by and between the County of Contra Costa, (hereinafter "**Grantor**"), in favor of Muir Heritage Land Trust (hereinafter **"Grantee"** or **"MHLT"**), a non-profit corporation organized under the California Nonprofit Corporation Law and exempt from taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code.

RECITALS:

A. WHEREAS, Grantor is the sole owner in fee simple of certain real property in the County of Contra Costa, State of California, consisting of approximately 27 acres, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "**Property**"); and,

B. WHEREAS, Grantor acquired the Property from and through the Contra Costa County Transportation Authority (**"Authority"**) in connection with the State Route 4 Gap Closure Project (**"Project"**) and in accordance with a December 20, 2001, Cooperative Agreement No. 4-1770-C between Authority and the State of California, acting by and through the Department of Transportation (**"Department"**), a true copy of which is attached hereto as **Exhibit B (**"**Cooperative Agreement**").

C. WHEREAS, the Property possesses significant conservation values of great importance to Grantor, Grantee, and the people of the State of California and the United States; and,

D. WHEREAS, significant conservation values of the Property, hereinafter referred to as "**Conservation Values**" include, without limitation, the Contra Costa Goldfields (lasthenia conjugens), the California red-legged frog (rana aurora draytonii), the western pond turtle (clemmys marmorata) ("**Conservation Species**"), annual grassland, seasonally flooded wetlands, and riparian habitat. The Conservation Values also include the public value of the Property as open space and a scenic resource, in particular to the users of the adjacent freeway; and,

E. WHEREAS, Grantor and Grantee intend that the **Conservation Values** of the Property be preserved and maintained in perpetuity by permitting only those land uses on the Property that are consistent with the preservation and protection of said Conservation Values, including the Conservation Species; and,

F. WHEREAS, Grantor, as the owner in fee simple of the Property, owns the affirmative rights to identify, preserve, and protect in perpetuity the features and values of the Property for the preservation and protection of the Conservation Values, including the Conservation Species and,

G. WHEREAS, the State of California has recognized the public importance and validity of Conservation Easements by enactment of Section 815 et seq. of the California Civil Code; and,

H. WHEREAS, The Contra Costa Goldfields Management Plan ("**Management Plan**"), a true copy of which is attached hereto as **Exhibit C**, indicates that Conservation Values will be preserved and protected by establishment of a conservation easement on the Property; and,

I. WHEREAS, Grantee will preserve, protect, sustain, enhance, and restore the Conservation Values of the Property.

J. WHEREAS, to accomplish all of the aforementioned purposes, Grantor intends to convey to Grantee and Grantee intends to accept a conservation easement, hereinafter referred to as "**Conservation Easement**", restricting the uses that may be made of Property for the public purpose of protecting the Conservation Values of the Property in perpetuity in order to mitigate for certain impacts caused by the Project in Contra Costa County, State of California, as required by The United States Department of the Army, Corps of Engineers (ACOE) authorization letter dated March 16, 1999, issued pursuant to Section 404 of the Clean Water Act of 1972, and a Biological Opinion dated July 30, 1998, issued by the United States Department of the Interior, Fish and Wildlife Services ("**USFWS**"); and

K. WHEREAS, The California Department of Fish and Game ("CDFG"), a division of the State of California, has jurisdiction over the conservation, protection, restoration, and

management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species within the State of California pursuant to Fish and Game Code §1802; the CDFG is also authorized to hold easements for these purposes pursuant to California Civil Code §815.3, Fish and Game Code §1348, and other provisions of California law; and,

L. WHEREAS, USFWS has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. §§1531, *et seq.* ("ESA"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §§742(f), *et seq.*, and other provisions of Federal law; and,

M. WHEREAS, under the Cooperative Agreement it is intended that the County of Contra Costa (**"County"**) transfer its title to, and all rights and interests in, the Property to the Department subsequent to County's conveyance of this Conservation Easement to MHLT, it is thus further intended that the rights, duties, and responsibilities imposed and granted by this Conservation Easement with respect to County shall also apply to Department, upon vesting of title to the Property in Department, and to all subsequent transferees as provided by Paragraph 15 herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, based on the common law and, further pursuant to California law, including Section 815 *et seq.* of the California Civil Code, Grantor voluntarily grants in perpetuity to Grantee, its successors and assigns, a Conservation Easement, in, on, over and across all of the Property which is subject to the terms and conditions hereinafter set forth, restricting the uses in perpetuity which may be made of the Property. With that purpose in mind, the Parties agree as follows:

1. PURPOSE. The purpose of this Conservation Easement is to ensure that the Property will be retained in perpetuity in a condition contemplated by the Management Plan, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to such activities including, without limitation, those involving the preservation and enhancement of the Conservation Species, including their habitat, as well as the annual grassland, seasonally flooded wetlands, riparian habitat, open space and as a scenic resource, in a manner consistent with the requirements and guidelines set forth in the Management Plan. Grantor further intends that this Conservation Easement will provide Grantee with the necessary rights and powers, to ensure that the Property will be used for such activities as are consistent with the conservation purposes of the Management Plan, and to foster the existence and augment the populations of the Conservation Species on the Property (including grazing, mowing, or other active management of the Contra Costa Goldfields habitat on the Property), and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property (collectively, the **"Conservation Purposes"**).

2. GRANTEE'S RIGHTS. To accomplish the purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

A. The right to preserve, identify, and protect in perpetuity, the Conservation Values of the Property;

B. The right to enter upon the Property at reasonable times in order enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property; notwithstanding the foregoing, however, in the event of an emergency (such as, but not limited to, threat of immediate harm to one or more Conservation Species), Grantee's right to enter shall be immediate;

C. The right to enjoin any activity on or use of the Property that is inconsistent with the Conservation Purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Conservation Purposes of this Conservation Easement;

D. The right to use and consume all appurtenant mineral, air and water rights necessary to protect and to sustain the Conservation Values of the Property. Grantee shall have the right to access and utilize any waters consisting of: (a) any riparian water rights appurtenant to the Property; (b) any appropriative water rights held by Grantor to the extent those rights are appurtenant to the Property; (c) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Property; and (d) any water from wells that are in existence or may be constructed in the future on the Property or on those lands described as excepted from the Property in the legal description and that were historically used to maintain the Property in a flooded condition (collectively, "Easement Waters"). The Easement Waters are limited to the amount of Grantor's waters reasonably required to comply with the provisions of this Conservation Easement; and,

E. All present and future development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property in order to ensure that said rights are hereby terminated and extinguished and may not be hereafter exercised or transferred unless otherwise expressly set forth in this Conservation Easement.

F. Grantee has the right to, and hereby does, agree that by accepting the grant of this Conservation Easement it will honor the intentions of Grantor stated herein and to conserve and protect in perpetuity the Conservation Values of the Property in accordance with the terms of this Conservation Easement.

3. PERMITTED USES OF THE PROPERTY. Except as prohibited or otherwise limited by Paragraph 4 below and Exhibit D "Prohibited Uses" attached hereto, Grantor specifically retains for itself, its successors in interest and invitees, the right to use and enjoy the Property as set forth in Exhibit E "Permitted Uses" attached hereto, and in any other manner which is consistent with the Conservation Purposes of this Conservation Easement.

4. PROHIBITED USES OF THE PROPERTY. The Property shall not be used in any manner that is inconsistent with the Conservation Purposes, including but not limited to those prohibited uses specifically listed on Exhibit D "Prohibited Uses".

5. INTERESTS IN PROPERTY AFFECTED BY INSTRUMENT. Grantee will preserve, protect, sustain, enhance, and restore the Conservation Values of the Property in accordance with the Conservation Purposes of this Conservation Easement, Section 3, Permitted Uses, and the Management Plan, which by this reference is incorporated herein. Should there be a conflict between the language of this Conservation Easement and the Management Plan, the language of this Conservation Easement shall control. Grantee may undertake all reasonable actions to prevent the unlawful entry and trespass by person(s) whose activities may degrade, or harm the conservation values of the Property. All interests not conveyed by this Conservation Easement shall remain in Grantor, including the right to engage in all uses of the land not affected by the Conservation Easement nor prohibited by the Easement or by law. Further, in accordance with the Cooperative Agreement, the deed by which ownership of the Property will transfer from Grantor to Department shall impose upon the Department the responsibility, at Department's expense, for the maintenance, repair, or replacement of the protective perimeter fences around the Property, and for the periodic removal of litter and trash following a request from Grantee.

6. REMEDIES.

A. Notice of Violation; Corrective Action. Grantee shall have standing to bring an action in its own right to enjoin any third party violation or enforce the provisions of this Conservation Easement against a third party. If Grantee determines that Grantor is in direct violation of the terms of this Conservation Easement or that a violation by Grantor alone is threatened, Grantee may give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation results in physical injury to the Property resulting from any use or activity prohibited by this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 30 days after receipt of written notice from Grantee, or if the violation cannot reasonably be cured within such 30 day period, and Grantor fails to begin curing such violation within the 30 day period and to diligently pursue such cure until finally cured, Grantee shall have all remedies available at law or in equity, *ex parte* as necessary, to enforce the terms of this Conservation Easement. Grantee's remedies include, without limitation, the right to seek a temporary or permanent injunction with respect to such prohibited activity or misuse, to cause the restoration of that portion of the Property damaged by such prohibited activity or misuse to the condition that existed prior to the undertaking of such prohibited activity, and to recover damages resulting from the prohibited activity or misuse of the Property. The rights and remedies described in this Paragraph 6 shall be cumulative and shall be in addition to all rights and remedies hereafter existing at law or in equity, including, but not limited to, the rights and remedies set forth in Civil Code section 815 et seq., inclusive. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, and to specific performance of the terms of this Conservation Easement, in addition to such other relief to which Grantee may be

entitled, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

B. Legal Costs, Fees and Expenses. In any action, suit or other proceeding to enforce the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses including but not limited to the costs of suits, attorneys' and experts' fees, in addition to all other relief awarded by the court, and if such prevailing party shall recover judgment in such action or proceeding, such costs and expenses shall be included as part of the judgment.

C. Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by CDFG.

D. Resource Agencies. If Grantee, Grantor, or any successor in interest or subsequent transferee uses, threatens to use the Property for purposes not in conformance with the stated Conservation Purposes contained herein, or releases or threatens to abandon this Conservation Easement in whole or part, then those applicable resource agencies that have the statutory authority to protect the conservation values set forth herein shall have the right to enforce the provisions set forth in this Conservation Easement.

E. Emergency Enforcement. In the case of emergency (such as, but not limited to, threat of imminent harm to one or more Conservation Species) Grantee may pursue its remedies under this Paragraph 6 without prior notice to Grantor or without waiting for the period to cure to expire.

F. Grantee's Discretion. Enforcement of the terms and provisions of this Conservation Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action under this Paragraph 6 shall not be deemed or construed to be a waiver of Grantee's rights hereunder in the event of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement; (ii) or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (iii) acts by Grantee or its employees.

7. RECORDING. Grantor and Grantee agree that this Deed shall be recorded in the County of Contra Costa, State of California. Grantee shall arrange for a

conformed copy to be sent to the Department of Transportation, District 4, Attention Jessica Dillingham, Right of Way, 111 Grand Ave, Oakland, California, 94623

8. ASSIGNMENT/AMENDMENT. Grantee may assign its rights and obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3, and only with the prior written consent of Grantor. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and upon written approval by Department. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration except as noted herein. Any such amendment and any assignment shall be recorded in the official records of the County where the Property is located.

9. TERMINATION OF RIGHTS AND OBLIGATIONS. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that a party's liability, if any, for acts or omissions occurring prior to transfer shall survive transfer.

10. NOTICE Any written notice called for in this Conservation Easement may be delivered (1) in person; (2) by certified mail, return receipt requested, postage prepaid; (3) by a reputable overnight courier that guarantees next business day delivery and provides a receipt and addressed as follows:

Grantee:	Muir Heritage Land Trust P.O. Box 2452 Martinez, CA 94553 Attn: Executive Director
Grantor:	County of Contra Costa 255 Glacier Drive Martinez, CA 94553 Attn: Director of Public Works/ Real Property Division
Copies To:	State Department of Transportation 111 Grand Ave, Oakland, CA 94623 Attn: Deputy District Director Right of Way
	United States Fish and Wildlife Service:
	Sacramento Fish and Wildlife Office 3310ElCamino Ave., Suite 130 Sacramento, CA 95825-1846 Attn: Field Supervisor

California Department of Fish & Game

Office of the General Counsel
1416 Ninth Street, 12 th Floor
Sacramento, CA 95814
Attn: General Counsel

Either party from time to time by written notice to the other, may designate a different address which shall be substituted for the one above specified. Written notice under this paragraph is deemed to be given upon delivery in the case of personal delivery or delivery by overnight courier, or in the case of delivery by first class mail, (five) days after deposit into the United States Mail, postage prepaid.

11. PUBLIC, GRANTEE, AND GRANTOR ACCESS. This Conservation Easement does not give or grant to the public a general right of access or any specific right to enter upon or use the Property or any portion thereof. Grantee has the right to access and traverse the property for purposes in furtherance of, or consistent with, the Conservation Purposes as set out in Paragraph 2. All rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage on all uses of the Property that are not prohibited herein and are not inconsistent with the Conservation Purposes of this Conservation Easement, are reserved to Grantor and Grantor's successors, including but not limited to rights of access to the Property. Access to the site will be maintained for grazing livestock during grazing periods, as specified in the Management Plan and "Permitted Uses" set forth in Exhibit E below.

12. REPRESENTATIONS AND WARRANTIES. Grantor makes the representations and warranties to Grantee set forth in Paragraphs A, B, C, D, E, and G below. Grantee makes the representations and warranties to Grantor set forth in Paragraph F below.

A. Environmental Defects: Grantor represents and warrants that Grantor shall comply with all Environmental Laws, as defined in Paragraph 19 below, in using the Property and that Grantor shall keep the Property free of any material environmental defect, including, without limitation, contamination from Hazardous Materials, as that term is defined in Paragraph 19 below.

B. State of Title: Grantor represents and warrants that Grantor has good and sufficient title to the Property, that there are no mortgages, liens, encumbrances or other interests in the Property which have not been expressly subordinated to this Conservation Easement Deed, that the Property is not subject to any other conservation easement deeds, and that Grantor has full right and authority to grant this Conservation Easement.

C. Compliance with Laws: Grantor has not received notice of and has no knowledge of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation, law or administrative or judicial order with respect to the Property.

D. No Litigation: There is no action, suit or proceeding which is pending or threatened against the Property or any portion thereof relating to or arising out of the ownership or use of the Property, or any portion thereof, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

E. Authority To Grant Conservation Easement. Grantor has full right and authority to grant this Conservation Easement. The person executing this Conservation Easement on behalf of Grantor represents that the execution of this Conservation Easement has been duly authorized by Grantor.

F. Authority to Accept Conservation Easement. Grantee has full right and authority to accept this Conservation Easement. The persons accepting this Conservation Easement on behalf of Grantee represent that the execution of this Conservation Easement has been duly authorized by Grantee.

G. Additional Easements: Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Property, without first obtaining the written consent of Grantee and Department approval. Grantee may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 12(G) shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement Deed and complies with Section 15.

13. FUNDING, LEGAL REQUIREMENTS, AND LIABILITIES.

A. Funding. Grantor has provided through the Contra Costa Transportation Authority an endowment of $200,000 grant for stewardship in perpetuity. The interest from this grant will fund maintenance, management, and stewardship activities in furtherance of this Conservation Easement. Funding shall be transferred to the appropriate transferee or assignee if the Conservation Easement is assigned or transferred.

B. Taxes. Grantor agrees to pay any and all real Property taxes, assessments, fees, and charges levied by competent authority on the Property before delinquency. Grantor shall furnish Grantee with satisfactory evidence of any payment related to this paragraph upon request.

C. Hold Harmless. Grantee or its successors shall indemnify, defend, and hold harmless Grantor, Grantor's successors in interest, their directors, officers, employees, agents, representatives, and contractors, and the heirs, successors and assigns of each of them (the "Grantor Indemnified Parties") from and against any and all costs, liabilities, losses, penalties, damages, claims or expenses (including, without limitation, reasonable attorneys' fees and experts' fees) and litigation costs, orders, liens, or judgments (each a "Claim" and, collectively, "Claims") which the Grantor Indemnified Parties may suffer or incur as a result of willful or grossly negligent acts or omissions by Grantee in furtherance of the Conservation Purposes, or that exceed or conflict with Grantee's rights and activities encompassed by this Conservation Easement. Grantor or its successors shall indemnify, defend, and hold harmless

Grantee, Grantee's successors in interest, their directors, officers, employees, agents, representatives, and contractors, and the and the heirs, successors and assigns of each of them (the "Grantee Indemnified Parties") from and against any and all costs, liabilities, losses, penalties, damages, claims or expenses (including, without limitation, reasonable attorneys' fees and experts' fees) and litigation costs, orders, liens, or judgments (each a "Claim" and, collectively, "Claims") which the Grantee Indemnified Parties may suffer or incur as a result of willful or grossly negligent acts or omissions by Grantor on the Property, or that exceed or conflict with Grantor's rights and activities encompassed by this Conservation Easement. If any action or proceeding is brought under this provision, the indemnifying party shall, at the election of and upon written notice from the indemnified parties defend such action or proceeding by counsel reasonably acceptable to the indemnified parties or reimburse the indemnified parties or their successors for all charges incurred for legal services in defending the action or proceeding.

14. RUNNING WITH THE LAND. This Conservation Easement shall burden and run with the Property in perpetuity. Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply in perpetuity to their respective agents, heirs, devisees, administrators, employees, personal representatives, lessees, and assigns, and all other successors as their interests may appear

15. SUBSEQUENT TRANSFERS. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. With the exception of the impending transfer of the Property's ownership from Grantor to Department in accordance with the Cooperative Agreement, Grantor agrees to give written notice to Grantee of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. SEVERABILITY AND ENFORCEABILITY. The terms and purposes of this Conservation Easement are intended to be perpetual. If any provision or purpose of the Conservation Easement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be void or invalid, the remainder of the provisions and purposes of the Conservation Easement, and the application of such provision or purpose to persons or circumstances other than those as to which it is found to be void or invalid, shall not be affected thereby.

17. CONDEMNATION.

A. Grantee has acquired this Conservation Easement from Grantor, pursuant to the Cooperative Agreement between Grantor and Department, in order to mitigate for certain impacts caused by Department's State Route 4 Gap Closure Project. In the event of any condemnation, bankruptcy, or other taking by exercise of the power of eminent domain which damages, impairs, or destroys the protected habitat values purchased by Grantor on Department's behalf, Grantor, its successors, assignees, or transferees, shall be entitled to compensation in accordance with applicable law for the value of the easement taken and Grantor shall be entitled to compensation, if any, in accordance with applicable law for the value of the underlying fee

taken. The value is agreed to be 75 % for the Conservation Easement and 25% for the underlying fee. This paragraph shall not be interpreted as a waiver of Grantee's, Grantor's or their respective successors' rights to object to, or otherwise challenge, any condemnation, bankruptcy, or other taking by eminent domain on the grounds the exercising authority lacks the right or power to take or that the Property is not necessary for a public use.

B. The condemning authority, shall notify Department of the proposed taking by sending written notice to: State of California, Department of Transportation, Legal Division, 1120 N Street, (MS 57) Sacramento, California 95814.

C. There shall be no obligation to pay Grantor, its successors, assignees, or transferees, if Grantor, its successors, assignees or transferees, and Grantee approve in a signed writing that those proceeds may be used for the protection of equivalent environmental resources for the same Conservation Purposes and protected by similar conditions to the extent applicable.

18. EXTINGUISHMENT. If circumstances arise in the future that render it impossible to preserve and protect the Conservation Values on the Property, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the compensation to which Grantor, its successors, assignees, or transferees, and Grantee are respectively entitled shall be calculated in the same manner as set in Provision 17 above.

19. INTERPRETATION.

A. Liberally Construed. It is the intent of this Conservation Easement to preserve the Conservation Values protected herein to the extent reasonably possible, notwithstanding hardship or changes in surrounding conditions. The provisions of this Conservation Easement shall be liberally construed to effectuate their purposes of preserving and protecting in perpetuity the Conservation Values described above, effectuating the policy and purposes of Civil Code Section 815, et seq., and allowing Grantor use and enjoyment of the Property as provided herein.

B. Ambiguity. The parties acknowledge that each party and its counsel have reviewed and negotiated this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement.

C. Conflict. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the State of California, the county in which the Property is located or any other governmental entity with jurisdiction, or if any provision is found to be ambiguous, the more restrictive provisions which protect the Conservation Purposes shall apply.

D. Governing Law. This Conservation Easement shall be interpreted in accordance with the laws of the State of California, disregarding the conflicts of law principles of such state.

E. Captions. The captions have been inserted solely for convenience of reference and are not part of the Conservation Easement and shall have no effect upon construction or interpretation.

F. No Hazardous Materials Liability. Grantor agrees that Grantee shall have no duty or responsibility for the monitoring of hazardous conditions on the Property. Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives to Grantee:

(1) The obligations or liabilities of an "owner" or "operator" as those words are defined and used in Environmental Laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq. and hereinafter "CERCLA");

(2) The obligations or liabilities of a person described in 42 U.S.C. §9607(a)(3) or (4);

(3) The obligations of a responsible person under any applicable as, as defined below;

(4) The right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or

(5) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

G. Definitions:

(1) The terms "Grantor" and "Grantee," wherever used in this Conservation Easement and any pronouns used in place thereof, shall mean and include, respectively, the above-named Grantor and Grantee, their respective personal representatives, heirs, devisees, assignees, transferees, and all other successors with respect to such party's rights and obligations under this Conservation Easement.

(2) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or regulated substances, as defined in CERCLA (42 U.S.C. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 6901 et seq.), the Hazardous Waste Control Law (Cal. Health & Safety Code section 25100 et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other similarly designated material that is regulated by, or gives rise to liability under, any other Environmental Law, whether now in effect or enacted after this date.

(3) The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, the environment, natural resources, hazardous materials, or protection of human health, safety or welfare.

(4) The term "Long-term Management" means the continuous management actions and/or resource investments necessary to achieve results that positively affect the long-term recovery of the species.

20. ENTIRE AGREEMENT. This Conservation Easement, together with the attached exhibits and schedules, the Easement Documentation Report, the Development Plan for the Property, and any documents incorporated by reference, constitutes the entire agreement of the parties with respect to the subject matter hereof. This Conservation Easement supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement.

21. COUNTERPARTS. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

22. EXHIBITS. The following exhibits are attached to and hereby incorporated into this Conservation Easement:

Exhibit A: Legal Description and Map of the Property

Exhibit B: December 20, 2001, Cooperative Agreement

Exhibit C: Contra Costa Goldfields Management Plan

Exhibit D: Prohibited Uses of the Property

Exhibit E: Permitted Uses of the Property

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the date and year first above written.

GRANTOR (PROPERTY OWNER):

By: Karen Mitchoff

Title: Chair, Board of Supervisors

Date: May 13, 2014

GRANTEE:

By: _____

Title: _____

Date: _____

Approved as to Form:

United States Department of the Interior, Office of the Regional Solicitor

By: _____

Title: _____

Date: _____

California Department of Transportation Legal Division

By: _____

Title: _____

Date: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property, specifically a Grant Deed of Conservation Easement, dated _____, conveyed by County of Contra Costa (Grantor) to Muir Heritage Land Trust(Grantee) is hereby accepted by the undersigned officer on behalf of the Grantee.

GRANTEE:

Muir Heritage Land Trust (a non-profit corporation organized under the California Nonprofit Corporation Law)

BY: _____

TITLE: _____

DATED: _____

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the date and year first above written.

GRANTOR (PROPERTY OWNER):

By: _____

Title: _____

Date: _____

GRANTEE:

By: _____

Title: Executive Director

Date: November 24, 2009

Approved as to Form:

United States Department of the Interior, Office of the Regional Solicitor

By: _____

Title: _____

Date: _____

California Department of Transportation Legal Division

By: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the date and year first above written.

GRANTOR (PROPERTY OWNER):

By: _____

Title: _____

Date: _____

GRANTEE:

By: _____

Title: _____

Date: _____

Approved as to Form:

United States Department of the Interior, Office of the Regional Solicitor

By: _____

Title: JAMES A. MONROE
ASSISTANT REGIONAL SOLICITOR

Date: 10/27/09

California Department of Transportation Legal Division

By: _____

Title: Attorney

Date: 10-19-09

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property, specifically a Grant Deed of Conservation Easement, dated _____, conveyed by County of Contra Costa (Grantor) to Muir Heritage Land Trust(Grantee) is hereby accepted by the undersigned officer on behalf of the Grantee.

GRANTEE:

Muir Heritage Land Trust (a non-profit corporation organized under the California Nonprofit Corporation Law)

BY: Lewis Enh

TITLE: Executive Director

DATED: November 24, 2009

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the day and year first above written.

Grantor:

Entity
Contra Costa County

By:

Name

Title

Grantee:

Entity
Muir Heritage Land Trust

By:

Name

Title

USFWS

By: Susan K. Moore

For

Title: Field Supervisor

Date: 10/27/09

EXHIBIT A

LEGAL DESCRIPTION AND MAP OF THE PROPERTY

Number
59490

EXHIBIT "A"

Real property situated in the Rancho El Pinole, being a portion of the unincorporated area of Contra Costa County, State of California, described as follows:

PARCEL 1 CONSERVATION PARCEL (56445-14)

All that real property described in the Final Order of Condemnation, document Series Number DOC- 2002-0301156-00, recorded August 27, 2002 in the recorders' Office of the County of Contra Costa further described as follows:

Commencing at the intersection of the west line of said Tosco parcel and the northerly line of State Route 4 as described, in State Director's Deed No. DD-000014-01-02 from the State of California to Collier Carbon & Chemical Corporation recorded March 30, 1973 in Book 6902 at page 53, Official Records of said County; thence from the Point of Commencement along the west line of said Tosco parcel North 1°08'43" East, 42.828 meters, to the Point of Beginning for the here-in described parcel; thence continuing along said westerly line North 1°08'43" East, 33.842 meters; thence North 80°38'50" East, 26.645 meters and South 77°48'01" East, 70.044 meters; thence South 14°13'20" West, 36.266 meters to the northeasterly line of PARCEL 1 (56445-1) in said Final Order of Condemnation, document Series Number DOC- 2002-0301156-00; thence along said northeasterly line North 80°03'39" West, 81.408 meters and South 70°21'37" West, 6.725 meters to the Point of beginning.

Containing an area of 3,388 square meters, more or less

PARCEL 2 CONSERVATION PARCEL (56445-6)

All that real property described in the Final Order of Condemnation, document Series Number DOC- 2002-0301156-00, recorded August 27, 2002 in the recorders' Office of the County of Contra Costa further described as follows:

Commencing at the intersection of the west line of said Tosco parcel and the northerly line of State Route 4 as described in State Director's Deed No. DD-000014-01-02 from the State of California to Collier Carbon & Chemical Corporation recorded March 30, 1973 in Book 6902 at page 53, Official Records of said County; thence along said line North 1°08'43" East, 177.114 meters to the beginning of a non-tangent curve concave northerly having a radius of 204.540 meters, a radial to said curve bears South 7°55'04" West; thence easterly along the arc of said curve through a central angle of 4°38'47", an arc distance of 16.587 meters; thence South 88°21'06" East, 3.116 meters to a non-tangent curve concave southeasterly having a radius of 37.879 meters, a radial

to said curve bears North 30°45'36" West; thence southwesterly along the arc of said curve through a central angle of 57°53'38", an arc distance of 38.275 meters; thence South 1°20'46" West, 66.819 meters; thence South 1°20'43" West, 33.584 meters; thence North 70°21'37" East, 5.187 meters; thence South 80°03'40" East, 3.070 meters; thence North 1°20'49" East, 33.674 meters; thence North 1°20'46" East, 65.331 meters to a curve concave southeasterly having a radius of 30.000 meters; thence along the arc of said curve through a central angle of 95°11'57", an arc distance of 49.846 meters; thence South 79°32'08" East, 7.837 meters; thence South 78°49'02" East, 226.245 meters to a curve concave southwesterly having a radius of 20.00 meters; thence along the arc of said curve through a central angle of 24°49'17", an arc distance of 8.664 meters; thence South 53°59'45'" East, 52.241 meters to a curve concave northeasterly having a radius of 20.000 meters; thence along the arc of said curve through a central angle of 32°05'35", an arc distance of 11.203 meters; thence South 86°05'20" East, 81.943 meters; thence South 0°00'00" East 1.881 meters to the Point of Beginning for the herein described parcel; thence North 90°00'00" East,121.528 meters, thence South 0°00'00" East, 79.598 meters; thence South 42°30'59" East, 124.116 meters; thence South 31°22'27" East, 159.938 meters; thence North 63°54'55" West, 204.767 meters; thence along said northwesterly line North 56°09'08" West 19.612 meters, North 50°30'04" West 86.010 meters and North 45°14'18" West, 31.135 meters; thence leaving said line, North 0°00'00" East, 12.176 meters; thence South 82°59'55" East, 53.163 meters; thence North 0°00'00" East, 17.413 meters; thence North 71°30'19" West, 55.640 meters; thence North 0°00'00" East, 89.284 meters to the Point of Beginning.

Containing an area of 35,114 square meters, more or less

PARCEL 4 CONSERVATION PARCEL (56457-3)

All that real property described in the Final Order of Condemnation, document Series Number DOC- 2002-0301156-00, recorded August 27, 2002 in the recorders' Office of the County of Contra Costa further described as follows:

Real property situated in the Rancho El Pinole, being a portion of that parcel of land described in the deed to C. S. Land Inc., a California corporation recorded June 11, 1998, Series No. 98-133024, records of Contra Costa County, State of California, further described as follows:

Commencing at the intersection of the northerly line of the parcel of land described in the Final Order of Condemnation, State of California vs. Claeys, recorded April 24, 1984 in Book 11756 at Page 440 with the southwesterly line of said C.S. Land Inc. parcel, (Series No. 98-133024) all records of Contra Costa

County, said southwesterly line also being the northeasterly line of the Burlington Northern & Santa Fe Railroad; thence North 30°26'37" West 25.542 meters to the Point of Beginning; thence continuing along said line North 30°26'37" West, 18.381 meters; thence North 67°33'14" West, 14.399 meters; thence North 86°44'59" East, 78.979 meters; thence North 88°27'12" East, 64.213 meters; thence North 49°29'43" East, 113.377 meters; thence North 57°52'49" East, 65.394 meters; thence North 64°16'17" East, 135.823 meters; thence South 76°20'48" East, 31.570 meters; thence South 28°06'17" East, 94.751 meters; thence South 3°07'16" West, 24.743 meters; thence North 76°50'20" West, 33.820 meters; thence North 8°11'28" West, 43.206 meters; thence North 27°46'57" West, 33.248 meters; thence North 74°34'29" West, 28.346 meters; thence South 53°43'11" West, 87.495 meters; thence South 56°03'03" West, 62.850 meters; thence South 62°39'24" West, 139.648 meters; thence South 79°34'44" West, 87.636 meters; thence South 89°59'13" West, 43.536 meters to the Point of Beginning.

Containing an area of 16,088 square meters, more or less.

Reserving Therefrom, to the Pacific Gas & Electric Company, its successors or assigns, an easement for Underground Gas line and appurtenant devices and the right to repair, reconstruct and maintain said system, upon, over and across that certain real property described as follows:

Commencing at the most northerly corner of the parcel of land described in the Final Order of Condemnation, State of California vs.Claeys, recorded April 24, 1984 in Book 11756 at Page 440 records of said County; thence along the northwesterly line of said parcel, South 79°18'20" West, 11.386 meters; thence North 3°07'16" East, 16.291 meters; thence North 76°50'20" West 3.070 meters to the Point of Beginning; Thence continuing North 76°50'20" West 9.309 meters; thence North 3°07'16" East, 37.970 meters; thence South 28°06'16" West, 17.682 meters; thence South 3°07'16" West, 24.473 meters to the Point Of Beginning.

Containing an area of 286 square meters, more or less

PARCEL 5 CONSERVATION PARCEL (56457-4)

All that real property described in the Final Order of Condemnation, document Series Number DOC- 2002-0301156-00, recorded August 27, 2002 in the recorders' Office of the County of Contra Costa further described as follows:

Real property situated in the Rancho El Pinole, being a portion of that parcel

of land described in the deed to C. S. Land Inc., a California corporation recorded June 11, 1998, Series No. 98-133024, records of Contra Costa County, State of California, further described as follows:

Commencing at the intersection of the east line of said C.S. Land Inc. parcel (Series No. 98-133024), with the northerly line of State Route 4 as described in the Acceptance of Deed for Highway Purposes to Contra Costa County, recorded April 5, 1920 in Road Book Volume 4 at page 200, all records of said County; thence along said east line North 1°08'43" East, 44.907 meters to the Point of Beginning for the herein described parcel; thence leaving said Point of Beginning, South 70°21'37" West, 25.853 meters; thence North 84°05'06" West, 53.187 meters; thence North 77°31'40" West, 105.225 meters; thence North 68°17'05" West, 28.748 meters; thence North 58°55'33" West, 89.375 meters; thence North 63°27'02" West 11.114 meters; thence North 4° 31'13" West, 39.763 meters; thence North 30°51'17" West, 20.755 meters; thence North 60°18'43" East, 10.173 meters; thence North 4°31'13" West, 53.202 meters; thence along said line the following courses: North 85°28'47" East, 64.336 meters; thence North 89°59'53" East 10.362 meters to a curve concave southwesterly having a radius of 219.700 meters; thence along the arc of said curve through a central angle of 23°50'08", an arc distance of 91.397 meters; thence South 66°09'59" East, 95.711 meters to a curve concave northeasterly having a radius of 210.300 meters; thence along the arc of said curve through a central angle of 15°22'57", an arc distance of 56.460 meters to the east line of said C.S. Land Inc. parcel; thence along said east line South 1°08'43" West, 128.820 meters to the Point of Beginning.

Containing an area of 46,639 square meters, more or less.

PARCEL 6 CONSERVATION PARCEL (56457-5)

All that real property described in the Final Order of Condemnation, document Series Number DOC- 2002-0301156-00, recorded August 27, 2002 in the recorders' Office of the County of Contra Costa further described as follows:

Real property situated in the Rancho El Pinole, being a portion of that parcel of land described in the deed to C. S. Land Inc., a California corporation recorded June 11, 1998, Series No. 98-133024, records of Contra Costa County, State of California, further described as follows:

Commencing at the intersection of the east line of said C.S. Land Inc. parcel (Series No. 98-133024), with the northerly line of State Route 4 as described in the Acceptance of Deed for Highway Purposes to Contra Costa County, recorded April 5, 1920 in Road Book Volume 4 at page 200, all records of said County; thence along said east line North 1°08'43" East, 44.907 meters; thence South 70°21'37" West, 25.853 meters; thence North 84°05'06" West, 53.187

meters; thence North 77°31'40" West, 105.225 meters; thence North 68°17'05" West, 28.748 meters; thence North 58°55'33" West, 89.375 meters; thence North 63°27'02" West 11.114 meters; thence North 4° 31'13" West, 29.804 meters to the Point of Beginning for the herein described parcel; thence South 77°56'27" West 44.478 meters; thence North 4°15'18" West, 18.043 meters; thence North 60°18'43" East, 38.453 meters; thence South 30°51'17" East, 20.755 meters; thence South 4°31'13" East, 9.959 meters to the Point of Beginning.

Containing an area of 1,016 square meters, more or less.

Reserving Therefrom, to the Chevron Company, its successors or assigns, an easement for Underground water line and appurtenant devices and the right to repair, reconstruct and maintain said system, upon, over and across that certain real property described as follows:

Commencing at the most northerly corner of the parcel of land described in the Final Order of Condemnation, State of California vs.Claeys, recorded April 24, 1984 in Book 11756 at Page 440 records of said County; thence along the northeasterly line of said parcel, South 10°41'40" East, 31.297 meters; thence North 89°59'55" East, 38.783 meters; thence North 0°24'28" East, 24.334 meters; thence North 2°38'18" West, 21.334 meters; thence North 77°56'27" East.44.478 meters to the point of beginning of the herein described

reservation; thence North 06°31'38" East a distance of 26.543 meters; thence North 60°18'43" East a distance of 7.556 meters; thence South 06°31'38" West a distance of 28.957 meters; thence South 77°56'27" West.6.432 meters to the point of beginning.

Containing an area of 169 square meters, more or less

The bearings and distances used in the above description are on the California Coordinate System of 1983 (CCS83) Zone III (1991.35 HPGN). Multiply distances shown by 1.000060 to obtain ground distances.

Number
59490

This real property description has been prepared by me, or under my direction in conformance with the Professional Land Surveyors Act.

By: _____
Brian L. Stockinger, PLS

Date: MARCH 15, 2014
Professional Land Surveyor No. 6995

LICENSED LAND SURVEYOR
BRIAN L. STOCKINGER
No. 6995
STATE OF CALIFORNIA

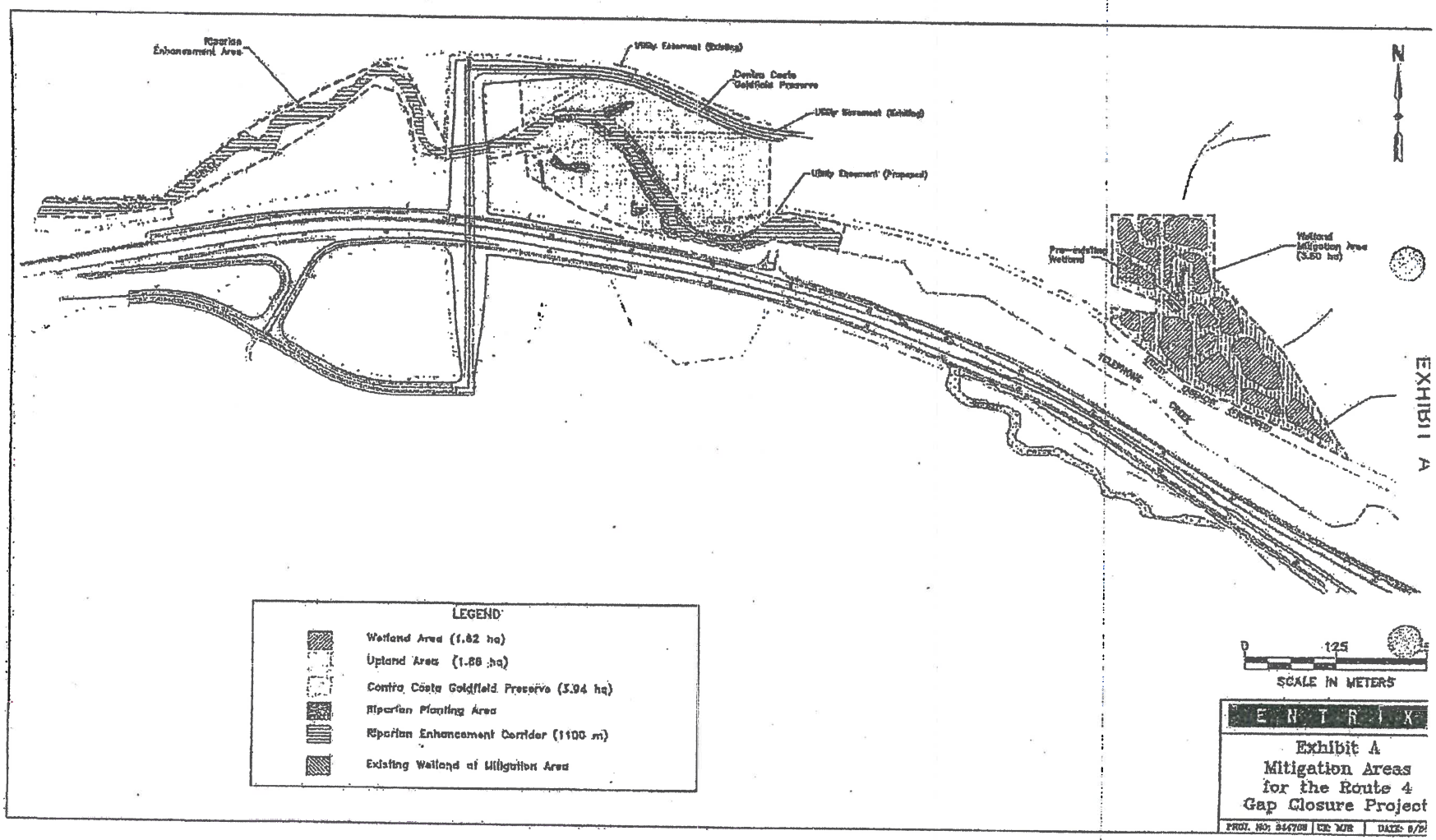

EXHIBIT A

E H T R I X

Exhibit A
Mitigation Areas
for the Route 4
Gap Closure Project

PROJ. NO: 344708 | DR: MJR | DATE: 8/9

EXHIBIT B

DECEMBER 20, 2001, COOPERATIVE AGREEMENT

C15183

CONTRA COSTA TRANSPORTATION AUTHORITY

December 20, 2001

TO WHOM IT MAY CONCERN:

Attached please find the staff report dated June 7, 2001 regarding the Memorandum of Understanding with the Muir Heritage Land Trust and related Cooperative Agreement with Caltrans. Also please find the minutes of the Authority Board Meeting of June 20, 2001, which reflect the Action to approve the Consent Calendar (specifically Agenda Item 2.A.15).

This is to certify that the Authority unanimously authorized the Chair to execute the District Cooperative Agreement No. 4-1770-C (CCTA Agreement No. 90.15.07).

Anita Fitzgibbons 12/20/01
Anita Fitzgibbons, CCTA Board Secretary

Hookston Square
3478 Buskirk Ave
Suite 100

Pleasant Hill
CA 94523

PHONE:
925/407-0121

FAX:
925/407-0128

http://www.ccta.net

ORIGINAL

4-CC-4 KP R1.6/3.2
(PM R1.0/2.0)
Rte. 4 (West) Gap Closure
4275-228941
District Agreement. No. 4-1770-C
Document No. CC-7-_____
CCTA Agreement No. 90.15.07

015183

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO ON DEC. 20, 2002, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and

CONTRA COSTA TRANSPORTATION AUTHORITY, a public entity, referred to herein as "AUTHORITY".

RECITALS

1. Contra Costa County voters approved Measure C on November 8, 1988, providing funding for transportation projects and programs throughout the County of Contra Costa.

2. AUTHORITY is required under its Ordinance to improve transportation services and facilities as set forth in the Measure C Expenditure Plan. The Expenditure Plan includes a project for the improvement of State Highway Route 4 from I-80 to Cummings Skyway (Gap Closure Projects). STATE and AUTHORITY are cooperating to design and construct the Gap Closure Projects.

3. The 1998 State Transportation Improvement Program (STIP) includes State Highway Account funds to construct the upgrade to 4-lane divided highway at Segment I and Segment II of the Gap Closure Projects. AUTHORITY's 1998 Strategic Plan includes Measure C funds to construct the upgrade to 4-lane divided highway at Segment III.

4. STATE and AUTHORITY, pursuant to Streets and Highways Code Section 130, are authorized to enter into a Cooperative Agreement for improvements to State highways within AUTHORITY's jurisdiction.

5. The Federal Highway Administration (FHWA) and STATE are the lead agencies for the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the State Route 4 Gap Closure Project, dated September 14, 1998. The EIS/EIR requires mitigation of the environmental impacts resulting from the Gap Closure Projects. Mitigation of the impact to the biological resources in the area of the Gap Closure Projects is the subject of this Agreement.

6. AUTHORITY has prepared, and obtained from the resource agencies, on behalf of STATE, approval for, a Mitigation and Monitoring Program that sets forth detailed measures to mitigate the impact to the aforementioned biological resources. The conditions set forth in the approved Mitigation and Monitoring Program are

incorporated in the US Army Corps of Engineers (ACOE) permit obtained by STATE for the Gap Closure Projects.

7. The conditions for approval of the Gap Closure Projects by the United States Fish and Wildlife Service (USFWS) are consistent with its Biological Opinion (BO) dated July 30, 1998. The USFWS BO is based on the approved Mitigation and Monitoring Program.

8. The EIS/EIR and the USFWS BO require that specific lands be acquired for mitigation purposes and preserved in perpetuity. These specific lands, referred to herein as "MITIGATION AREA", are shown on Exhibit A, attached and made a part of this Agreement. MITIGATION AREA will be enclosed by fences and will be used to create new seasonal wetlands, develop a riparian habitat, plant Oak trees, and create a Contra Costa Goldfield Preserve. Environmental improvements to MITIGATION AREA include grading to create wetlands, planting and establishing Oak trees, and installation of protective perimeter fences. Said improvements are referred to herein as "ENHANCEMENT".

9. The ACOE Permit and the USFWS BO require maintenance of ENHANCEMENT and periodic monitoring of biological resources to ensure success of the mitigation measures within MITIGATION AREA. The approved Mitigation and Monitoring Program defines criteria for success of the mitigation measures. A summary of monitoring periods is shown on Exhibit B, attached and made a part of this Agreement.

10. AUTHORITY has prepared the contract documents and has advertised, awarded, and is administering the contract to construct ENHANCEMENT. AUTHORITY will fund one hundred percent (100%) of all capital outlay and construction support costs for ENHANCEMENT, except that costs of STATE's oversight of construction activities will be borne by STATE.

11. The ACOE Permit requires maintenance and monitoring of MITIGATION AREA following completion of ENHANCEMENT. Said maintenance and monitoring activities are referred to herein as "ESTABLISHMENT".

12. AUTHORITY will be responsible for the performance of ESTABLISHMENT for a period of ten (10) years required for the mitigation measures to be successful. Said ten-year period is referred to herein as "AUTHORITY PERIOD".

13. AUTHORITY will fund one hundred percent (100%) of the costs for ESTABLISHMENT during AUTHORITY PERIOD except that costs of STATE's oversight will be borne by STATE. Following AUTHORITY PERIOD, STATE, at its own cost, will assume responsibility for ESTABLISHMENT.

14. The combination of ENHANCEMENT and ESTABLISHMENT is referred to herein as "MITIGATION PROJECT".

15. Inasmuch as MITIGATION PROJECT is a permit requirement for all STIP-funded and AUTHORITY-funded segments, STATE and AUTHORITY agree to share responsibilities in implementing MITIGATION PROJECT and intend to define herein the terms and conditions under which MITIGATION PROJECT is to be accomplished and financed.

SECTION I

AUTHORITY AGREES:

1. To pay one hundred percent (100%) of the total costs for MITIGATION PROJECT until the end of AUTHORITY PERIOD, except for the costs of STATE's oversight activities.

2. To perform all right of way activities required for MITIGATION PROJECT, including all eminent domain activities, in accordance with procedures acceptable to STATE, and in compliance with all applicable State and Federal laws and regulations, subject to STATE's oversight.

3. To prepare contract documents and to advertise, award, and administer the construction contract for ENHANCEMENT.

4. To construct ENHANCEMENT by contract in accordance with plans and specifications of AUTHORITY to the satisfaction of and subject to STATE's oversight.

5. To perform, or cause the performance of, ESTABLISHMENT, until the end of AUTHORITY PERIOD, according to the specifications for maintaining and monitoring the mitigation measures prescribed in the approved Mitigation and Monitoring Program.

6. To enter into an agreement with the Muir Heritage Land Trust, referred to herein as "MHLT", for the management of ENHANCEMENT and for the perpetual management of the Contra Costa Goldfield Preserve, using secured funds provided by AUTHORITY. The agreement should entitle STATE for all rights of the AUTHORITY at the end of the AUTHORITY PERIOD and successful completion of the ESTABLISHMENT.

7. To set aside funds, in an amount agreeable to the MHLT and to STATE, for the perpetual management of the Contra Costa Goldfield Preserve.

8. To cause the acquisition of MITIGATION AREA, in fee title, in the name of the County of Contra Costa and to transfer title to STATE's name simultaneously with the transfer of the operating highway. Title of MITIGATION AREA shall include an easement for the MHLT for the management of ENHANCEMENT and for the perpetual management of the Contra Costa Goldfield Preserve.

9. To include in the easement language for MITIGATION AREA a restriction for MITIGATION AREA to be used only as a natural undeveloped site except for work required to maintain flood control and any existing utility easements that run through MITIGATION AREA.

10. To prepare monitoring reports on a schedule consistent with the Mitigation and Monitoring Program and to discuss the findings with resource agencies and STATE in subsequent Milestone Success meetings to assure that mitigation measures are succeeding according to the success criteria. AUTHORITY shall forward to STATE a copy of the monitoring report and copies of all correspondence with the resource agencies that are relevant to the success of the mitigation site. AUTHORITY shall notify STATE, in a timely manner, of all meetings with resource agencies pertinent to the success of the mitigation site.

11. If, during the time of AUTHORITY PERIOD, the mitigation measures are not succeeding according to the criteria for success, AUTHORITY and STATE shall confer and jointly decide on the implementation of, and the source of funds for, contingency measures to correct deficiencies. These measures should be outside of the scope of the ESTABLISHMENT. STATE's financial participation will be limited, subject to approval.

12. To notify, upon completion of ENHANCEMENT, all other parties that may have jurisdiction, access, or need to enter the site to conduct work that could damage MITIGATION AREA and to notify STATE of any damages to MITIGATION AREA as a result of unauthorized work by other parties during AUTHORITY PERIOD and to meet and confer with STATE to determine a course of corrective action. The cost for any corrective work shall be borne by funding sources for the Gap Closure Projects.

13. At the end of AUTHORITY PERIOD, to conduct a final Milestone Success meeting with STATE and the resource agencies and to obtain written acknowledgements by the resource agencies regarding the status of the mitigation measures in meeting the success criteria.

SECTION II

STATE AGREES:

1. To provide, at no cost to AUTHORITY, oversight of MITIGATION PROJECT and prompt reviews and comments, as appropriate, of submittals and construction by AUTHORITY, and to cooperate in timely processing of documents for MITIGATION PROJECT.

2. To participate, at no cost to AUTHORITY, in all Milestone Success meetings and to offer comments and constructive review of the monitoring reports prior to submittal to the resource agencies.

3. Following AUTHORITY PERIOD, to assume responsibility, at STATE's expense, for the required monitoring activity for the California Red-legged Frog, as shown on Exhibit B, and any other monitoring as required by the ACOE Permit.

4. Following transfer of title of MITIGATION AREA to STATE's name, pursuant to Article (8) of Section I of this agreement, to assume responsibility, at STATE's expense, for the maintenance, repair, or replacement of the protective perimeter fences for MITIGATION AREA, and the periodic removal of the litter and trash following a request from the AUTHORITY.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission.

2. Should any portion of MITIGATION PROJECT be financed with Federal funds or State gas tax funds, all applicable laws, rules, and policies relating to the use of such funds shall apply notwithstanding other provisions of this Agreement.

3. Following the construction of ENHANCEMENT, the MHLT will be responsible, under its agreement with AUTHORITY, for the management of MITIGATION AREA pursuant to the USFWS BO, however, following transfer of title to STATE's name, STATE shall be responsible for maintenance of the protective perimeter fences and removal of litter and trash, as specified in Article 4 of Section II of this Agreement.

4. If any unforeseen potential hazardous waste sites are encountered during the construction and accomplishment of MITIGATION PROJECT, STATE and AUTHORITY shall meet and confer on a course of action. The responsibilities and costs for any action shall be covered by amendment to this Agreement

5. Upon completion of all work under this Agreement, ownership and title to all materials, equipment, and appurtenances installed will automatically be vested in STATE or its designee. No further agreement will be necessary to transfer ownership as hereinbefore stated.

6. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.

7. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless the State of California, all officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.

8. Neither AUTHORITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall defend, indemnify and save harmless AUTHORITY from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

9. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

ORIGINAL

District Agreement No. 4-1770-C
CCTA Agreement No. 90.15.C7

015183

10. This Agreement shall terminate at the end of AUTHORITY PERIOD; however, the restrictive use conditions, the ownership, liability, and claims clauses shall remain in effect until terminated or modified, in writing, by mutual agreement.

STATE OF CALIFORNIA
Department of Transportation
JEFF MORALES
Director of Transportation

By: _____
Deputy District Director

Approved as to form and procedure:

_____
Attorney
Department of Transportation

Certified as to budgeting of funds:

for _____
District Budget Manager

Certified as to financial terms and conditions:

_____
Accounting Administrator

CONTRA COSTA TRANSPORTATION AUTHORITY

By: _____
IRMA ANDERSON, Chair

Attest: _____
ROBERT K. MCCLEARY, Executive Director

Approved as to form:

_____
Stan Taylor, Attorney

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and the purpose of payment as stated in this Agreement:

_____
Executive Director

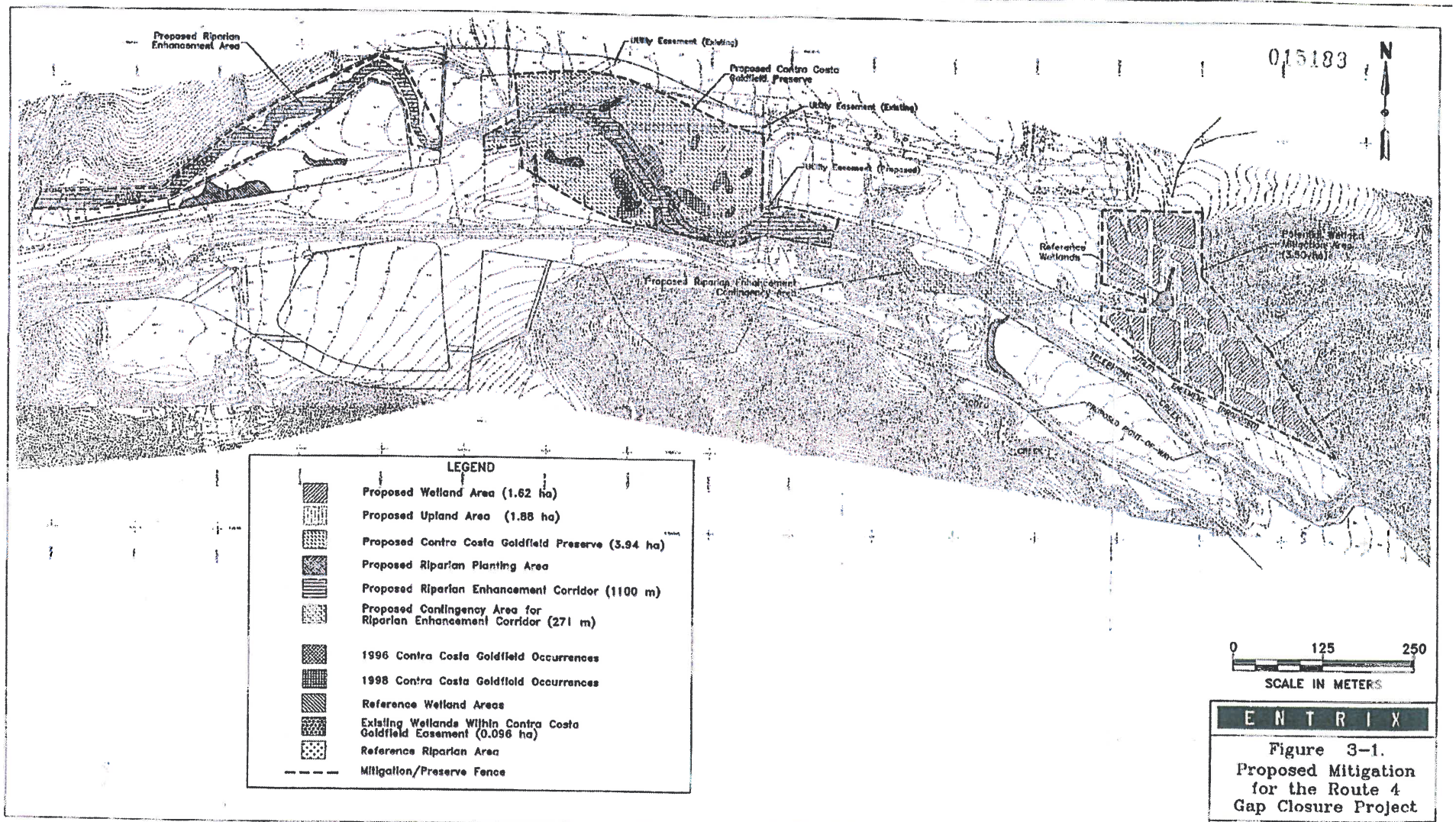
Proposed Riparian Enhancement Area
Utility Easement (Existing)
Proposed Contra Costa Goldfield Preserve
Utility Easement (Existing)
Utility Easement (Proposed)
Proposed Riparian Enhancement Contingency Area
Reference Wetlands
Potential Wetland Mitigation Area (3.50 ha)
TELEPHONE & UTILITY EASEMENT (PROPOSED)
PROPOSED POINT-OF-WAY
015183
N
LEGEND
Proposed Wetland Area (1.62 ha)
Proposed Upland Area (1.88 ha)
Proposed Contra Costa Goldfield Preserve (3.94 ha)
Proposed Riparian Planting Area
Proposed Riparian Enhancement Corridor (1100 m)
Proposed Contingency Area for Riparian Enhancement Corridor (271 m)
1996 Contra Costa Goldfield Occurrences
1998 Contra Costa Goldfield Occurrences
Reference Wetland Areas
Existing Wetlands Within Contra Costa Goldfield Easement (0.096 ha)
Reference Riparian Area
Mitigation/Preserve Fence
0
125
250
SCALE IN METERS
ENTRIX
Figure 3-1.
Proposed Mitigation for the Route 4 Gap Closure Project
PROJ. NO: 3447C6
CK: MJR
DATE: 6/24/96

EXHIBIT A

District Agreement No. 4-1770-C
CCTA Agreement No. 90.15.03

C15183

4-CC-4 KP R1.6/3.2
(PM R1.0/2.0)
Rte. 4 (West) Gap Closure
4275-228941

EXHIBIT B

SUMMARY OF MONITORING PERIODS

	Total Monitoring Period (Years)	Annual	Biennial	Thereafter (1)
California Red-legged Frog	20	Years 1-5	Years 6-10	Years 15 and 20
Western Pond Turtle	5	Years 1-5	N/A	N/A
Wetlands				
Hydrology	5	Years 1-5	N/A	N/A
Vegetation	5	Years 1-5	N/A	N/A
Riparian	10	Years 1-5	Years 6-10	N/A
Contra Costa Goldfield (2)	5	Years 1-5	N/A	N/A

NOTES

(1) STATE shall assume responsibility for the monitoring of the California Red-legged Frog following AUTHORITY PERIOD, through Year 20, as specified in Article 3 of Section II of this Agreement.

(2) The Contra Costa Goldfield Preserve shall be managed in perpetuity by the Muir Heritage Land Trust, as specified in Articles 6 and 7 of Section I of this Agreement.

EXHIBIT C

CONTRA COSTA GOLDFIELDS MANAGEMENT PLAN

DRAFT

CONTRA COSTA GOLDFIELDS MANAGEMENT PLAN

Prepared for:

CONTRA COSTA TRANSPORTATION AUTHORITY
3478 Buskirk Avenue, Suite 100
Pleasant Hill, California 94523

Prepared by:

ENTRIX, INC.
590 Ygnacio Valley Road, Suite 200
Walnut Creek, California 94596

and

MUIR HERITAGE LAND TRUST
P.O. Box 2452
Martinez, California 94553

Project No. 3064801

April 19, 2004

1.1 MANAGEMENT PLAN OBJECTIVES

The Contra Costa Goldfields Preserve Management Plan (CCGPMP or Plan) provides management guidelines for the preservation and maintenance of the population of Contra Costa goldfields (*Lasthenia conjugens*) in a conservation preserve in Hercules, adjacent to Highway 4. This plan details steps to be taken for the benefit of this goldfields population, subject to approval by the U. S. Fish and Wildlife Service (USFWS).

The Contra Costa goldfields population covered by this Plan was subject to cattle grazing for many years prior to the construction of the Route 4 Gap Closure project. Project construction has separated the conservation preserve from neighboring grazing lands. Experience with other populations of Contra Costa goldfields has shown that removal of grazing can result in apparent loss of the population (Holmes, 1999, 2000). Total removal of grazing can result in dominance of non-native annual grasses and the thick accumulation of undecomposed annual grass mulch which covers and eliminates virtually all the native annual wildflowers (Davis and Sherman 1992, Edwards 1995, Griggs 2000, Hayes 1998, Menke 1989).

Grazing results in a variety of effects that are difficult to accomplish by other management practices, including reduction in abundance of non-native grasses. The original mitigation and monitoring plan for the Route 4 Gap Closure project stipulated that a management plan which included grazing would be developed for the preserve (ENTRIX 1998). Management of the preserve is complicated by the circunstance that the Contra Costa goldfields are growing, flowering, and producing seed during the period when the non-native annual grasses are at peak growth.

The goals of this management plan are to reduce the mass of non-native grasses in the winter prior to growth of the Contra Costa goldfields in the early spring, to reduce the amount of seed input of non-native species, and to reduce the amount of mulch or biomass left standing at the end of the growing season.

1.2 PRESERVE DESCRIPTION

The conservation preserve is a 9.73-acre parcel adjacent to Highway 4, protected in perpetuity as mitigation for impacts from the Route 4 Gap Closure Project. The property is now under title with Contra Costa County, which will soon transfer title to the State. [has this occurred?] The Contra Costa Transportation Authority (CCTA) will provide funding for consultant monitoring services for some aspects of the preserve through 2008. The State proposes to grant a conservation easement to a steward (the Muir Heritage Land Trust) that will have primary stewardship responsibility after 2008. The California Department of Transportation (Caltrans) will have responsibility for certain maintenance activities, described in Section 4. The conservation preserve is within the

boundaries of Critical Habitat Unit 6 for the Contra Costa goldfields (Federal Register 2003).

The preserve consists primarily of annual grassland, but also supports seasonally flooded wetlands, riparian habitat, and special-status species: California red-legged frogs, western pond turtles, and Contra Costa goldfields. Initial, baseline, and post-construction surveys have been for conducted Contra Costa goldfields between 1995 and 2003. During this period, the distribution and numbers of Contra Costa goldfields have varied from year to year. The highest numbers and greatest extent were recorded in 1998, during a series of high rainfall years and at a time when cattle grazing was still conducted in the preserve area. Populations of Contra Costa goldfields have declined in recent years, possibly due to less-than-normal precipitation, competition from non-native plant species, or other changes resulting from removal of cattle grazing.

In the preserve, Contra Costa goldfields are typically found in mesic areas that are not water-logged for extended periods. Much of the drier part of the preserve is populated by the more common California goldfields (*Lasthenia californica*).

1.3 Contra Costa Goldfields Description

Contra Costa goldfields is federally listed as endangered and is a California Native Plant Society List 1B species (Federal Register 1997, CNPS 2001, CDFG 2003,). This annual species is found in cismontane woodland, alkaline playas, valley and foothill grassland, and seasonally wet areas (including vernal pools), at elevations from sea level to 1540 feet. Contra Costa goldfields may have single or branched stems up to 16 inches high (Hickman 1993). Larger plants are found in years with wet winters, while low-rainfall years may produce only short, single-stemmed plants. This species has yellow, daisy-like flowers that may be produced from March to June (CNPS 2001, Federal Register 1997).

1.4 Grazing History

Information grazing history of this property is available for the period from 1992 through 2003, although the property has apparently been subject to grazing use for over fifty years prior to 1992.

Prior to 1998, this property was leased to Mr. Ed Brazil with assistance from Mr. Nick Compaglia, the current lessee. According to Mr. Compaglia, the property was lightly grazed year-round (Compaglia 2003). The property boundaries were different at that time, prior to the construction of the Route 4 Gap Closure Project. The grazing lease was much larger than the preserve and included the land north of the preserve, as far as the railroad tracks. Mr. Brazil kept 25-30 cows on the property year-round. This number does not include the calves born in the fall and kept on the property until June. It is not possible to exactly duplicate this regime, because the relatively small size of the preserve will not sustain that level of stocking.

From 1998 to 1999, grazing continued, probably on the same arrangement as in preceding years, until May or June 1999. At that time, grazing was discontinued while the highway and access road changes were constructed.

During 2000, no management activities were conducted in the goldfields area of the conservation preserve

In May 2001, after the Contra Costa goldfields had shed their seed, the goldfields area of the conservation preserve was mowed to reduce growth of non-native species and the height of the standing grass cover.

In 2002, the property was grazed for almost three months during October, November and December. The initial stocking level was 21 cattle. By December, 11 calves had been born, for a total of 32 head of cattle.

2.1 RECOMMENDED MANAGEMENT PRACTICES

The proposed management for the Contra Costa goldfields area of the conservation preserve is moderate grazed during the growing season, from October or November until April or May. This schedule is based on personal communication with several experienced workers (Bainbridge 2003, Marty 2003), the Draft Habitat Management Plan for Don Edwards National Wildlife Refuge (another East Bay site with Contra Costa goldfields) (2003), the Draft Jepson Prairie Grazing Plan (1997), and various reports (Barry 1996, 2003). The best timing of the removal of cattle in the spring is dependent on weather conditions, both in spring and in the preceding winter months. Therefore, the timing must be flexible, rather than tied to a specific date. However, grazing during the spring is proposed, in order to reproduce as closely as possible the conditions under which this population has persisted in past years.

2.1.1 CRITERIA FOR ANNUAL CESSATION OF GRAZING

[Insert the indicators recommended by range manager on which to base the decision for removing the cattle. If it's based on a visual estimate of vegetation height, or proportional green to dry matter, include those specifics.]

2.1.2 STOCKING RATES

Generally, the appropriate number of cattle per acre is determined by calculating the ideal amount of biomass on the ground at all times. This value is factored in with other numbers, such as rainfall and site productivity. Because no biomass calculations are available for the conservation preserve, 500 lbs/acre is the initial goal (Bainbridge 2003).

Moderate grazing pressure is assumed to be two to three cattle per hectare. This property is 9.73 acres, or 3.94 hectares. Thus, moderate grazing pressure for the property would generally consist of eight to twelve cattle on the property in the grazing period. The number of cattle can be reduced in number or removed at any time, depending on the extent to which the management goals are achieved. Stocking rates may need to be changed mid-year or from year to year.

2.1.3 ALTERNATIVE MANAGEMENT PRACTICES

In the event that grazing is not possible in certain years, mowing may be implemented as an alternative management activity. Mowing should occur in late spring or early summer, after the last of the goldfields have shed their seed. If possible, mowing should be immediately followed by raking to reduce the amount of thatch left in the preserve. However, very short or dry stems may shatter too much during mowing to be raked. In such conditions, the mowed vegetation will be left in situ.

In certain years, neither grazing nor mowing may be possible or desirable. For example, if the preserve burns during a dry season, and a low-rainfall winter follows, available biomass may be too low to support cattle. Thus, when conditions warrant it, management activities may be suspended for a year.

2.1.4 Invasive Plant Management

If invasive plant species become a problem in the conservation preserve, species-appropriate methods will be implemented to control such species, with the concurrence of USFWS. Because invasive species are not currently a problem, specific methods are not included in this document. Methods could include hand-pulling, spot application of herbicides, or disking of areas not populated by goldfields.

2.2 Annual Report

An annual report will be submitted to the management team [Edit to match whatever is described in the agreement between CCTA, the steward, and USFWS. Also add whatever is agreed upon regarding meeting or conferencing to make management decisions.]. This report shall include the results of the annual monitoring, and a description of the grazing or other management activities implemented that year. The report shall also include recommendations for future management activities and schedules. This report may be in letter format.

This monitoring program is designed to provide data for determining the success of management activities and for determining the level of stocking, the initiation and cessation of grazing each growing season, and the implementation of alternative management methods when grazing is not possible. Because intensive annual monitoring is beyond the funding available, an intermediate level of monitoring is proposed.

3.1 CONTRA COSTA GOLDFIELDS SURVEY

Annual estimates of population size and distribution are needed to determine whether adjustments in schedules and stocking rates are necessary. However, intensive quadrat sampling is expensive, both in the data collection phase and the data analysis phase. Therefore, two levels of monitoring surveys are described in the following sections. The qualitative survey will be conducted in the spring of most years. The quadrat survey will be conducted once in every 5-year period, but the quadrat survey year may be selected based on a high rainfall season during the 5-year period, rather than at a set interval. [If an alternative sampling method is preferred for any of the survey methods, insert the complete methods here.]

Photo points have been established in past monitoring, but have not proved useful. Because of the abundance of the commoner California goldfields at the site, the extent of yellow flowers in site photographs does not correlate with the size of the Contra Costa goldfields population. Once the surrounding grasses reach the height of the goldfields, the goldfields are no longer visible in site photos, even though they may be flowering profusely. Also, cattle use the stakes as rubbing posts, often knocking them down, so that the exact views are difficult to repeat from year to year.

3.1.1 QUALITATIVE SURVEY

In some years, particularly in low-rainfall years, the population of Contra Costa goldfields may be quite small. For example, while the population was of a size suitable for measurement by the quadrat method described in Section 3.1.2 in 1998, 1999, and 2000, it was much smaller in 2001, 2002, and 2003. In those years, the entire area within the Contra Costa goldfields preserve was surveyed, and all of the Contra Costa goldfields found were counted. This is the survey method that will be implemented in years when the population is very small.

In years when the fifth-year quadrat survey described in Section 3.1.2 is not employed, the initial step will be the same as for the quadrat survey. In late March, April or May (whenever the goldfields reach peak bloom in a given year), monitors will survey the entire area within the Contra Costa goldfields preserve. When Contra Costa goldfields are found, stake flags will be used to mark the location of the plants. When several plants are located in an area, the flags will be adjusted to delineate the outer boundaries of that group. The areas occupied by the Contra Costa goldfields will be marked on large-scale

topographic maps. Measured length, estimated width, and relationships to surrounding landmarks will also be recorded for the staked areas. These areas can be digitized and the acreage determined from resulting AutoCadd or GIS maps, or by using commercially available acreage grids. Once the field data are collected, the flags will be removed. For each staked area, a qualitative estimate of percent cover by Contra Costa goldfields, California goldfields, and bare ground will be recorded.

3.1.2 QUADRAT SURVEY

The following methods were implemented to characterize the status and distribution of Contra Costa goldfields during pre-construction, construction, and post construction monitoring. This method was intended to facilitate the sampling of species occurrences that vary in size, location, and configuration from year to year. The approach was to determine the acreage occupied by Contra Costa goldfields and to determine a density estimate within this acreage. Because California goldfields are also present at the preserve, both species are recorded in the quadrat sampling.

In late March, April or May (whenever the goldfields reach peak bloom in a given year), monitors will survey the entire area within the Contra Costa goldfields preserve. When Contra Costa goldfields are found, stake flags will be used to mark the location of the plants. When several plants are located in an area, the flags will be adjusted to delineate the outer boundaries of that group. The areas occupied by the Contra Costa goldfields will be marked on large-scale topographic maps. Measured length, estimated width, and relationships to surrounding landmarks are also recorded for the staked areas. These areas can be digitized and the acreage determined from resulting AutoCadd or GIS maps, or by using commercially available acreage grids. Once the field data are collected, the flags will be removed.

To estimate the number of plants within an area, a measuring tape will be laid down the center of each population, following the longest axis of the population. Because there is considerable variation in boundary undulation, the tape is not laid along an edge. Thus, the width of the plots varies both between plots and within plots. A random number table will be used to generate distances along the measuring tape for the placement of a one-meter square quadrat frame.

The quadrat frame will be placed at the randomly generated points along the tape, alternating the placement to the left and right sides of the tape to avoid overlapping quadrats. The number of quadrats sampled in each population will be determined by the length of the longest axis through the population. The number of quadrats is calculated as two quadrats for each five meters, although the quadrats are randomly spaced. For example, along a 50 meter transect, there would be twenty randomly spaced quadrats, while a transect 30 meters long would have twelve quadrats.

Percent cover will be recorded for each quadrat sampled. The smallest percent cover that will be recorded was one percent, even if only one plant of Contra Costa goldfields, representing less than one percent, is present in the quadrat. Although this approach results in a slightly elevated cover value, this situation generally occurs in only a few

quadrats. The percent cover of California goldfields and of bare ground will also be recorded. The difference between the sum of these values and 100 percent cover will be recorded as percent cover of other species. The average percent cover within each plot will be determined by combining all the quadrats from that transect location, divided by the number of quadrats in the transect. Additionally, the overall average percent cover will be calculated by adding the percent cover of all quadrats, divided by the total number of quadrats. Young grasses and other dicot species are often present under the goldfields. Percent cover for these species is not estimated in this survey method. Therefore, the data represent the percent cover of each species of goldfields, by other species, and by bare ground.

The method for estimating the density of Contra Costa goldfields in the baseline survey conducted in 1998 can be used to calculate density estimates for other years (ENTRIX 1998). To calculate the 1998 density estimate, a quadrat with 100 percent cover of Contra Costa goldfields was selected. The density estimate was made by counting the number of Contra Costa goldfields in 0.2 m^2 of a one-square-meter quadrat, which contained 100 percent CCGs. This was done several times to obtain an average number of plants. This count was used in conjunction with the goldfields' acreage and percent cover to provide an estimate of the number of individual plants present at the site.

3.2 BIOMASS ESTIMATES

When the cattle have been removed for the season in June, or later, when the residual vegetation is dry, the remnant biomass or residual dry matter will be calculated (Bainbridge 2003). Clipping and weighing the biomass contributes to understanding the effects of the grazing schedule for that year. The results, in pounds/acre, will be compared with the goal. Results will show if the grazing regime needs to be changed (either increased or decreased), or whether the current grazing level is satisfactory.

3.2.1 CLIPPING ESTIMATES

3.2.1.1 Late Summer Clipping

The following procedure, recommended by the University of California, is derived from Bartolome, et al. (2002), and is intended to be conducted in September. At this time, the plant material should be dry unless there has been unusually early rain, and it should not be necessary to further dry the harvested material. At least five plots will be clipped on each side of Rodeo Creek, as described below. If necessary, up to fifteen or twenty plots may be clipped on each side of Rodeo Creek. These plots will be positioned to represent the range of biomass through the goldfields section of the conservation preserve.

The surveyor will place a 1-square-foot quadrat on the ground surface and remove tree leaves and all summer annuals such as tarweed and yellow starthistle from within the quadrat. The remaining plant material within the quadrat will be clipped as close to the ground as possible, without disturbing the soil surface. The clipped plant material will be collected as rapidly as is practical without inadvertently including bits of soil. While

some material may be long enough to be held during clipping and immediately deposited in a bag, smaller pieces may have to be lifted from the soil surface.

The plant material from each plot will be weighed separately, and the results (in grams per square foot) will be converted to pounds per acre. The results for the plots will be averaged to derive a residual dry matter value for the site.

3.2.1.2 Early Summer Clipping

Timing of management decisions may necessitate a determination of biomass shortly after the cattle are removed in June, and before the vegetation at the conservation preserve has fully dried in the field. In this instance, the methods described in Section 3.2.1.1 will be used to harvest the material, but the vegetation from each quadrat will be oven-dried separately before weighing. This method will also be employed if late or early rains have resulted in green matter remaining when late summer clipping is conducted.

3.2.2 Visual Estimates

Because photo standards have successfully been used to estimate residual dry matter in other areas (Bartolome et al. 2002), site photographs will be taken when residual vegetation is clipped. Eventually, in conjunction with several years of clipping results and comparison with standards developed for similar grasslands in the Central Valley (Bartolome et al. 2002), it may be possible to replace clipping estimates entirely with visual estimates. [BP: if you are using a digital camera, information on the resolution, etc. should be recorded, because different cameras will be used during the life of the preserve.]

4.1 COSTS

[Insert cost discussion here, as appropriate. Time for surveys includes at least four hours for one person to stake the field – more likely up to 8+ hours in good years. (Divide time by the number of people doing the work, but inexperienced people take longer.) To stake and quadrat-sample the whole site in a really good year takes 2 people for 2 days. Data entry, data analysis, and the report take several more days if quadrat sampling is done. For counts in poor years, or for qualitative sampling, the additional time needed to incorporate the field info into a report and produce a map is necessary. For biomass clipping, include hours to clip, hours to dry (if necessary), photography costs (less if a digital camera is used), and hours to convert the data and write the report. Additional hours for management meetings. Some of this may come under the general purview of staff responsibilities of the steward organization, but it's desirable to identify all this and track it so that it can be determined what management of the preserve requires in time, expenses, and consumables.]

4.2 FUNDING

Contra Costa Transportation Authority has provided a $200,000 grant for stewardship in perpetuiy. The interest from this grant will fund stewardship activities. The Caltrans is responsible for fence maintenance and removal of any materials dumped in the conservation preserve.

It may be possible to locate alternative sources to fund management activities at the conservation preserve. A number of government and non-profit agencies have programs that support such activities.

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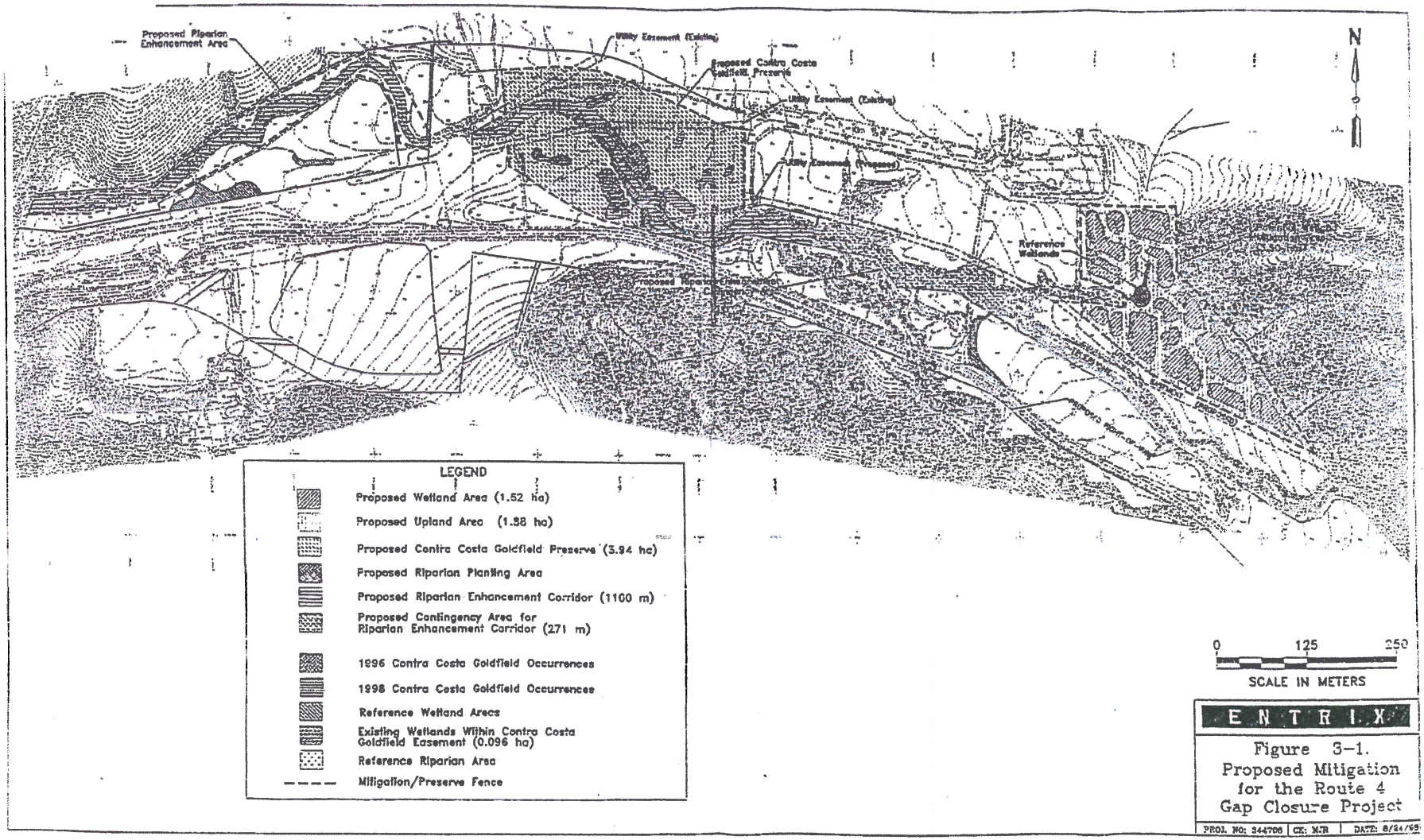

ENTRIX

Figure 3-1.
Proposed Mitigation for the Route 4 Gap Closure Project

PROJ. NO: 344706 | CK: MJB | DATE: 8/24/99

EXHIBIT A

EXHIBIT D

PROHIBITED USES OF THE PROPERTY

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the Property. The following are set forth both to list specific prohibited activities on the Property and to provide guidance in determining whether or not other activities are inconsistent with the Conservation Purposes.

1. Prohibited Uses. Subject to provisions of the Management Plan (Exhibit F), any activity on or use of the Property inconsistent with the Conservation Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Grantor, Grantee, and their personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees, respectively, are expressly prohibited from doing or permitting any of the following on the Property unless specifically authorized by the Conservation Easement or Management Plan:

A. Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement.

B. Watering, use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the purposes of this Conservation Easement unless said activities or uses are expressly permitted by the Conservation Easement or Management Plan.

C. Grazing and agricultural activity of any kind not expressly required, directed, and/or set forth in the Conservation Instrument.

D. Commercial or industrial uses.

E. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material.

F. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

G. Substantially altering the surface or general topography of the Property, including building roads, new trails, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material, but this paragraph shall not prohibit the maintenance or improvement, albeit not enlarging, of trails or paved roadways already existing within the Property at the time of conveyance of this Easement to Muir Heritage Land Trust..

H. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for: (i) fire breaks; (ii) maintenance of existing foot trails or roads; (iii) prevention or

treatment of disease; (iv) utility line clearance; or (v) as expressly provided and permitted by the Management Plan.

I. Use of motorized vehicles, including off-road vehicles, except on existing roadways.

J. Divesting the Property of any water right necessary to carry out the purposes of the Conservation Easement.

K. Planting, introduction or dispersal of non-native or exotic plant or animal species.

L. Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Property and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except for work required to maintain flood control.

M. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing.

N. Permitting a general right of access to any parties, entities or individuals not specifically identified in this Conservation Easement.

O. Subdividing the Property, recording of a subdivision plan, partition, or any other division of the Property into two or more parcels.

P. Any activities that could foresee ably result in personal injury or property damage to any person.

Q. Dumping, burning, and/or burning of rubbish, garbage, or any other wastes or fill materials.

R. Placement of storm water drains.

S. Killing, removal, alteration, or replacement of any existing native vegetation, except as described in the Management Plan.

T. Fire protection activities not required by the Management Plan.

U. Any other use of, or activity on, the Property which is, or may become inconsistent with the purposes of this Conservation Easement, the preservation of the Property substantially in its natural condition, or the protection of its Conservation Values. The following uses or activities are not prohibited under this paragraph: work required to maintain flood control; maintain, repair, replace, or retrofit any structure, improvement, utility, or easement existing within the Property at the time of conveyance of this Easement to Muir Heritage Land Trust.

EXHIBIT E

PERMITTED USES OF THE PROPERTY

The uses set forth in this **Exhibit E** detail specific activities that are permitted under the Conservation Easement. The uses set forth in this **Exhibit E** are also intended to provide guidance in determining the consistency of other activities with the Conservation Purposes. Notwithstanding the uses set forth in this **Exhibit E** and, notwithstanding any provision of this Conservation Easement to the contrary, in no event shall any of theuse of the Property (whether set forth in this **Exhibit E** or elsewhere in this Conservation Easement) be conducted in a manner or to an extent that impairs the Conservation Values or that otherwise violates this Conservation Easement.

1. Controlled livestock grazing to control vegetation, in accordance with the management practices set forth in the Management Plan. Moderate grazing is permitted during the Goldfield growing season, from October or November until April or May; however, the timing of the grazing season depends year to year on winter and spring weather conditions, and cannot be tied to a specific date. Access to the site will be maintained for grazing livestock.

2. In the event grazing is not feasible in certain years, or grazing has not been sufficient to control competing vegetation, mowing may be implemented as an alternative management activity. When mowing is appropriate, it should occur in late spring or early summer, after the last of the Goldfields have shed their seed. Mowing should be immediately followed by raking to reduce the amount of thatch remaining on the Property; however, mowed vegetation should be left *in situ* if stems have shattered during mowing so that raking is not reasonably feasible.

3. Should invasive plant species assert themselves on the Property, species-appropriate control methods will be implemented, with the concurrence of USFWS. Such methods may include hand-pulling, spot application of herbicides, or disking of areas not populated by Goldfields.

4. Use of concrete telephone poles is permitted outside the occupied Goldfield habitat.

5. Fencing of the Property perimeter is permitted.

6. Surveying, sampling, and monitoring of the Conservation Species is permitted, provided that the surveying, sampling, and monitoring activities are accomplished in manners that preserve and protect Conservation Values.

7. Work necessary to maintain flood control, and maintain, repair, replace, or retrofit any structure, improvement, utility, or facility that is existing within the Property at the time this Conservation Easement is conveyed to Grantee Muir Heritage Land Trust is permitted.

8. Grantor may erect a reasonable number of signs or other appropriate markers not to exceed dimensions of eight feet (8') by sixteen feet (16') in a prominent location on the Property, visible from a public road, which identify ranching or open space activities on the Property and/or which state that no trespassing or no hunting is allowed on the Property.

9. Except as expressly limited by this Conservation Easement, Grantor may exercise and enjoy all rights as owner of the Property, including the right to use the Property for any purpose that is consistent with this Conservation Easement.

10. If any question exists regarding whether historic, current, or new practices or activities are permitted or would be inconsistent with the Conservation Purposes or would impair the Conservation Values, Grantee or Grantor shall notify Grantor the other in writing and obtain Grantor's the other party's written approval prior to engaging in such practices or activities.