



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



October 13, 2020

Eric Hughes  
Senior Planner  
County of San Luis Obispo  
976 Osos Street, Room 300  
San Luis Obispo, California 93408  
[ehughes@co.slo.ca.us](mailto:ehughes@co.slo.ca.us)

**Subject: Preliminary San Joaquin Kit Fox Mitigation Evaluation Assessor's Parcel Number (APN) 072-301-017, 11330 Tule Elk Lane, Santa Margarita, CA 93453 (Carrizo North Cannabis Farm (DRC2018-00078 Shannon/Whipkey/Esma) (Project)**

Dear Mr. Hughes:

The Department of Fish and Wildlife (CDFW) assists the County of San Luis Obispo (County) and project applicants in mitigating project impacts to San Joaquin kit fox and kit fox habitat. CDFW and the County apply a habitat evaluation method which considers the functions and values of kit fox habitat affected at each project site. This letter provides the preliminary review by CDFW of the Kit Fox Habitat Evaluation submitted for the above referenced Project. A final letter, that may include revised scoring and mitigation requirement, will be issued after the California Environmental Quality Act (CEQA) document for this Project has been finalized.

The Kit Fox Habitat Evaluation, which was completed for your Project, located at APN 072-301-017, 11330 Tule Elk Lane in Santa Margarita, California, on December 14, 2018 by PAX Senior Biologist Sam Stewart and reviewed by Shannon Dellaquila of CDFW on September 2, 2020, will impact **5.39** acres of kit fox habitat. Your Project earned a score of **78** on the evaluation; which requires that all impacts be mitigated at a ratio of three(3) acres conserved for each acre impacted (**3:1**). Total compensatory mitigation required for your Project is **16.17** acres, based on three (3) times **5.39** acres impacted.

This letter identifies the options for satisfying this mitigation obligation. The mitigation options identified below apply to ***the proposed Project only***; should your Project change, your mitigation obligation may also change, and a reevaluation of your mitigation measures would be required.

Eric Hughes  
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1. *Provide for the protection in perpetuity, through acquisition of fee or a conservation easement, of **16.17** acres of suitable habitat in the kit fox corridor area (e.g., within the San Luis Obispo County kit fox habitat area northwest of Highway 58), either on-site or off-site, and provide for a non-wasting endowment to provide for management and monitoring of the property in perpetuity. Lands conserved shall be subject to the review and approval of CDFW and the County.*

Should you choose this mitigation alternative, please be advised that all aspects of this program must be in place prior to issuance of County permits and initiation of any ground-disturbing activities.

2. *Deposit funds into an approved in-lieu fee program, which would provide for the protection in perpetuity of suitable habitat in the kit fox corridor area located primarily within San Luis Obispo County and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.*

If you elect to meet mitigation requirements by way of option (2) above, you can do so by providing funds, in the amount determined by CDFW through the evaluation described above, to The Nature Conservancy (TNC), at the first address listed below, pursuant to the Voluntary Fee-Based Compensatory Mitigation Program (Program). The Program was established through an agreement between the CDFW and TNC to preserve San Joaquin kit fox habitat and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with the CEQA. A copy of the agreement between the CDFW and TNC is enclosed with this letter. CDFW has determined that your fee, which is payable to The Nature Conservancy, would total **\$40,425**. This fee is calculated based on the current cost-per-unit, **\$2,500 per acre** of mitigation, which is scheduled to be adjusted to address the increasing cost of property in San Luis Obispo County; your actual cost may increase depending on the timing of payment. This fee would need to be paid prior to issuance of County permits and initiation of any ground disturbing activities.

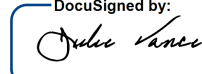
3. *Purchase **16.17** credits in an approved conservation bank, which would provide for the protection in perpetuity of suitable habitat in the kit fox corridor area and provide for a non-wasting endowment for management and monitoring of the property in perpetuity.*

If you elect to meet mitigation requirements by way of option (3) above, you can do so by purchasing credits, in the amount determined by CDFW through the evaluation described above, from the Palo Prieto Conservation Bank, at the third address listed below. The bank was established through an agreement between CDFW and the Grant Family Trust to preserve San Joaquin kit fox habitat and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with CEQA. Purchase of credits would need to be completed prior to issuance of County permits and initiation of any ground-disturbing activities.

Eric Hughes  
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Should you have questions regarding your mitigation alternatives, please contact Shannon Dellaquila, Senior Environmental Scientist (Specialist), of CDFW at [Shannon.Dellaquila@wildlife.ca.gov](mailto:Shannon.Dellaquila@wildlife.ca.gov) Should you have questions regarding the status of your application with the County, please contact Eric Hughes at the San Luis Obispo County Department of Planning and Building at, [ehughes@co.slo.ca.us](mailto:ehughes@co.slo.ca.us).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Enclosure

cc: Leslie Jordan  
The Nature Conservancy  
201 Mission Street, Fourth Floor  
San Francisco, California 94105

The Nature Conservancy  
Attention: Legal Department  
201 Mission Street, Fourth Floor  
San Francisco, California 94105

ec: Steve Conner  
[sconner@rinconconsultants.com](mailto:sconner@rinconconsultants.com)

Shannon Dellaquila  
Department of Fish and Wildlife

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***For Department Use Only***

**PROJECT NAME:** Minor Use Permit Shannon/Whipkey/Esmay DRC2018-00078

**PROJECT PROPONENT:** Tim Esmay, Patrick Shannon, and Larry Whipkey

**LEAD AGENCY:** County of San Luis Obispo

**AMOUNT OF IN-LIEU FEE:** \$40,425

**DEPARTMENT CONTACT PERSON:** Shannon Dellaquila

**Agreement between The Nature Conservancy  
and the California Department of Fish and Game, Central Coast Region**

**To Establish a Voluntary Fee-Based Compensatory Mitigation Pilot Program  
Pursuant to the California Environmental Quality Act**

This Agreement is made on this 18<sup>th</sup> day of MARCH, 2003, by and between the California Department of Fish and Game (the "Department") and The Nature Conservancy, a District of Columbia nonprofit corporation ("TNC"), hereinafter referred to collectively as the "Parties."

**I. RECITALS**

This agreement is based on the following facts, intentions and expectations:

A. The Department and TNC wish to cooperate in facilitating the development of a regional program ("Program") to conserve important San Joaquin kit fox habitat within San Luis Obispo County, California. Two subpopulations of the endangered species exist in the county, one at Camp Roberts, northern San Luis Obispo County, and the other at the Carrizo Plain, eastern San Luis Obispo County. The goal of this Program is to provide an effective, efficient option that the Department can offer to private individual applicants (hereafter collectively referred to as "Proponents"), who in accordance with the California Environmental Quality Act (CEQA) must mitigate the impacts of their projects within San Joaquin kit fox habitat, if those impacts cannot be otherwise avoided. The Program will focus specifically on preserving the habitat within the corridor stretching between Camp Roberts and the Carrizo Plain, essentially the same area identified as the Salinas, Estrella and San Juan Rivers Conservation Area in *Conserving the Landscapes of San Luis Obispo County*, a report completed by TNC in July 2000 (Exhibit A) and may also include the Carrizo Plain and TNC portfolio sites within Kern, Monterey and Santa Barbara Counties included in the range of one or both of those two kit fox subpopulations.

Under this Program, Proponents can voluntarily elect to meet their mitigation requirements by providing funds in an amount determined by the Department to TNC ("Fees" or "Program Fees") for preservation of habitat within the program area, if the CEQA lead agency concurs.

B. Under California Fish and Game Code § 1802, and other State laws, the Department has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The Department is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code Section 1802.

C. TNC is a non-profit corporation of the District of Columbia and is authorized to conduct activities in California.

D. The purpose of this agreement is to facilitate conservation of habitat within the Salinas, Estrella, and San Juan Rivers corridor, which links the Carrizo Plain and Camp Roberts subpopulations of San Joaquin kit fox, by providing a means for Proponents to expedite their

compliance with CEQA through payment of a San Joaquin kit fox Fee to be used to conserve existing San Joaquin kit fox habitat within the aforementioned corridor.

## II. AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above. The covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### A. Obligations of the Parties

#### 1. The Department

(a) The Department shall establish voluntary San Joaquin kit fox Fees for projects that require review under CEQA within San Luis Obispo County that result in impacts to San Joaquin kit fox habitat. Necessary Fee amounts shall be determined by a formula developed and set forth by the Department's Regional office, which the Department's Regional office will review annually, and revise as conditions warrant. The Fee will reflect the cost of protecting suitable kit fox habitat, providing for TNC's project and administrative fees (as set forth below in Paragraph II.A.2(b)), and providing long term management and maintenance of the protected lands.

(b) If the Department determines that a project is suitable for participation in the Program, the Department shall inform the Proponents, and the CEQA lead agency, in writing of the Program, of the Fee amount required for participation in the San Joaquin kit fox Program, and that the payment of the Fee will, in the Department's judgment, satisfy, in part, the Proponent's obligations under CEQA to address project impacts on San Joaquin kit fox habitat. The Department shall also inform each Proponent that payment of a San Joaquin kit fox Fee to TNC (as defined herein) is voluntary and that other options are available to satisfy the Proponent's obligation under CEQA to mitigate project impacts on San Joaquin kit fox habitat. The Department shall provide each Proponent with an explanation of the process for participation in the Program and with a copy of this Agreement prior to the Proponent's payment of a San Joaquin kit fox Fee. The Department will advise the Proponent that TNC's Fee for administering the San Joaquin kit fox Fund shall be the amount set forth below in Paragraph II.A.2.(b) of this Agreement.

(c) In exercising its approval authority under section II.A.1.(d) of this Agreement, the Department shall insure to the extent possible that all San Joaquin kit fox Fees deposited in TNC's San Joaquin kit fox Program's Fund in accordance with this Agreement, and the interest and earnings thereon, and all disbursements from the Fund, with the exception of the Project Fee and Administrative Fee identified under Paragraph II.A.2.(b) below, shall be used to finance conservation of San Joaquin kit fox habitat within the aforementioned corridor in San Luis Obispo County in the form of fee interest in land, conservation easement acquisition, and/or other activities related directly to the identification, purchase, and stewardship of said land, specifically to offset project impacts to such habitat as provided in Paragraph II.A.1.(a) and (b) above. If kit fox habitat cannot be acquired in the corridor, the Department shall insure that the fees are used to finance acquisition and management of habitats in the same geographical region as the corridor.

(d) Upon receipt of written notification of TNC's intent to procure fee title or a conservation easement of San Joaquin kit fox habitat within the area using any amount

of San Joaquin kit fox Fees, the Department shall be responsible for providing written approval of the project and associated costs (as set forth in Paragraph II.A.2.(d)) to TNC (see Exhibit C).

(e) Any proposal to procure fee title or a conservation easement in which the fee title or conservation easement will be held by an entity not a party to this agreement must be approved by the Department. Additionally, the Department must approve all conservation easements and deeds as to form, which approval shall not be unreasonably withheld. The Department's standard conservation easement attached as Exhibit D; however, TNC shall not be required to use the Department's standard conservation easement.

(f) The Department will provide written notification to TNC whenever it learns that a Proponent intends to participate in the Program by submitting a Fee (Exhibit C). The notification shall include the amount of the Fee, the identity of the proponent, the project or transaction for which the fee is being made, and the expected date for TNC's receipt of the fee.

## 2. TNC's Obligations

(a) TNC will provide written notification to the Proponent and to the Department upon receipt of Fees from a Proponent (Exhibit B). Funds Received by TNC under this agreement may be pooled and invested in accounts ("Fee accounts") with other funds TNC holds for similar or other purposes. The funds received by TNC for the Program shall be separately accounted for on a project basis. The Fee accounts will be credited with Fee funds as they are received by TNC, for the benefit of each project. Investments shall be in funds which carry a very slight risk of loss of capital, conforming to accepted standards of prudence. Investments may be in short-term certificates of deposit, U.S. Treasury obligations, or commercial paper.

(b) Interest from the funds held in the Fee accounts will remain in the accounts until the funds are expended or until this agreement is terminated in accordance with the provisions of the Amendment and Termination sections of this agreement. TNC will deduct from each payment into the Fee accounts a management fee (the "Project Fee") of two percent (2%) of the mitigation project's anticipated costs. TNC shall deduct the Project Fee upon receipt of the Program Fee. Additionally TNC will deduct from the Fee accounts two percent (2%) of the average annual balance of the Fee accounts, as calculated at June 30 of each year (the "Administrative Fee") to cover the direct management costs of the program and to help defray the costs associated with TNC's ongoing programmatic involvement with the Program. The Department acknowledges that the Project Fee and Administrative Fee represent reasonable consideration for TNC's efforts under this agreement.

(c) TNC shall provide to the Department a semi-annual report which shall contain a description of projects funded during the prior six (6) months as well as a financial report itemizing all project receipts and disbursements and reconciling the current balance of the project. These reports will be prepared as of 30 June and 31 December, and will be submitted to the Department within 30 days of the report date.

(d) TNC shall disburse funds in the San Joaquin kit fox Conservation Account only on projects which have received prior written authorization of the Department. The Parties agree that in addition to fee title or conservation easement costs, funds under this

agreement may be applied to direct and indirect costs for: (1) reasonable pre-acquisition expenses which apply directly to the project purpose, including, but not limited to, negotiations (staff time), travel, appraisals, boundary and water rights surveys, environmental hazard surveys, easement documentation or baseline reports, title insurance, and closing costs and (2) management, restoration, and stewardship costs (including property tax expense). TNC may use the funds under this agreement to cover pre-acquisition costs even in the event that the acquisition is not completed for any reason. In addition to the above-referenced items, TNC will charge the Project Fee and the Administrative Fee (as set forth in Paragraph II.A.2.(b)).

(e) For all acquisitions pursuant to this agreement, TNC shall reserve sufficient funds from the Fee to provide for the long term management of the habitat.

(f) Funds collected pursuant to this program must be committed for the acquisition of suitable habitat within three years of TNC's receipt of the funds.

(g) To the extent that kit fox habitat is procured by TNC with funds provided to TNC pursuant to this agreement, such habitat shall be protected in perpetuity by either restrictive covenants or conservation easements. The purpose of the restrictive covenants or conservation easements shall be to ensure that such property will be retained forever in a condition that does not impair or interfere with the conservation values of the property. Land uses which are compatible with the preservation of kit fox habitat shall not be unreasonably restricted.

### III. SPECIAL TERMS AND CONDITIONS

A. For any project within San Luis Obispo County where there are impacts to the San Joaquin kit fox habitat, the Department shall have discretion as to whether payment of fees as described in this Agreement would adequately fulfill the needs of the species.

B. TNC reserves the right to refuse mitigation funds for any particular project.

C. This Agreement does not impose upon TNC any obligation to maintain an accounting of the biological values associated with San Joaquin kit fox Fees deposited or disbursed pursuant to this Agreement or to match San Joaquin kit fox Fees deposited with specific San Joaquin kit fox habitat acquisitions.

D. Nothing in this Agreement shall prohibit the disbursement of San Joaquin kit fox Fees to enable the purchase of a land parcel otherwise appropriate for use as kit fox habitat for the sole reason that a portion of the parcel is not suitable for San Joaquin kit fox habitat conservation, subject to the discretion and approval of the Department.

E. Notwithstanding anything contained herein to the contrary, TNC shall have no obligation pursuant to this Agreement other than to deposit and disburse the San Joaquin kit fox Fees in accordance with this Agreement, subject to the terms and conditions hereof.

### IV. EFFECTIVE DATE

This Agreement shall take effect immediately upon execution by the Department and TNC.

## V. AMENDMENTS

Amendments to this Agreement may be proposed by either Party and shall become effective upon the written agreement of both Parties.

## VI. AUTOMATIC RENEWAL

Subject to the limitations in Paragraph VIII, this agreement shall remain in effect for a period of three years from the date of execution. At three years, and at each year thereafter, the agreement will automatically renew for the period of one additional year, continuing yearly unless and until the Department gives TNC a notice of non-renewal. Upon issuance of a notice of non-renewal by the Department, the agreement will terminate effective one year from the date of the notice of non-renewal. Upon receiving a notice of non-renewal, TNC shall begin the process of completing transactions undertaken pursuant to this agreement and shall comply with Section VII termination provisions.

## VII. TERMINATION

This Agreement may be terminated by either Party without cause at any time upon thirty (30) days written notice to the other Party. Upon termination, TNC shall provide the Department with an accounting of the San Joaquin kit fox Fee Account in accordance with the following procedures. Immediately upon termination, and as a condition of the release of TNC from its obligations under this Agreement, TNC shall disburse all funds in the San Joaquin kit fox Conservation Account in accordance with written instructions provided by the Department (which shall be provided within 60 days of the receipt by the Department of TNC's Termination Notice). Thereafter, TNC shall be relieved of all further obligations and liabilities under the Agreement provided, however, that within 60 days following disbursement, TNC provides the Department final accounting showing the deposits and disbursements of all sums received by it pursuant to the Agreement, from the date of the last annual accounting through the date of final disbursement.

## VIII. MISCELLANEOUS PROVISIONS

### A. Entire Agreement

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

### B. Interpretation and Headings

The language in all parts of this agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against either Party. Headings of the paragraphs of this Agreement are for the purpose of convenience only and the words contained



in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this agreement.

#### C. Notices

All notices, demands, or requests from one Party to the other Party may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile, transmission, or mailing.

The Department

Department of Fish and Game, Central Coast  
Region Headquarters  
7329 Silverado Trail, Napa CA 94558  
Attn: Carl Wilcox  
Telephone: (707) 944-5500  
Fax: (707) 944-5563

TNC:

The Nature Conservancy  
California Regional Office  
201 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94105  
Attn: Legal Department  
Telephone: (415) 777-0487  
Fax: (415) 777-0244

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

#### D. Successors and Assigns

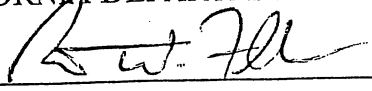
This agreement, and the rights and obligations thereunder, shall not be transferred or otherwise assigned by TNC without prior written approval of the proposed transferee/assignee by the Department.

#### E. Execution

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement which shall be binding on all the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart. If any provision of this Agreement is held invalid, the other provisions shall be affected thereby. Each party to this Agreement warrants to the other that it is duly organized, validly existing and, if a corporation, qualified to do business in the State of California, and that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above:

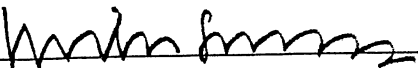
CALIFORNIA DEPARTMENT OF FISH AND GAME

By: 

Name: ROBERT W. FLOATE

Title: REGIONAL MANAGER

THE NATURE CONSERVANCY

By: 

Name: MIKE SWEENEY

Title: COO-CA

Enclosures (3)

Exhibit A: *Conserving the Landscapes of San Luis Obispo County*

Exhibit B: Letter from TNC to Proponent and Department Acknowledging Receipt of Fee

Exhibit C: Letter from Department Authorizing Conservancy's Disbursement of Funds

Exhibit D: Department's Standard Conservation Easement Form.

Exhibit A

See Accompanying Bound Report: "Conserving the Landscapes of San Luis Obispo County."

## Exhibit B

Dear [Applicant]

The Nature Conservancy hereby acknowledges the receipt of \$ \_\_\_\_\_ in connection with [Applicant's] Department of Fish and Game [permit of other identifying case number]. The Nature Conservancy (the "Conservancy") has not been involved in the permitting process or any non-compliance determination, but it is committed to working with the Department of Fish and Game (the "Department") and [Applicant] to use these funds to conserve habitat along the Salinas, Estrella, San Juan Rivers corridor linking the Carrizo Plain and Camp Roberts subpopulations of San Joaquin kit fox. By accepting these funds from [Applicant] with the written approval of the Department, the Conservancy does not make any direct or implied statement that the funds are adequate "mitigation" for any purpose.

The Conservancy's only obligation is to receive these funds and apply them as described in this letter. The Conservancy retains the flexibility to use these funds for a number of purposes within the area described above, including acquisition of fee interest in land, conservation easement acquisition, and/or other activities related to identification of said land. These funds may also be used to cover the indirect and administrative costs associated with any project. The Conservancy does not guarantee any specific results, actions or effects on the lands acquired, managed or restored with these funds but will use good faith efforts to meet the objectives of the Fee-Based Compensatory Mitigation Program. [Applicant] agrees that it remains ultimately responsible for any matters pending between the Department and [Applicant]. [Applicant] agrees to release, indemnify, defend and hold the Conservancy harmless for any and all claims, damages, losses, liabilities, costs or expenses, including without limitation attorneys' fees, in the event that any claim is brought against the Conservancy for any act or omission arising out of any acts it takes pursuant to the Agreement, the Fee-Based Compensatory Mitigation Program, and/or the mitigation matter between the Department and [Applicant] that brought about the payment of these funds.

The funds received by the Conservancy from [Applicant] will be pooled and invested with other funds the Conservancy holds for similar or other purposes in accordance with an agreement with the Department. The funds received shall be separately accounted for by the Conservancy in accordance with the Agreement.

The Conservancy will consult with the Department on the intended use of these funds and notify the Department in accordance with the Agreement before disbursing them.

Please acknowledge your agreement to the terms of this letter by signing below and returning the original to me. Once the Conservancy received the counter-signed letter, the Conservancy will notify the Department in accordance with the Agreement.

Thank you,

Sincerely,

Project Director

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[Applicant]

cc: CA Department of Fish and Game  
[add contact info]

## DEPARTMENT OF FISH AND GAME

EXHIBIT C

1416 NINTH STREET  
P.O. BOX 944209  
SACRAMENTO, CA 94244-2090  
916) 654-3821



Date: \_\_\_\_\_

Margaret C. McNutt  
Director, Central Coast Ecoregion  
C/O Legal Department  
The Nature Conservancy  
201 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94105

Re: Notification of In-Lieu Fee for San Joaquin Kit Fox Mitigation

Dear Ms. McNutt and Legal Department,

The Department of Fish and Game (Department) is, by way of this letter, notifying you of a project proponent's election to meet mitigation requirements by providing funds to the Nature Conservancy (TNC) pursuant to the Voluntary Fee-Based Compensatory Mitigation Program (Program). The Program was established in agreement between the Department and TNC to preserve San Joaquin kit fox habitat, and to provide a voluntary mitigation alternative to project proponents who must mitigate the impacts of projects in accordance with the California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA).

This letter is to advise TNC of the following project:

PROJECT NAME: \_\_\_\_\_

PROJECT PROPONENT: \_\_\_\_\_

AMOUNT OF FEE: \_\_\_\_\_

EXPECTED DATE FOR TNC'S RECEIPT OF FEE: \_\_\_\_\_

DEPARTMENT CONTACT PERSON: \_\_\_\_\_

Based on the review of this project, the Department has determined that the project is eligible to participate in the Program.

Sincerely,

\_\_\_\_\_

REGIONAL MANAGER

EXHIBIT D

RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
 )  
State of California )  
Wildlife Conservation Board )  
1807 13<sup>th</sup> Street, Suite 103 )  
Sacramento, CA 95814 )  
 )

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("Grantor"), in favor of THE STATE OF CALIFORNIA ("Grantee"), acting by and through its Department of Fish and Game, a subdivision of the California Resources Agency, with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property in the County of \_\_\_\_\_, State of California, designated Assessor's Parcel Number \_\_\_\_\_ and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property");

B. The Property possesses wildlife and habitat values (collectively, "conservation values") of great importance to Grantee and the people of the State of California;

C. The Property provides high quality habitat for [*list plant and/or animal species*] and contains [*list habitats; native and/or non-native*];

D. The Department of Fish and Game has jurisdiction, pursuant to Fish and Game Code Section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species, and the Department of Fish and Game is authorized to hold easements for these purposes pursuant to Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

E. This Conservation Easement provides mitigation for certain impacts of [*describe project*] located in the City of [ ], County of [ ], State of California, pursuant to [*California Endangered Species Act Incidental Take Permit No. [ ] by and between [ ] and the Department of Fish and Game, dated [ ] the Agreement Regarding Proposed Stream or Lake Alteration [Notification No. [ ] ("Section 1603 Agreement") executed by [ ] and the Department of Fish and Game, dated [ ] the [document prepared pursuant to CEQA]*]



*certified by the [ ] for [project] [SCH No. [ ] dated [ ], and the Mitigation Plan created thereunder.]*

## COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purpose. The purpose of this Conservation Easement is to ensure the Property will be retained forever in a natural condition and to prevent any use of the Property that will 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 native species and their habitat in a manner consistent with the habitat conservation purposes of this Conservation Easement.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

- (a) To preserve and protect the conservation values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise 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;
- (c) To prevent any activity on or use of the Property that is inconsistent with the 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 purposes of this Conservation Easement;
- (d) All mineral, air and water rights necessary to protect and to sustain the biological resources of the Property; and
- (e) All present and future development rights.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited:

- (a) Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;
- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

- (c) Grazing or other agricultural activity of any kind;
- (d) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as may be specifically permitted under this Conservation Easement;
- (e) Commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property;
- (g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind;
- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (i) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property;
- (k) Altering the surface or general topography of the Property, including building of roads;
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease; and
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights.

5. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of this Conservation Easement.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within fifteen (15) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Conservation Easement or for any injury to the conservation values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire. 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, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

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, notwithstanding Civil Code Section 815.7, the California Attorney General or any entity or individual with a justiciable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1. Costs of Enforcement. Any costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2. Grantee's Discretion. Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or 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.

6.3. 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, 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 (ii) acts by Grantee or its employees.

6.4. 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 the Department of Fish and Game. These rights are in addition to, and do not limit, the rights of enforcement under *[insert title of permit/Agreement described in Recital E, above]*.

7. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee around the Conservation Easement area to protect the conservation values of the Property, including but not limited to wildlife corridors.

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement Deed, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes

imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep Grantee's interest in the Property free from any liens, including those arising out of any obligations incurred by Grantor or any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of Grantee or any of its employees; (2) the obligations specified in Sections 4, 9, and 9.1; and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

9.3. Condemnation. The purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Assignment. This Conservation Easement is transferable by Grantee, but 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. Grantee shall require the assignee to record the assignment in the county where the Property is located.

11. 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. Grantor further 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.

12. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor:

To Grantee: Department of Fish and Game  
Region \_\_\_\_  
[Region's address]  
Attn: Regional Manager

With a copy to: Department of Fish and Game  
Office of the General Counsel  
1416 Ninth Street, 12th Floor  
Sacramento, California 95814-2090  
Attn: General Counsel

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

13. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of [ ] County, State of California.

14. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

(g) 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 liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.



(i) No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Property. Without limiting the obligations of Grantor under Section 9.2, Grantor agrees to indemnify, protect and hold harmless the Indemnified Parties (defined in Section 9.2) against any and all Claims (defined in Section 9.2) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. If any action or proceeding is brought against any of the Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Indemnified Party or reimburse Grantee for all charges incurred for services of the Attorney General in defending the action or proceeding.

Despite any contrary provision of this Conservation Easement Deed, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

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

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

(3) The obligations of a responsible person under any applicable Environmental Laws; or

(4) The right to investigate and remediate any Hazardous Materials 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.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous

wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement Deed.

The term "Environmental Laws" includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that Grantor's activities upon and use of the Property will comply with all Environmental Laws.

(j) Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property which have not been expressly subordinated to this Conservation Easement Deed, and that the Property is not subject to any other conservation easement.

(k) 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. 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 14(k) 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 11.

(l) 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.

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

GRANTOR:

Approved as to form:

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

General Counsel  
State of California  
Department of Fish and Game

BY: \_\_\_\_\_  
Ann S. Malcolm  
Deputy General Counsel

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by \_\_\_\_\_, dated \_\_\_\_\_, to the State of California, grantee, acting by and through its Department of Fish and Game (the "Department"), a governmental agency (under Government Code Section 27281), is hereby accepted by the undersigned officer on behalf of the Department, pursuant to authority conferred by resolution of the California Fish and Game Commission on \_\_\_\_\_.

GRANTEE:

STATE OF CALIFORNIA, by and through its  
DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Authorized Representative

Date: \_\_\_\_\_