CITY OF PITTSBURG
AGENDA

JANUARY 19, 2021

CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA

REGULAR MEETINGS
7:00 P.M.

CITY COUNCIL
PITTSBURG ARTS AND COMMUNITY FOUNDATION
PITTSBURG POWER COMPANY
SOUTHWEST PITTSBURG GEOLOGIC HAZARD ABATEMENT DISTRICT II
SUCCESSOR AGENCY

PRESIDING

Marilyn "Merl" Craft, Mayor/Chair
Holland Barrett White, Vice- Mayor/Chair
Shanelle Scales-Preston, Council Member/Board Member
Juan Antonio Banales, Council Member/Board Member
Jelani Killings, Council Member/Board Member

FOR HOUSING AUTHORITY:
S.L. Floyd, Housing Authority Member
Annie Hill Herring, Housing Authority Member

Pittsburg City Council meetings are held the first and third Mondays of each month at 7:00 p.m. The Housing Authority meets in conjunction with the City Council on the third Monday of each month. The Pittsburg City Council meets regularly in the Council Chamber at 65 Civic Avenue, unless otherwise noted above. The City Council also sits as the Board of Directors of several other City agencies. The stipends for all agency members conform to state statutes governing compensation amounts. All other Agencies meet on an as needed basis and will be listed above if applicable. Copies of the open session agenda packets, which are distributed to the City Council, are on file in the office of the City Clerk, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning 72 hours in advance, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except from noon to 1:00 p.m. and City holidays). The agenda and reports are also located on the City's website at www.ci.pittsburg.ca.us. Additionally, if any reports or documents, which are public records, are distributed to the City Council less than 72 hours before the meeting, those reports and documents will also be available for public inspection in the City Clerk's Office and on the day of the meeting in the Council Chamber at the public counter area below the dais.

PUBLIC ADVISORY:
THE CITY COUNCIL CHAMBER WILL NOT BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the meeting of the City Council will be conducted electronically through Zoom and broadcast live through Granicus on the City's website. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber will not be open for the meeting. Council Members will be participating electronically and will not be physically present in the Council Chamber.

Beginning with the January 19, 2021 City Council Meeting, live comments will be allowed by members of the public via teleconferencing during Zoom meetings and emailed comments will no longer be read aloud by staff. To be placed in a queue to comment, please adhere to the following instructions.

To Participate in Public Comment During the Meeting:

- Notify the City Clerk's Office via email by 3:00 p.m. on the meeting date that you would like to be placed in the queue for general Public Comments, or comments on a specific agenda item. Requests received after 3:00 p.m. on the date of the meeting will not be able to comment.
- Email your name and telephone number to meetingcomments@ci.pittsburg.ca.us. We need both identifications to pair you with the item you wish to speak on. You must also be sure that you call in using the number you have provided or we may not be able to identify you as a speaker.
- Your email must include the words **"FOR PUBLIC COMMENT"** in the subject line and specify the **Agenda Item number or Non-Agenda** as appropriate.
- You will receive an email confirmation with instructions to log in.
- Once the meeting starts (check the Streaming Media link on our website – www.ci.pittsburg.ca.us) you can phone in to Zoom. If you log in before the event has actually started you may be disconnected.
- You will be added to the meeting as an attendee and will be called upon by staff for phone-in comments.
- Speakers will be muted until their opportunity to provide public comment.
- All comments will be subject to the three-minute time limitation (approximately 350 words).
- Begin your comment by providing your name and city of residence for the record – although providing this is not required for participation.
- Just as in a live meeting inside the Council Chamber, only one comment per agenda item per person is allowed.

The City of Pittsburg thanks you in advance for taking all precautions to prevent the spread of the COVID 19 virus.

7:00 P.M. - CONVENE IN OPEN SESSION FOR REGULAR MEETING

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PRESENTATION

1. Report on Human Trafficking

CITY MANAGER REPORTS/REMARKS

The City Manager may make brief announcements or informal comments at this time and brief the Council on items of interest. (No Action Required)

PUBLIC COMMENTS

See Public Advisory.

COMMITTEE REPORTS

Council Members may make a report on their committee assignments at this time. (see attached list of adhoc committees and other public agencies in which Council members particiapte). (No Action Required)

CITY COUNCIL MEETING

PUBLIC HEARING

2. Introduce and Waive First Reading of an Ordinance Amending Title 2 – Administration – by adding Chapter 2.06 “Electronic Filing of Campaign Disclosure Statements,” Relating to Electronic Filing of Fair Political Practices Commission Statements

   The City Clerk proposes an amendment to Title 2 – Administration of the Pittsburg Municipal Code. This amendment will require electronic filing of Campaign Disclosure Statements for all parties subject to disclosure under state law.

3. Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC (“Element 7”), AP-19-1435 and AP-19-1454.

   This is a public hearing on a request for City Council approval of a zoning amendment establishing a limited overlay district to allow a ‘Food and Drug Processing’ use with limitations exclusively for commercial cannabis businesses as well as consideration of a request for City Council approval of 1) four commercial cannabis permits to allow for the use of cannabis within medical and nonmedical consumer product manufacturing; and 2) an operating agreement between the City and Element 7. The project site is located at 1416 Bobo Court in

the CS (Service Commercial) District (Assessor's Parcel No. 088-570-009).

4. Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Canna Analytical, Inc., AP-19-1414.

   This item includes consideration of a request for City Council approval of: 1) commercial cannabis permits to allow for the testing of medical and nonmedical cannabis products at 1534 Willow Pass Road (Assessor's Parcel No.: 096-092-009); and 2) an operating agreement between the City and Canna Analytical Inc.

CONSIDERATION

5. Adoption of a Minute Order Authorizing the Co-Sponsorship of the Contra Costa County COVID-19 Youth/Young Adult Ambassador Program

   The City Council will consider the adoption of a minute order authorizing the participation in the Contra Costa County COVID-19 Youth/Young Adult Ambassador (YYA) Program providing for employment of Pittsburg youth and young adults.

CONFLICT OF INTEREST STATEMENT

City Council/Agency Members may make any conflict of interest declarations pertaining to Consent Calendar items at this time.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY, SUCCESSOR AGENCY AND SOUTHWEST PITTSBURG GHAD II CONSENT CALENDAR

6. Minutes of December 21, 2020

7. Adoption of a Pittsburg Power Company Resolution Approving the "On-Call" Utility Electrical Engineering Professional Services List

   Pittsburg Power Company (PPC), a joint powers agency, provides utility retail electric and natural gas services on Mare Island, Vallejo in the name of Island Energy (IE). In its normal course of business, PPC utilizes professional electric consulting and design services to support customer service and utility reliability projects.

8. Adoption of a Successor Agency Minute Order Approving the July 1, 2021 – June 30, 2022 Recognized Obligation Payment Schedule

   The Successor Agency for the Redevelopment Agency of the City of Pittsburg (Successor Agency) has prepared its Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2021 – June 30, 2022 (ROPS 21-22), pursuant to AB 26x1, also referred to as the "Dissolution Act".

9. Adoption of a City Council Resolution Accepting the Plans and Specifications and Authorizing Award of Project 4063, 2020/2021 CDBG ADA Curb Ramp Installation Project

Contract 2020-01, 2020/2021 CDBG ADA Curb Ramp Installation Project ("the Project') is for construction of 18 curb ramps in the neighborhoods located in the High School Village and Westwood Gardens subdivisions. Adoption of this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to M4 Concrete & Drywall, Inc. of Turlock, California.

10. Adoption of a City Council Resolution Accepting the Plans and Specifications, and Awarding Project 3115, Stoneman Avenue Safety Improvements Project

    Project 3115, Stoneman Avenue Safety Improvements Project (the "Project"), is for safety improvements at three intersections on Stoneman Avenue. Adoption of this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to Redgwick Construction Co. of Oakland, California.

11. Adoption of a City Council Resolution Accepting the Plans and Specifications, Allocating Funds and Awarding Project 5066, Water Treatment Plant Filter Gallery Valve Replacement Project

    Contract 2018-11, Water Treatment Plant Filter Gallery Valve Replacement Project (the "Project"), is for the removal and replacement of select filter valves, actuators, and spot piping repairs at the City's Water Treatment Plant. Adoption of this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to Con-Quest Contractors of San Leandro.

12. Adoption a City Council Resolution Approving an Agreement with Diablo Energy Storage LLC for Wetlands Ecosystem and Water Quality Educational Programs

    Diablo Energy Storage ("Diablo") is constructing and will operate a battery energy storage facility at 701 Willow Pass Road ("Project"). As part of the Project, Diablo is required to mitigate environmental impacts. As part of the required mitigation, Diablo will provide funds to the City in the amount of $55,000 to support the City's implementation of the Program for wetlands ecosystem and water quality educational programs within the City or the surrounding local community ("Grant").

13. Adoption of a City Council Resolution to Authorize the City Manager to Execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement between and amongst the City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

    To facilitate developer compliance with the Habitat Conservation Plan for the previously approved Sky Ranch subdivision, Montreux subdivision, and future potential Faria property development, staff recommends the City Council authorize the City Manager to execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement between and amongst the City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery

Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

14. Adoption of a City Council Resolution Approving an Exclusive Negotiating Rights Agreement between the City of Pittsburg and Global Resources Trading, LLC for Two Waterfront Properties

    Global Resources Trading, LLC (Developer) proposes to enter into an Exclusive Negotiating Rights Agreement (ENRA) for the lease and development of two adjacent City-owned properties, one of which is comprised of use-restricted tidelands property granted by the state to the City.

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Council Members may request items to be considered for future agendas. An item will only be brought forward with a majority vote and will appear on a future agenda with staff recommendations for further Council consideration.

COUNCIL MEMBER REMARKS

Council Members may make brief announcements or informal comments at this time. (No Action Required)

ADJOURNMENT to February 1, 2021

NOTICE TO PUBLIC

GENERAL INFORMATION

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SPEAKER'S CARD

Members of the audience who wish to address the City Council on issues that are not scheduled for the agenda and on any items listed as part of the agenda should complete a Speaker's Card available at the dais. Please read the card carefully in order to fill out the card properly. Submit the completed card to the City Clerk before the item is called, preferably before the meeting begins. Individuals will be given three minutes to address the Council unless additional time is allowed as provided for spokespersons. Speakers are not permitted to yield their time to another speaker. Prior to speaking, each member of the public shall state their name and business and City of residence in a clear and audible tone of voice. Pursuant to the Brown Act, no action may be taken by the City Council on items not already scheduled on the agenda; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

PUBLIC HEARINGS

Persons who wish to speak on Public Hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to public comment and brought to the Council/Agency level for discussion and action. Further comment from the audience will not be received unless requested by the Council/Agency.

There is a 90-day limit for the filing of a challenge in the Superior Court to certain City administrative decisions and orders which require a hearing by law, the receipt of evidence, and the exercise of discretion. The 90-day limit begins on the date the decision is final (Code of Civil Procedure Section 1094.6). Further, if you challenge an action take by the City Council in court, you may be limited, by California law, including but not limited to Government Code Section 65009, to raising only those issues you or someone else raised in the public hearing, or in written correspondence delivered to the City Council prior to or at the public hearing. The City Council may be requested to reconsider a decision if the request is made prior to the next City Council meeting, regardless of whether it is a regular or special meeting.

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the City of Pittsburg will provide special assistance for disabled citizens. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Council meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at 925-252-4850. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

DISRUPTIVE CONDUCT

The Council requests that you observe the order and decorum of our Council Chamber by turning off or setting to vibrate all cellular telephones, and that you refrain from making personal, impertinent, or slanderous remarks. Boisterous and disruptive behavior while the Council is in session, and the display of signs in a manner which violates the rights of others or prevents others from watching or fully participating in the Council meeting, is a violation of our Municipal Code and any person who engages in such conduct can be ordered to leave the Council Chamber by the Mayor.

LIVE MEDIA BROADCASTING ADVISEMENT

City Council meetings are webcast live on the City's website at www.ci.pittsburg.ca.us on the Streaming Media page. Past meetings are also archived on that webpage. City Council meetings are also broadcast live on CCTV, Channel 24 also re-run at a later date. For more information, please contact the City Clerk's office at 252-4850.

City Council Outside Agency / Liaison / Sub-Committees Assignments - 2021

Updated December 21, 2020

OUTSIDE AGENCY BOARDS	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
ABAG	Merl Craft / Holland White Alternate	Standing	Annual	G. Evans
Delta Diablo**	Juan Banales / Shanelle Scales-Preston Alt.	Standing	2nd Wednesday	R. Abono
East Co. Co. County Habitat Conservancy	Juan Banales / Jelani Killings Alternate	Standing	Monthly	K. Pollot
East County Water Management	Juan Banales / Jelani Killings Alternate	Standing	Annual	R. Abono
MCE Clean Energy Board	Shanelle Scales-Preston / Holland White Alt.	Standing	4 Per Year	D. Buchanan
TRANSPLAN / ECCRFFA	Holland White / Juan Banales Alternate	Standing	2nd Thursday	J. Hecht
Tri-Delta Transit (2 reps)***	S. Scales-Preston & Merl Craft / Jelani Killings Alt.	Standing	Last Wednesday	J. Hecht

LIAISON TO	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
East Bay League of Calif. Cities	Shanelle Scales-Preston / Merl Craft Alt.	Standing	3rd Thursday	*Rotational
Mayor's Conference	Merl Craft / Holland White Alt.	Standing	1st Thursday	G. Evans
School Districts Committee (2x2)	Merl Craft & Holland White / Shanelle Scales-Preston Alt.	Standing	4th Thursday even months	G. Evans

SUBCOMMITTEES	COUNCIL MEMBER(S)	TYPE	MEETS	STAFF
CAC CDBG Subcommittee	S. Scales-Preston & Jelani Killings / Holland White Alt.	Standing	As needed	M. Aliotti
City Council Policy and Procedures Review	Juan Banales & Merl Craft	Ad Hoc	As needed	G. Evans
City Infrastructure and Transportation	Holland White & Juan Banales / S. Scales-Preston Alt.	Standing	Ad needed	G. Evans
Community Services Subcommittee	Merl Craft & Shanelle Scales-Preston / Juan Banales Alt.	Ad Hoc	As needed	G. Evans
Constituent Management Services	S. Scales-Preston & Juan Banales / Holland White Alt.	Ad Hoc	As needed	G. Evans
Government Performance Subcommittee	Holland White & Juan Banales	Ad Hoc	As needed	G. Evans
Hills Committee	Juan Banales & Jelani Killings / Merl Craft Alt.	Ad Hoc	As needed	G. Evans
Pittsburg Recognition Committee	Merl Craft / Juan Banales Alt.	Ad Hoc	As needed	J. Hecht
Economic Develop/Waterfront Subcommittee	Jelani Killings & Holland White / Juan Banales Alt.	Standing	Quarterly	J. Davis
Finance Subcommittee	Juan Banales & Holland White / Jelani Killings Alt.	Standing	As needed	FINANCE
Land Use Subcommittee	Juan Banales & Holland White / Merl Craft Alt.	Ad Hoc	As needed	K. Pollot
Pittsburg Arts & Community Foundation	Merl Craft & S. Scales-Preston / Jelani Killings Alt.	Standing	As needed	G. Evans
Pittsburg Police Activities League (PAL)	S. Scales-Preston & Holland White / Juan Banales Alt.	Standing	Monthly	B. Addington
Power Company Advisory	S. Scales-Preston & Holland White / Juan Banales Alt.	Standing	As needed	D. Buchanan
Public Safety Subcommittee	Holland White & Shanelle Scales-Preston	Standing	As needed	B. Addington
Sister City Committee	Jelani Killings & Merl Craft / Holland White Alt.	Ad Hoc	As needed	K. Simonton
Successor Agency Subcommittee	Merl Craft & Jelani Killings / S. Scales-Preston Alt.	Standing	As needed	M. Aliotti

*Rotational Staff as assigned by City Manager
**Stipend of $209 per month
***Stipend of $100 per month

COMMISSION/SUBCOMMITTEE MEETING SCHEDULE

Following is a tentative list of currently scheduled Commission meetings for the upcoming month. For further information, please visit our website at www.ci.pittsburg.ca.us and click on the CALENDAR link for meetings, dates, times and locations.

Commission	Tentative Meeting Dates
Planning Commission	2nd and 4th Tuesdays
Community Advisory Commission	1st Wednesday

Planning Commission meetings are regularly held the second and fourth Tuesdays of the month in the Pittsburg City Hall Council Chambers.

Community Advisory Commission meetings are regularly held the first Wednesday of the month in the Pittsburg City Hall Council Chambers.

In addition to the Commission Meetings listed above, there are several Council Member Subcommittees that meet on an “as needed basis”. For a list of subcommittees that Council Members and staff are assigned to, please see the “Council Committee List” attached to the agenda.

Subcommittee Meetings that are anticipated to occur in the coming month vary. The meeting dates, times and locations for these meetings are yet to be determined. This information will be posted on the City’s website, www.ci.pittsburg.ca.us , as soon as it is determined. Please check the Calendar on the City’s website for information.

For further information, contact the City staff member assigned to that Commission or Subcommittee.

HUMAN TRAFFICKING OVERVIEW

Corporal Kyle Baker Pittsburg Police Department

GOALS FOR THIS DISCUSSION

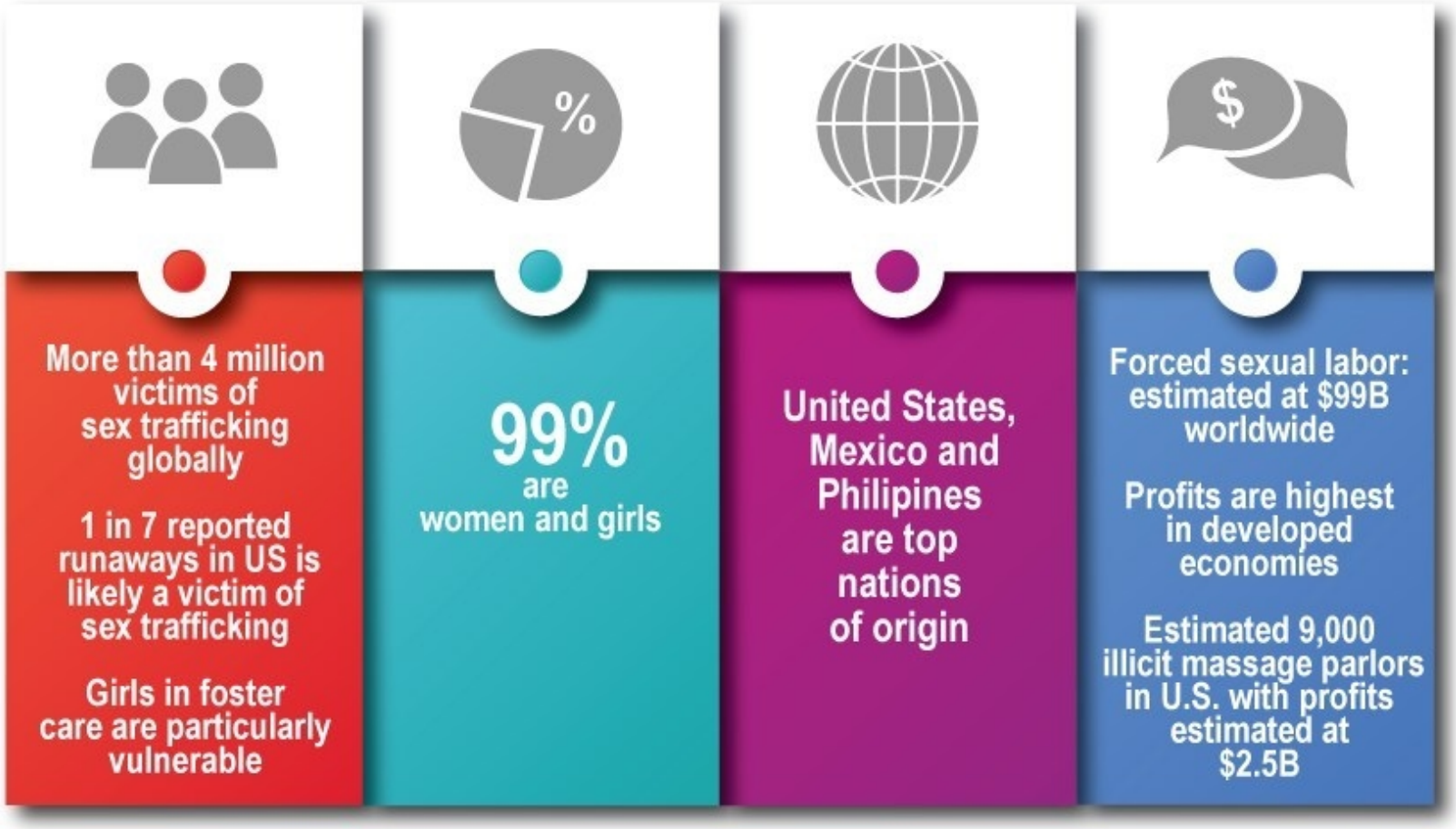
- 1. Understanding what human trafficking is.
- 2. Recognize that human trafficking happens everywhere. We don't need to panic, but be aware.
- 3. Recognize the warning signs.
- 4. What Pittsburg Police Department does to combat this epidemic.
- 5. Discuss future plans/outreach.

WHAT IS HUMAN TRAFFICKING?

- Simply put: Forcing someone into the commercial sex trade or forced labor.
- The "forcing," is the deprivation of liberty by such things as force, fear, coercion.
- Both labor trafficking and sex trafficking cases exist; the majority of our cases are sex trafficking based.

SO HOW PREVALENT IS IT? EVEN HERE?

- Should we Panic? NO! But we should be aware
- Human trafficking is everywhere, and its unique in that it often covers multiple locations/jurisdictions.
- For example, a case we investigated started with an exploiter picking up a girl in Pittsburg, and forcing her to conduct commercial sex acts in Oakland and San Jose



USA TODAY, July 2019

WHAT IS A TYPICAL CASE?

- There is no "typical," case in that every human trafficking/commercial sex case is different.
- However, from our experience, here are some common themes:
  - The victim is often young, (15-28 and female).
  - The victim usually comes from circumstances that are not ideal such as : poor family structure, abuse, drug use, chronic runaway.
  - The pimp is usually male, and deploys a number of different tactics IE "Romeo or Guerilla Pimping"
  - Victims are often not willing to share at first due to trauma or sense of love for the pimp.

WHAT ARE SOME THINGS TO LOOK FOR?

- **What can we educate our community on as far as signs that someone is a victim of human trafficking?**
- - First and foremost: Changes in behavior.
- -New ”boyfriend,” or friends that someone is unwilling to bring around.
- New clothes, shoes, phones, etc…. How is she/he paying for these?
- SOCIAL MEDIA!!!!!- What is being portrayed on their social media. We as parents must monitor this!!!

- These are suggestions that are just beginning, more to be discussed in future presentations.

OUR RESPONSE

- Pittsburg Police Department's approach to combating human trafficking is multi-faceted, and includes four main areas INVESTIGATION, TRAINING, COLLABORATION, EDUCATION.

INVESTIGATION

- VICE Unit- Investigative Unit with a primary mission of investigating human trafficking.
- Proactive Operations- Multiple operations a year where officers proactively seek out victims and exploiters using internet research and investigative techniques.
- Recent Example Cases:
- A suspect on parole met an 18 year old victim on a dating website. Picked her up in Pittsburg, kidnapped her, made her conduct commercial sex acts for multiple days. Arrested and sentenced to over 25 years in prison.
- A local gang member arrested and convicted for trafficking two juveniles in Contra Costa County. His co-defendant also arrested/convicted for providing drugs.

TRAINING

- Constant and updated training from outside sources for Investigators.
- Constant updates and trainings for patrol officers on human trafficking, including what to recognize at calls for service (i.e. domestic violence / missing persons investigations).
- Due to experience and dedication to combatting human trafficking, members of the Pittsburg Police Department routinely provide training for outside agencies.

COLLABORATION

- Pittsburg Police Department is one of the original agencies to be a part of a Contra Costa County Human Trafficking Task Force, which is headed by the District Attorney's Office.
- Constantly building relationships, and working closely with, District Attorney's Office, Victim Advocates, and Victim Support Groups.

EDUCATION

- PPD has provided community presentations on human trafficking to community groups (IE PAAACT). Willing to provide presentations for anyone.
- Citizen's Academies
- School Resource Officers educated on human trafficking investigative techniques, and able to provide instruction to school staff, students, and parents.

THE FUTURE…

- Human Trafficking is not going anywhere, so we must continue to build relationships and educate.
- Future community workshops.
- POST certified class in the works.

QUESTIONS?

- Corporal Kyle Baker
- kbaker@ci.pittsburg.ca.us
- 925-252-6464- Work Cell

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Introduce and Waive First Reading of an Ordinance Amending Title 2 – Administration – by adding Chapter 2.06 "Electronic Filing of Campaign Disclosure Statements," Relating to Electronic Filing of Fair Political Practices Commission Statements

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

The City Clerk proposes an amendment to Title 2 – Administration of the Pittsburg Municipal Code. This amendment will require electronic filing of Campaign Disclosure Statements for all parties subject to disclosure under State law.

FISCAL IMPACT

There is no fiscal impact in adopting this Ordinance.

RECOMMENDATION

Council open the Public Hearing, take public testimony, close the Public Hearing and waive further reading of the attached Ordinance.

BACKGROUND

State law authorizes cities to require specified individuals to file campaign disclosure statements electronically so long as the city adopts an ordinance and fulfills certain requirements. Once the statements are filed electronically, State law requires that the data be made available to the public on the internet. In addition, effective this year, State law requires a local government agency to post on its website a copy of any campaign finance document filed with that agency in paper format. The proposed ordinance would require electronic filing of campaign disclosure statements with the City, which would streamline the handling of the documents for public access.

SUBCOMMITTEE FINDINGS

This item was not submitted to a subcommittee.

STAFF ANALYSIS

Government Code Section 84615 is part of the Political Reform Act and authorizes a city to require elected officers, candidates, and committees to file campaign disclosure documents electronically, except those who receive less than $2,000 in contributions. The statute requires a city to adopt an ordinance with a finding that the electronic filing system will operate securely and not unduly burden filers. The State law further requires that data filed electronically be made available on the internet for the public to access.

In the most recent legislative session, the State legislature enacted AB 2151, which amended the Political Reform Act by adding Section 84616 to the Government Code to increase transparency regarding campaign contributions. The new law requires a city to post campaign disclosure statements that are filed in paper format on the city's website, subject to specified redactions.

To increase efficiency and utilize computer technology in conducting City business as allowed by State law, staff recommends requiring campaign disclosure statements to be filed electronically.

Staff has identified a vendor, Netfile, to facilitate the electronic filing. The vendor also provides electronic filing of Statements of Economic Interest (Form 700) and tracking of AB 1234 training and state-mandated sexual harassment training, along with a free public viewing portal to display the state-required FPPC 800 series forms. Electronic filing is available for automatic filing with other local public agencies.

The cost of a vendor will be absorbed in the City Clerk budget for the remainder of this fiscal year and will be included as part of the budget process in subsequent years. The Fair Political Practices Commission (FPPC) charges a fee of $1,000 on a city to implement electronic filing. The proposed vendor offers a price of $7,500 per year for up to five years, which includes the $1,000 fee to the FPPC. There is no cost to the filers and the information posted on-line will be free to the public for viewing purposes.

If adopted, the ordinance would become effective 30 days after adoption. The next campaign disclosure statements are due July 1, 2021. Staff would conduct outreach beginning in March to inform filers of the new requirement and how to file electronically.

ATTACHMENTS:
Ordinance

Report Prepared By:
Alice E. Evenson, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

An Ordinance of the City Council of the City Of Pittsburg, California, Adding Chapter 2.06 To the Pittsburg Municipal Code Regarding Electronic Filing of Campaign Finance Disclosure Statements	)))))	ORDINANCE NO. 21-1482

The City Council of the City of Pittsburg DOES HEREBY ORDAIN as follows:

WHEREAS, California Government Code Section 84615 provides that a legislative body of local government agency may adopt an ordinance that requires an elected officer, candidate, commissioner, committee, or other person required to file statements, reports or other documents required by Chapter 4 of the Political Reform Act, except those whose contributions and expenditures each total less than two thousand dollars ($2,000) in a calendar year, to file such statements, reports, or other documents online or electronically with the City Clerk; and

WHEREAS, the City Council expressly finds and determines that NetFile software web-based system contains multiple safeguards to protect the integrity and security of the data, and will operate securely and effectively and will not unduly burden filers; and

WHEREAS, the software used by NetFile's electronic filing system has been certified by the Secretary of State and meets the requirements set by Government Code Section 84615; and

WHEREAS, the City and NetFile will operate the electronic filing system in compliance with the requirements of California Government Code Section 84615 and any other applicable laws.

Now, therefore, the City Council of the City of Pittsburg does hereby ordain as follows:

Section 1. Recitals

The City Council hereby incorporates the above recitals into this Ordinance by this reference.

Section 2. Amendment

Chapter 2.06 is hereby added to Title 2 Administration and Personnel of the Pittsburg Municipal Code to read as follows:

“CHAPTER 2.06 ELECTRONIC FILING OF CAMPAIGN DISCLOSURE INFORMATION

Sections:

2.06.010 Required Use of Electronic Filing System.

2.06.020 Paper Filing Not Required After Electronic Filing.

2.06.030 Filing Options When a Copy Must be Filed With City Clerk.

2.06.040 Paper Filing When Cannot File Electronically.

2.06.050 Administrative Policies and Procedures.

§ 2.06.010 Required Use of Electronic Filing System.

(A) Any elected officer, candidate, commissioner, committee other person required to file specified statements, reports, forms, or other documents with the Pittsburg City Clerk as required by Chapter 4 (commencing with Section 84100 of Title 9) of the California Government Code, also known as the Political Reform Act, and that has received contributions or made expenditures of $2,000 or more in a calendar year, shall electronically file such statement using the City's online system according to procedures established by the City Clerk.

§ 2.06.020 Paper Filing Not Required After Electronic Filing. Any elected officer, candidate, commissioner, committee or other person who has electronically filed a statement, report, form, or other document using the City's online system is not also required to file a copy of that document in a paper format with the City Clerk.

§ 2.06.030 Filing Options When a Copy Must be Filed With City Clerk. In any instance in which an original statement, report, form, or other document must be filed with the Secretary of State or other agency, and a copy of that document is required to be filed with the City Clerk, the filer may electronically file a copy with the City Clerk, or may file in a paper format.

§ 2.06.040 Paper Filing When Cannot File Electronically. If, for technical reasons, the City's system is not capable of accepting a particular type of statement, report, form or other document, an elected officer, candidate, commissioner, committee or other person shall timely file that document in paper format with the City Clerk.

§ 2.06.050 Administrative Policies and Procedures. The City Clerk is authorized to adopt such administrative policies and procedures as deemed necessary to implement this Chapter.

Section 3. Severability

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other person or circumstances, shall not be affected hereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

Section 4. Publication

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and

again within 20 days after its adoption.

Section 5. Effective Date

This ordinance shall take effect and be in force thirty (30) days from and after the date of its adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pittsburg held on January 19, 2021, and was adopted and ordered published at a meeting of the City Council held on February 1, 2021 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC ("Element 7"), AP-19-1435 and AP-19-1454.

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

This is a public hearing on a request for City Council approval of a zoning amendment establishing a limited overlay district to allow a 'Food and Drug Processing' use with limitations exclusively for commercial cannabis businesses as well as consideration of a request for City Council approval of 1) four commercial cannabis permits to allow for the use of cannabis within medical and nonmedical consumer product manufacturing; and 2) an operating agreement between the City and Element 7. The project site is located at 1416 Bobo Court in the CS (Service Commercial) District (Assessor's Parcel No. 088-570-009).

FISCAL IMPACT

Adoption of the proposed operating agreement would require Element 7 pay the City a cannabis business tax of 5% on all gross receipts up to $10,000,000; 2.5% on all gross receipts between $10,000,001-$20,000,000; 2% on all gross receipts between $20,000,001-$50,000,000; 1% on all gross receipts between $50,000,001-$100,000,000; and 0.5% on all gross receipts over $100,000,000. Based on the applicant's projections, the City estimates this could potentially result in general fund revenues in excess of $100,000 a year for the term of the agreement.

RECOMMENDATION

Staff recommends the City Council open the public hearing, take public comment, close the public hearing and then:

1. Introduce, waive further reading and pass to second reading the attached ordinance establishing a limited overlay district at 1416 Bobo Court; and

2. Adopt a resolution (contingent on ordinance adoption) approving four commercial medical and nonmedical commercial cannabis permits and an operating agreement with Element 7.

BACKGROUND

In 2015, the state legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA) to regulate the medical cannabis industry. On November 8, 2016, the voters of the State of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("Prop 64"), while the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax on all commercial marijuana businesses that may operate within the City. As approved by the voters, the maximum marijuana business tax rate is 10% on all marijuana related transactions. In 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp.

On March 19, 2018, the City Council adopted Ordinance No. 18-1442, amending PMC Title 5 to allow for use of cannabis within medical and nonmedical product manufacturing and establishing procedures for issuing medical and nonmedical commercial cannabis permits. These amendments limit the types of commercial cannabis businesses to those designated as Type 6 (Manufacturers), Type 7 (Manufacturers), Type 8 (Testing Laboratories), and Type 11 (Distributors). Commercial entities seeking to manufacture cannabis-related products are required to obtain a commercial cannabis permit, which is subject to City Council approval, and is mandated to include: 1) a Business Operating Agreement, which sets forth the terms and conditions under which the commercial medical cannabis business would operate; 2) a Business Operating Plan; and 3) a Business Security Plan approved by the Chief of Police. Cultivation, dispensaries, and retail deliveries of cannabis in the City of Pittsburg remain prohibited.

On October 21, 2019, the City Council adopted Ordinance No. 19-1465, amending PMC Title 5, Chapter 5.70, sections 5.70.051 and 5.70.160 in order to: 1) specify how required distances between cannabis businesses and potentially sensitive uses are measured; 2) clarify definitions of specific potentially sensitive uses; and 3) establish a minimum distance of 1,000 feet between cannabis dispensaries and potentially sensitive uses, in the event cannabis dispensaries are allowed in the future.

On December 10, 2019, the Planning Commission voted 4-2 to adopt Resolution No. 10137 recommending City Council approval of a request for establishment of an overlay district to allow for a 'Food and Drug Processing' use with limitations exclusively for commercial cannabis businesses at 1416 Bobo Court.

Public Notice: On or prior to January 9, 2021, notice of the January 19, 2021, public hearing to consider this item was published in the East County Times, posted at City Hall, near the proposed project site, and on the "Public Notices" section of the city's website; was delivered to the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 600 feet of the proposed project site, to local service agencies expected to provide services to the business, and to individuals who had previously filed written request for such notice, in accordance with PMC section 18.14.010 and Government Code section 65091. Although not required, the notice was also posted on www.nextdoor.com ("Nextdoor").

SUBCOMMITTEE FINDINGS

On September 24, 2019, the Land Use Subcommittee was convened to discuss the proposed zoning text amendment application at 1416 Bobo Court. Staff presented three options of zoning amendments that could be processed to facilitate a potential cannabis manufacturing business at this location (which is the sole reason for the rezoning request). The subcommittee seemed to generally be in favor of the location for a cannabis facility; however, a clear consensus on which procedural approach would be best for rezoning was not reached, so staff determined that it would be most appropriate to keep the scope for rezoning as narrow as possible with a proposed overlay district specific to the desired use at the specific location.

STAFF ANALYSIS

Existing Conditions: Currently, the proposed project site consists of an existing 12,000 square-foot, double volume industrial building built in 2005, complete with landscaping, trash enclosure and parking lot on a 44,164 square foot (1.03 acre) site. According to City records, the building was originally developed in order to relocate an existing custom manufacturing business from Garcia Avenue, “Modern Cabinets,” which would remain in operation on site. Surrounding uses include the Wal-Mart Shopping Center and Motel 6 to the west, an auto repair shop to the east, and a self-storage facility to the north and north east. The Society of St. Vincent de Paul and the New Destiny Church are located to the south.

Project: The project proposes to establish an overlay district to add ‘Food and Drug Processing’ as an allowable land use, subject to limitations, at 1416 Bobo Court. This added land use category would be limited to exclusively allow commercial cannabis businesses, subject to approval by the City Council, and no other types of food and drug processing businesses that may otherwise fall within this land use category. No changes to other land use classifications or additional special regulations are proposed as part of this project.

Element 7 is requesting approval of commercial cannabis permits to operate as: 1) a Type 7 Manufacturer of medical cannabis products; 2) a Type 7 Manufacturer of nonmedical cannabis products; 3) a Type 11 Distributor of medical cannabis products; and 4) a Type 11 Distributor of nonmedical cannabis products. The use would be allowed to conduct “extraction” activities, in which the business would accept raw cannabis materials that would then be placed into processing equipment to extract Cannabidiol (CBD) and Tetrahydrocannabinol (THC). The extracted CBD and THC would be inserted into product formulations, batched, packaged, and shipped from the site to approved, legal destination points. The proposed use is requesting the ability to operate 24 hours a day. As specified in the recommended security plan, Element 7 would ensure a licensed and bonded security guard is present during all hours of operation. Further, all cannabis would be kept in secure storage areas, which would only be accessed by authorized personnel.

The proposed project site is located in an area which meets the distancing requirements contained in PMC Title 5. The proposal incorporates all the previously recommended operational and security requirements, as well as additional measures determined by the Police Department to be necessary.

Environmental: The proposed overlay district and overlay plan, as well as the proposed cannabis manufacturing and distribution business, are exempt from the requirements of the California Environmental Quality Act (CEQA) under the general rule of the state CEQA

Guidelines, section 15061, in that the activity in question consists of a limited zoning amendment that would only allow one new type of use on the site, which is very similar in nature to other existing allowable uses within the base zoning district, and would not result in any physical impact on the environment that could be considered more significant than what is already allowed within the base zoning. Furthermore, the amendment is proposed for one property only of approximately one-acre in size, which includes a previously improved site, that further minimizes the potential for any environmental impacts as a result of the proposed zoning overlay district.

General Plan/Code Compliance: The attached Planning Commission staff report (and supporting attachments) dated December 10, 2019, includes a full description of the proposed project's compliance with the City's General Plan, Zoning regulations, and a detailed analysis of the required findings of the Pittsburg Municipal Code (PMC).

Operating Agreement: The applicant is required to enter into an Operating Agreement with the City which sets forth the terms and conditions under which the use would operate. The operating agreement has a term of five years, at which time the applicant would be required to renew both the agreement and all commercial cannabis permits. The Operating Agreement also establishes a "cannabis business tax," rate, as described above, and includes an "operating plan," and "security plan."

The applicant would be required to transport cannabis and/or cannabis products via a courier service(s) holding a valid State of California license. Deliveries within the City shall be made only to Element 7 facilities, while deliveries outside the City shall be made only to approved, legal destination points. Deliveries to and from the locations within the City shall be limited to the hours of 8:00 AM and 6:00 PM, and all transportation activity must comply with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and implementing regulations.

Operating Plan: As part of the proposed Operating Agreement, the applicant is required to submit an operating plan which details procedures and requirements the applicant would follow on a day-to-day basis. The operating plan (attached) establishes practices to assure and control cannabis quality. This requires Element 7 to, among other things:

1. provide a list of responsible parties and employees;
2. provide a floor plan and process map showing where cannabis material would be delivered, stored, and shipped, as applicable;
3. require licensed delivery services for all shipping;
4. make necessary site improvements, including potentially providing a new refuse containment area;
5. specify all chemicals used in testing;
6. keep records of all cannabis material shipments, from acceptance to shipment or disposal/destruction;
7. opt into and maintain enrollment in the Marin Clean Energy (MCE) "Deep Green" or "Local Sol" Programs, or similar programs offered by MCE;
8. dispose of all waste and by-products per state and local requirements; and
9. provide a hazardous materials management plan (HMMP), as applicable, to the necessary agencies.

The applicant would also be required to submit to the City a list of all employees of the business, and consent to background checks by the Police Department as necessary.

Security Plan: The operating agreement also includes a security plan that has been reviewed and approved by the Police Department. In general, the security plan would require, among other things, the applicant to:

1. ensure a licensed and bonded security guard is present during all hours of operation;
2. make all inventory, testing, or other logs as required by the operating agreement available to the Police Department upon request;
3. maintain a professionally installed and monitored security system with 24-hour monitoring and 360-degree coverage;
4. use of commercial-grade locking mechanisms and card readers at any location cannabis is stored and all ingress/egress points of buildings;
5. submit to background checks as required by the Police Department; and
6. ensure that one manager-level employee remain on-call at all times in case of emergency.

The Chief of Police may also require the operator to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, limiting the amount of cannabis material stored on site, or such other measures as determined necessary by the Chief of Police at the business owner's sole expense.

Signage: Signage is not proposed with this application; however, future requests shall be approved and placed in accordance with Title 19 of the Municipal Code, and shall not utilize any wording that would convey the presence of cannabis at the project site, including but not limited to the terms "cannabis," "marijuana," or any other commonly used phrase associated with cannabis or marijuana use. The Police Department and Planning Division shall reserve sole discretion in determining whether any word or phrase conveys the presence of cannabis at the project site.

Fencing: The chain link fencing directly adjacent to Bobo Court shall be replaced with a steel or wrought iron gate at a minimum six (6) feet in height (measured from grade). All remaining chain-link fencing would be finished and maintained with vinyl privacy slats.

Required Findings: While PMC Chapter 5.70, which establishes the process by which Commercial Cannabis Permits may be issued, does not identify specific findings that must be made in order to approve a permit, PMC sections 5.70.051(f) and 5.7.160 (f) state, respectively, that the City Council may deny an application for commercial medical and nonmedical cannabis permits if it determines any of the following:

1. The applicant made one or more false or misleading statements or omissions on the registration application or during the application process;
2. The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to [PMC Chapter 5.70];
3. It is not in the best interest of the City, based upon the applicant's application or operating agreement, to issue a Permit to the business;
4. Potential threats to public health and safety cannot be sufficiently mitigated; or
5. Significant public opposition necessitates denial to preserve the health, safety, and general welfare of the City.

ATTACHMENTS:

1. Proposed Ordinance
2. Exhibit A to Proposed Ordinance: Map and Overlay Plan,
3. Proposed Resolution
4. Proposed Operating Agreement (portions redacted)
5. Map of Surrounding Uses
6. Public Hearing Notice
7. Staff Presentation

Report Prepared By: Jordan Davis, Assistant to the City Manager
Trishia Caguiat, Associate Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Ordinance Approving a Zoning Map Amendment and Cannabis Operating Agreement for Element 7, AP-19-1454) ORDINANCE NO. 21-

The City Council of the City of Pittsburg DOES ORDAIN as follows:

WHEREAS, on August 6, 2019, Tina Todesco filed Planning Application No. 19-1454 requesting approval for a zoning amendment establishing a limited overlay district to allow 'Food and Drug Processing' as a permitted use, contingent on City Council approval of the overlay district, amending the allowable use onsite to include a cannabis manufacturing facility located at 1416 Bobo Court in the CS (Service Commercial) District. Assessor's Parcel No. 088-570-009.

WHEREAS, the proposed project is governed by the applicable goals and policies of the Pittsburg General Plan and Pittsburg Municipal Code (PMC).

WHEREAS, on June 4, 2019, the Pittsburg City Council adopted Ordinance No. 18-1448 amending the definition of the 'Food and Drug Processing' land use to include businesses utilizing cannabis as a primary or accessory use not required to obtain a use permit, but shall comply with the requirements prescribed by PMC Title 5, and Chapters 5.70 and 18.88 PMC.

WHEREAS, on September 24, 2019, the Land Use Subcommittee was convened to discuss the proposed zoning text amendment application at 1416 Bobo Court. Staff presented three options of zoning amendments that could be processed to facilitate a potential cannabis manufacturing business at this location. Staff determined that it would be most appropriate to keep the scope for rezoning as narrow as possible with a proposed overlay district specific to the desired use at the specific location.

WHEREAS, on December 10, 2019, after conducting a duly noticed public hearing, the Planning Commission voted 4-2 to adopt Resolution No. 10137, recommending approval of the requested Overlay Zoning District.

WHEREAS, on January 19, 2021, the City Council held a public hearing on Element 7 Rezoning and Cannabis Operating Agreement, Application No. 19-1954, at which time and/or written testimony was considered.

SECTION 1. Findings.

A. Based on the City Council Staff Report entitled, "Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC ("Element 7"), AP-19-1435 and AP-19-1454," dated January 19, 2021, and

based on all the information contained in the Planning Division files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the public hearing, the City Council finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

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2. The proposed amendment is consistent with the objectives, policies, general land uses and programs in the General Plan, in that the amendment would remain consistent with the Service Commercial land use designation for the site, which is intended for commercial businesses that may not be appropriate in other retail commercial areas and generally include “auto repair facilities, contractors services, and other heavy maintenance activities (General Plan, page 2-6).” The manufacturing-only nature of the future intended cannabis manufacturing business is appropriate for the Service Commercial zoning district and surrounding land uses on Bobo Court.

3. The proposed limited overlay district and overlay plan is compatible with uses and regulations of the CS (Service Commercial) District. The proposed overlay will allow a cannabis manufacturing facility to operate on the site. The ‘Food and Drug Processing’ land use are substantially compatible with the existing service businesses on Bobo Court. The cannabis manufacturing business will be low impact and contained within an existing custom manufacturing building.

4. The proposed overlay district and overlay plan will help meet a community need, in that it will broaden the allowable uses for the area, thereby assisting property owners in filling vacant and underutilized spaces, and it will also provide additional business tax revenue and jobs for Pittsburg residents.

5. The proposed overlay district and overlay plan will be in conformity with the public convenience, general welfare, and good zoning practice, in that it will be consistent with the standard CS base zoning district land use regulations and the requirements of PMC Chapter 5.70 and Chapter 18.88, which regulate cannabis uses within the City, while also expanding the array of allowable uses for the area, which will assist property owners in filling vacant and underutilized spaces in the area. Future individual proposals for cannabis uses will be reviewed on an individual basis to ensure that they will operate in accordance with state law and are properly vetted, regulated, and will be monitored annually to have positive economic impacts in the communities in which they operate.

6. The proposed overlay district and overlay plan is needed because the base zone’s land use classifications would not permit a ‘Food and Drug Processing’ use and the proposed cannabis manufacturing facility is compatible with the surrounding land uses, which including businesses not allowed in other commercial districts because they have industrial characteristics, require heavy vehicle or truck traffic, or have certain other adverse impacts. The proposed business is compliant with all cannabis related regulations outlined in the PMC, inclusive of the minimum buffer of 600-feet to sensitive uses.

7. The proposed overlay district generally complies with the land use and development regulations of the base zoning district.

B. The staff report entitled, “Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC (“Element 7”), AP-19-1435 and AP-19-1454,” dated January 19, 2021, is referenced hereto as additional support for the findings.

SECTION 2. Zoning Map Amendment.

The Zoning Map, as referenced in Pittsburg Municipal Code, Title 18 (Zoning Ordinance) section 18.04.020, is hereby amended to change the zoning for a parcel commonly known as 1416 Bobo Court (APN: 088-570-009), as shown in Exhibit A of this Ordinance, from CS District to CS-O (Service Commercial with limited overlay) District with an accompanying overlay plan as set forth in Exhibit A).

SECTION 3. CEQA.

The proposed overlay district and overlay plan are exempt from the requirements of the California Environmental Quality Act (CEQA) under the general rule of the state CEQA Guidelines, section 15061, in that the activity in question consists of a limited zoning amendment that would only allow one new type of use on the site, which is very similar in nature to other existing allowable uses within the base zoning district, and would not result in any physical impact on the environment that could be considered more significant than what is already allowed within the base zoning. Furthermore, the amendment is proposed for one property only of approximately one-acre in size, which includes a previously improved site, that further minimizes the potential for any environmental impacts as a result of the proposed zoning overlay district.

SECTION 4. Severability.

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

SECTION 5. Publication.

The City Clerk shall either (a) have this ordinance published once within 15 days after adoption in a newspaper of general circulation or (b) have a summary of the ordinance published twice in a newspaper of general circulation, once 5 days before its adoption and again 20 days after its adoption.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Pittsburg held on January 19, 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

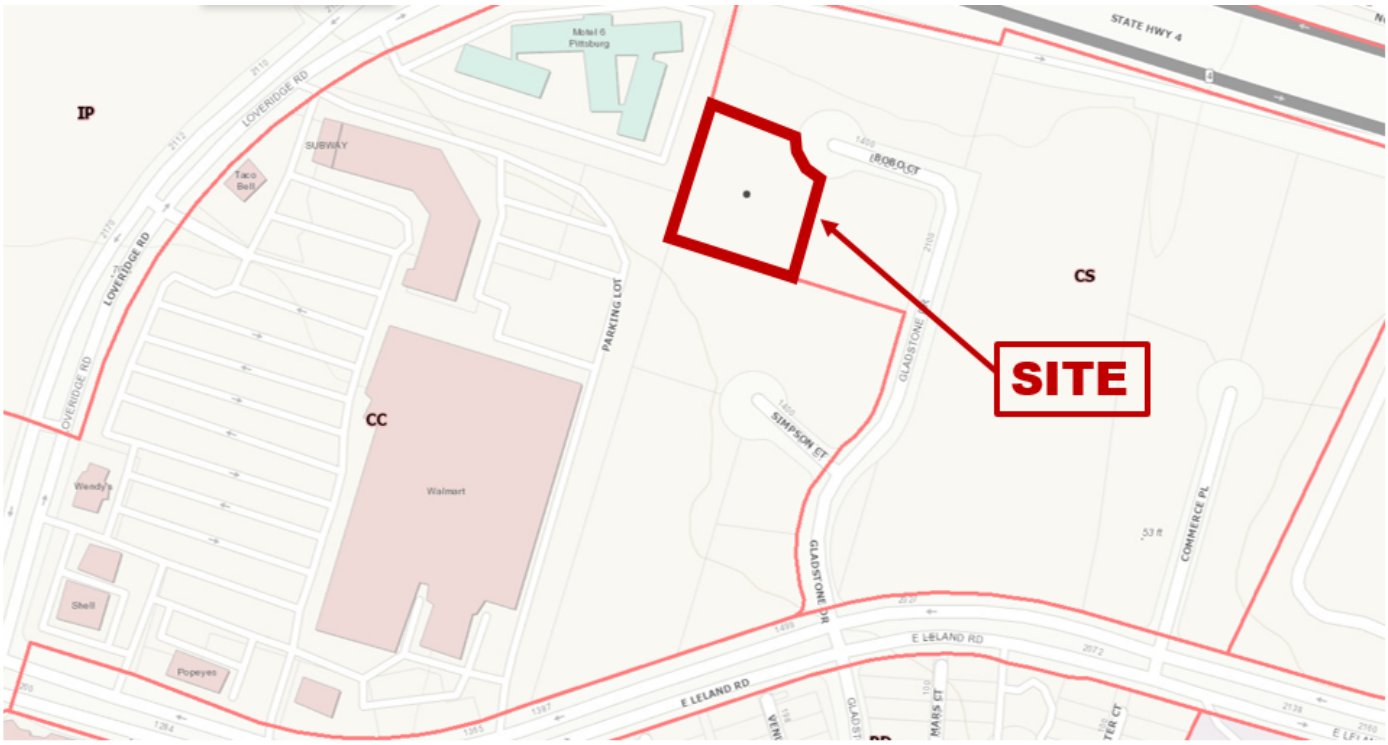
ATTEST:

_____
Alice E. Evenson, City Clerk

Exhibit A
CS-O (SERVICE COMMERCIAL WITH LIMITED OVERLAY) DISTRICT OVERLAY PLAN

Purpose and Applicability

The purpose of this Overlay Plan is to establish land use and development regulations for a 1.03-acre site located 1416 Bobo Court (APN: 088-570-009) as identified in the map below. The land use and development regulations herein are intended to be supplmental to those set forth by Pittsburg Municipal Code (PMC) Chapter 18.52 for the CS (Service Commercial) District.



Land Use and Development Regulations

The land use classifications allowed in the CS-O (Service Commercial with Limited Overlay) District shown above shall be the same as those allowed in the CS District (PMC Chapter 18.52), with the addition of 'Food and Drug Processing', as defined in PMC section 18.08.100.A, and subject to the following limitation: "Uses shall be limited to commercial medical and nonmedical cannabis businesses, as defined by PMC 18.88.010, and related activities within an enclosed building. Additionally, businesses are not required to obtain a use permit, but shall comply with the requirements prescribed by PMC Title 5, and Chapters 5.70 and 18.88 PMC. On-site tasting, sampling, or retailing of cannabis products to or by the public is prohibited."

Use and development of the property shall also comply with all other applicable regulations contained within PMC Title 5, Division II (Cannabis Dispensaries, Business and Deliveries) and Title 18, Division V (Cannabis Uses).

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

City Council Resolution Approving Commercial Cannabis Permits and Execution of an Operating Agreement Between the City and E7 Pittsburg LLC to Allow for Commercial Manufacturing and Distribution of Cannabis Products at 1416 Bobo Court	RESOLUTION NO. 21-_____

The Pittsburg City Council DOES RESOLVE as follows:

WHEREAS, on June 14, 2019, Robert M. DeVito Jr. filed Planning Application No. 19-1435, requesting approval of: 1) commercial cannabis permits to allow for the use of cannabis within medical and nonmedical manufacturing and distribution at 1416 Bobo Court (Assessor's Parcel No.: 088-570-009); and 2) an operating agreement between the City and the E7 Pittsburg LLC ("Element 7"); and

WHEREAS, on November 8, 2016, the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax on all commercial marijuana businesses that may operate within the City, should land use regulations and applicable provisions of the PMC be amended to allow for such businesses and/or if local control over such businesses is removed by the courts, the Legislature, or statewide initiative in the future. Measure J passed with 13,693 (68.3%) "yes" votes and 6,364 (31.7%) "no" votes. As approved by the voters, the maximum marijuana business tax rate is 10% on all marijuana related transactions; and

WHEREAS, in 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp; and

WHEREAS, on June 18, 2018, the City Council adopted Resolution No. 18-13496, establishing and imposing the marijuana business tax rate which shall be ten percent (10%) on marijuana businesses gross receipts, unless otherwise modified by City Council resolution; and

WHEREAS, on September 24, 2019, the Land Use Subcommittee was convened to discuss the proposed zoning text amendment application at 1416 Bobo Court. The subcommittee seemed to generally be in favor of the location for a cannabis facility; and

WHEREAS, on January 19, 2021, the City Council introduced Ordnance No. 21-____, approving the establishment of a limited overlay district at 1416 Bobo Court to allow for "Food and Drug Processing" uses, including cannabis manufacturing and distribution at the subject site; and

WHEREAS, the proposed cannabis facility is categorically exempt from environmental review under State CEQA Guidelines section 15301 (Existing Facilities); and

WHEREAS, while not required for the approval of cannabis permits or approval of an operating agreement, on or before January 9, 2021, a notice of the January 19, 2021, public hearing to consider this item was published in the East County Times, posted at City Hall, near the proposed project site, and on the "Public Notices" section of the city's website; was delivered to the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 600 feet of the proposed project site, to local service agencies expected to provide services to the business, and to individuals who had previously filed written request for such notice, in accordance with PMC section 18.14.010 and Government Code section 65091. Although not required, the notice was also posted on www.nextdoor.com ("Nextdoor"); and

WHEREAS, on January 19, 2021, the City Council held a public hearing to consider the proposed application and operating agreement, as well as related zoning map amendments to establish a limited overlay district, at which time oral and/or written testimony was considered.

NOW, THEREFORE, the City Council finds and determines as follows:

Section 1. Findings

A. Based on the City Council Staff Report entitled, "Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC ("Element 7"), AP-19-1435 and AP-19-1454," dated January 19, 2021, and based on all the information contained in the City files on the project, incorporated herein by reference and available for review at City Hall located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the public hearing, the City Council finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

2. The proposed cannabis facility is categorically exempt from environmental review under State CEQA Guidelines section 15301 (Existing Facilities).

3. To the knowledge of the City, the applicant has not made any false or misleading statements or omissions during the application process.

4. The proposed operating agreement with Element 7 will ensure that the commercial cannabis operation is consistent with the all regulations imposed by Chapter 5.70 of the Pittsburg Municipal Code and State law.

5. It is in the best interest of the City to issue commercial cannabis permits to the applicant, in that the operating agreement will require the applicant pay a cannabis business tax in the amount of: 5% on all gross receipts up to $10,000,000; 2.5% on all gross receipts between $10,000,001-$20,000,000; 2% on all gross receipts between $20,000,001-$50,000,000; 1% on all gross receipts between $50,000,001-$100,000,000; and 0.5% on all gross receipts over $100,000,000. This potential tax revenue would result in additional General Fund revenues, which would help the

City reach and maintain its financial goals. The operating agreement and issuance of commercial cannabis permits will also allow a new business within the City of Pittsburg to utilize cannabis in product manufacturing, consistent with General Plan Economic Development goals and policies that call for maintaining and enhancing an attractive climate for conducting business in Pittsburg (Goal 6-G-4), and will also support the City's continued effort to develop a research and development use and to promote economic diversification, ensure appropriate location, and maximize growth opportunities, while retaining and expanding existing businesses (6-P-12).

6. Potential threats to public health and safety will be sufficiently mitigated, in that the proposed operating agreement includes a security plan approved by the City's Chief of Police, which requires, among other things, the applicant to: 1) ensure a licensed and bonded security guard is present at all times during operation; 2) make all inventory, testing, or other logs as required by the operating agreement available to the Police Department upon request; 3) maintain a professionally installed and monitored security system with 24-hour monitoring and 360-degree coverage; 4) use of commercial-grade locking mechanisms and card readers at any location cannabis is stored and all ingress/egress points of buildings; 5) submit to background checks as required by the Police Department; and 6) ensure that one manager-level employee remain on-call at all times in case of emergency. The Chief of Police may also require the operator to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, limiting the amount of cannabis material stored on site, or such other measures as determined necessary by the Chief of Police at the business owner's sole expense.

7. The City Council has not received significant public opposition which would otherwise necessitate denial in order to preserve the health, safety, and general welfare of the City.

B. The Staff Report entitled, "Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC ("Element 7"), AP-19-1435 and AP-19-1454," dated January 19, 2021," is referenced hereto as additional support for findings.

Section 2. Decision

Based on the findings set forth above, the City Council hereby approves an Operating Agreement with Element 7, as well as commercial cannabis permits allowing the operator to function at 1416 Bobo Court as: 1) a Type 7 Manufacturer of medical cannabis products; 2) a Type 7 Manufacturer of nonmedical cannabis products; 3) a Type 11 Distributor of medical cannabis products; and 4) a Type 11 Distributor of nonmedical cannabis products.

Section 3. Execution of Agreement

The City Manager is hereby authorized to execute the Operating Agreement and take any and all other actions necessary to carry out this Resolution.

Section 4. Effective Date

This resolution shall take effect immediately upon the effective date of City Council Ordinance No. 21-_____, approving the establishment of a limited overlay district affecting the subject property.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

OPERATING AGREEMENT BETWEEN
THE CITY OF PITTSBURG
AND
ELEMENT 7 LLC

THIS OPERATING AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the City of Pittsburg, a California municipal corporation ("City") and Element 7 LLC, a California Corporation ("Licensee").

RECITALS:

A. On June 14, 2019, Robert M. Divito, Jr., on behalf of Element 7, LLC., filed Planning Application No. 19-1435, requesting approval of a Commercial Cannabis Permit in order to allow for use of cannabis within medical and nonmedical consumer product manufacturing and distribution.

B. On November 8, 2016, the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax of up to 10 percent on all commercial marijuana businesses that may operate within the City, should land use regulations and applicable provisions of the PMC be amended to allow for such businesses and/or if local control over such businesses is removed by the courts, the Legislature, or statewide initiative in the future.

C. In 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp.

D. On March 19, 2018, the City Council adopted Ordinance No. 18-1442, amending PMC Title 5 to allow for use of cannabis within medical and nonmedical product manufacturing and establish procedures for issuing medical and nonmedical commercial cannabis permits. These amendments limit the types of commercial cannabis businesses to those designated as Type 6 (Manufacturers), Type 7 (Manufacturers), Type 8 (Testing Laboratories), and Type 11 (Distributors). Commercial entities seeking to manufacture cannabis-related products are required to obtain a commercial cannabis permit, which would be subject to City Council approval, and shall be mandated to include: 1) a Business Operating Agreement which sets forth the terms and conditions under which the commercial medical cannabis business would operate; 2) a Business Operating Plan; and 3) a Business Security Plan approved by the Chief of Police. The total number of commercial cannabis permits that may be issued within the City is limited to nine. Cultivation, dispensaries and retail deliveries of cannabis in the City of Pittsburg remain prohibited.

E. On May 21, 2018, the City Council adopted Ordinance No. 18-1448, amending PMC Title 18 in order to allow for use of cannabis within medical and nonmedical product manufacturing. The adopted changes to Title 18 were consistent with

those adopted by the City Council as part of the Title 5 amendment process, and also modified the use definition of "food and drug processing," to specifically include commercial medical and nonmedical cannabis businesses, and added a limitation to specify that businesses utilizing cannabis as a primary or accessory use are not required to obtain a use permit, but rather shall comply with the requirements prescribed by Title 5 (including obtaining a Commercial Cannabis Permit along with an operating agreement, business operating plan, and security plan approved by the City Council), and prohibits onsite tasting, sampling, or retailing of cannabis products to or by the public.

F. On June 18, 2018, the City Council adopted Resolution No. 18-13496, establishing and imposing the marijuana business tax rate of up to 10 percent on marijuana businesses gross receipts.

G. In 2018, the state agencies responsible for promulgating regulations to implement the California Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) issued final regulations.

H. On December 10, 2019, the Planning Commission held a public hearing and adopted Resolution No. 10137, recommending approval of the creation of a Limited Overlay District to allow food and drug processing, including the manufacturing and distribution of commercial cannabis products.

I. On _____, 2021, the City Council held a public hearing, and voted to introduce and wave further reading of Ordinance No. 21-_____, approving the creation of a Limited Overlay District to allow food and drug processing, including the manufacturing and distribution of commercial cannabis products.

J. While not required, on _____, the City Council held a public hearing, considered oral and/or written testimony and adopted Resolution No. 21-_____, approving the requested Commercial Cannabis Permits.

AGREEMENT

1. DEFINITIONS.

In this Agreement, unless the context otherwise requires, terms have the following meaning. Capitalized terms within the Exhibits not defined below have the meaning set out in the Exhibits.

1.1 "Administrative Review Deposit" means the good faith deposit provided by Licensee in the amount of $5,000, and all interest earned on the Administrative Review Deposit.

1.2 "Agreement" means this Operating Agreement, inclusive of all Exhibits attached hereto.

1.3 "Business" means the commercial medical or non-medical cannabis business that is the subject of this Agreement.

1.4 "Cannabis" means medical and non-medical cannabis as defined by Health and Safety Code Section 11362.5 and Business and Professions Code Sections 26000 *et seq.*

1.5 "Cannabis Business Tax" means the Marijuana Business Tax as defined by Chapter 3.10 of the Pittsburg Municipal Code.

1.6 "Cannabis Flower" or "Cannabis Bud" means the trichome-covered part of a female cannabis plant.

1.7 "CBD" means Cannabidiol derived from cannabis.

1.8 "City" means the City of Pittsburg, including its agents, officers, employees, representatives, and elected and appointed officials.

1.9 "City Council" means the City Council of the City of Pittsburg.

1.10 "City Manager" means the City Manager of the City of Pittsburg, or their designee.

1.11 "Commercial Cannabis Permit" means a Commercial Medical Cannabis Permit and/or Commercial Nonmedical Cannabis Permit issued by City in accordance with Chapter 5 of the Municipal Code.

1.12 "Fees" means all charges, expenses, costs, monetary exactions, and any other monetary obligations imposed on Licensee by City, other than assessments, or regular or special taxes.

1.13 "Law" means ordinance, statutes, rules, regulations, or any order, decree, or directive of any court or any local, regional, State, or federal government agency, unless the context suggests a different meaning.

1.14 "Licensee" means Element 7 LLC

1.15 "Municipal Code" means the Municipal Code of the City of Pittsburg.

1.16 "Operating Plan" means the operating plan defined by Title 5 of the Municipal Code.

1.17 "Operations" means the operating of the Business upon receiving all necessary licenses, permits, and approvals.

1.18 "Security Plan" means the security plan defined by Title 5 of the Municipal Code, as approved by the Pittsburg Chief of Police.

1.19 "State" means the State of California.

1.20 "Term" means the term of the Agreement set forth in Section 3.3.

1.21 "THC" means tetrahydrocannabinol derived from cannabis.

1.22 "Trim" means the remnant plant matter resulting from the pruning of cannabis plants, and generally does not include cannabis flower or cannabis buds.

2. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) City has entered into this Agreement pursuant to the Municipal Code and its authority to address public health, safety, and general welfare concerns of the public within City; (b) there is certain authority to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder; and (c) this Agreement sets forth the terms and conditions under which Licensee will operate.

3. GENERAL PROVISIONS.

3.1 Property Description. See Exhibit A.

3.2 Effective Date. This Agreement shall be binding as to Licensee upon Licensee's execution hereof, with an effective date ("Effective Date") as of the effective date of the Resolution adopting the Agreement.

3.3 Commercial Cannabis Permit. Licensee is permitted to operate as: 1) a State of California Type 7 Manufacturer of medical cannabis products; 2) a State of California Type 7 Manufacturer of nonmedical cannabis products; 3) a State of California Type 11 Distributor of medical cannabis products; and 4) a State of California Type 11 Distributor of nonmedical cannabis products at the location described in Exhibit A and Exhibit B of this Agreement, commonly known as 1416 Bobo Court, and as further specified below. Prior to commencing production, distribution, or testing of any cannabis or cannabis products, Licensee shall provide the City Manager documentation certifying issuance of all required State of California licenses for such cannabis-related operations. Licensee shall be responsible for maintaining these licenses in good standing at all times during its operations within the City.

3.4 Term. The term of this agreement shall commence upon the Effective Date and shall extend five (5) years thereafter, unless the term is otherwise terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the parties.

3.5 Expiration of Term. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect, unless the duration of the

Agreement is extended by an amendment approved by the City Council.

3.6 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

3.7 Enforceability of Agreement. City and Licensee agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by either party hereto notwithstanding any change hereafter.

3.8 Further Assurances. Licensee shall execute and deliver to City all such other further instruments and documents as may be reasonably required by City to execute this Agreement.

3.9 Changes in State and Federal Laws and Regulations. If California law allowing the use for which the Commercial Cannabis Permit is issued is amended or repealed resulting in the prohibition of such use, or City receives credible information that the federal government will commence enforcement measures against such businesses and/or local government that allow them, City shall retain the right to terminate this Agreement in its sole discretion by giving Licensee 30 days prior written notice of such termination.

3.10 Prevailing Requirements. Licensee shall comply with all State of California permitting requirements, including but not limited to submittal of a security plan to the State licensing agency. In the event of a conflict between any state or local regulation, the more restrictive requirement, as determined by the City Manager, shall prevail.

4. OPERATING PLAN.

4.1 Responsible Parties. Prior to operation of the commercial cannabis business, the applicant shall submit to the Chief of Police or his designee, an exhibit listing the names, addresses, telephone numbers, and responsibilities of the business owner and manager-level employees of the business ("Responsible Parties"). This list shall remain confidential. Any changes to this list shall be submitted to the Chief of Police as soon as reasonably possible. These changes shall not be considered an amendment to this agreement, and shall not require any prior approval.

4.2 Employee List. Prior to operation of the commercial cannabis business, the applicant shall submit to the Chief of Police or his designee, an exhibit listing the names, addresses, telephone numbers, and responsibilities of all employees not considered Responsible Parties. All employees must be twenty-one (21) years of age or older. This list shall remain confidential. Any changes to this list shall be submitted to the Chief of Police as soon as reasonably possible. These changes shall not be considered an amendment to this agreement, and shall not require any prior approval.

4.3 Hours of Operation. Licensee shall be permitted to operate twenty-four hours a day. The Chief of Police shall reserve the right to place restrictions on the hours of operation at any time if determined, in the sole discretion of the Chief of Police, that operation of the business during certain hours of the day have been the cause of negative impacts to public safety or quality of life. As specified in Exhibit E, Licensee shall ensure a licensed and bonded security guard is present during all hours of operation.

4.4 Transportation Plan. Licensee shall only transport cannabis and/or cannabis products via a trucking service(s) holding an applicable and valid State of California License. Deliveries within the City shall be made only to those locations identified within subsection 3.1 of this Agreement. Deliveries outside the City shall be made only to approved, legal destination points. [redacted] All deliveries shall be subject to all applicable requirements of Exhibit E. All transportation activity must comply with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and implementing regulations as may be amended from time to time.

4.5 Mitigation Measures. Licensee acknowledges that minimizing the impacts on neighboring properties of the business, as well as the public health, is paramount. Licensee shall implement the following measures to mitigate potential negative impacts:

4.6.1 Licensee shall provide a hazardous materials management plan that complies with all federal, state, and local requirements for management of such substances. “Hazardous materials” includes any hazardous substance regulated by any federal, state, or local laws or regulations intended to protect human health or the environment from exposure to such substances.

4.6.2 All fencing shall meet the requirements of Municipal Code Title 18, “Zoning,” as applicable and shall be properly maintained. Licensee shall be responsible for obtaining all necessary permits from the City of Pittsburg Community Development Department prior to installation, including but not limited to design review and building permits. The final design and location of the fence shall be subject to approval by the Planning Division.

4.6.3 The City reserves the right to require additional measures be taken to ensure proper refuse collection at the 1416 Bobo Court location if the City Manager determines that the existing enclosure does not provide adequate or secure refuse storage space, including but not limited to an additional and/or expanded trash enclosure, larger bins, increased number of bins, and/or additional pickups to the maximum amount provided by the City-contracted refuse collection company. All enclosures shall meet the requirements of Municipal Code Title 18, “Zoning,” as applicable. Licensee shall be responsible for obtaining all necessary permits from the City of Pittsburg Community Development Department prior to any and all necessary construction. All changes to an existing enclosure shall be subject to approval by the

Planning Division.

4.6.4 Licensee shall opt into and maintain enrollment in the Marin Clean Energy (MCE) "Deep Green" or "Local Sol" Programs, or similar programs offered by MCE.

4.6 Cannabis Quality Control/Quality Assurance. Licensee shall at all times comply with state law including but not limited to the manufactured cannabis safety regulations at 17 California Code of Regulations Sections 40100 et seq. Licensee shall adhere to manufacturing practices as set forth in Title 21 of the Code of Federal Regulations, Parts 210, 211, 225, and 226.

4.7 Cannabis Inventory Control. All inventory of cannabis raw materials and finished products shall be kept in secured storage areas as identified in Exhibits B and E, or as otherwise approved by the Chief of Police, to which only authorized personnel shall have access. (See section 5 of this agreement for additional details and requirements.) Use and movement of: a) all cannabis materials; and b) manufactured products once cannabis has been added, shall be logged "cradle to grave" (i.e. acceptance of shipment to delivery at retail location) for inventory accuracy and management. Records shall be made available to the Police Department or any other agency with regulatory authority within 72 hours of written request therefor.

4.8 Employee Screening. Licensee shall require all prospective employees to submit to a live scan at a designated service provider and a background check by the California Department of Justice (DOJ) and local law enforcement. The cost of the background check shall be borne by the Licensee or the prospective employee. Licensee shall not employ any person in violation of PMC sections 5.70.052 and 5.70.161.

4.9 Extraction. [redacted]

4.10 Manufacturing Process. [redacted]

4.11 Chemical Usage. See Exhibit C.

4.12 Manufactured Products. See Exhibit D.

4.13 By-Products. By-products of the manufacturing process shall be disposed of pursuant to local and state laws.

4.14 Odor Management. While it is not anticipated that odors resulting from the manufacturing of cannabis products will occur based on the nature of the approved operation, the City Manager reserves the right to require additional measures be taken to eliminate odors, in the event odors resulting from cannabis are shown to have continually occurred. These measure may include, but are not limited to, installation of industrial grade HEPA filtration and/or activated carbon filtration systems. Any required measures shall be taken at the sole cost of the Licensee.

4.15 Required Changes. City shall have the discretion to require changes to any of the terms within this section, upon reasonable notice to Licensee.

4.16 Proposed Changes. Any proposed change(s) to this section must be approved in writing by the City Manager, or City Manager's designee at least thirty (30) days before the proposed change(s) is/are to take effect.

5. SECURITY PLAN.

The Security Plan was reviewed by the Chief of Police or their designee as of the effective date of this agreement, and is attached hereto and incorporated herein as Exhibit E ("Security Plan"). Licensee acknowledges that prior to operation, licensee shall be required to consult with the Police Department and submit for review and approval a Final Security Plan ("Final Security Plan") which contains detailed information including but not limited to: 1) the location, make(s) and model(s) of all security infrastructure; 2) a floor plan showing the location of secure areas; 3) any proposed building modifications; and 4) all other requirements identified in Exhibit E.

Licensee acknowledges that failure to adhere to the Security Plan, as may be modified from time to time by the Chief of Police, may result in termination of this Agreement and revocation of Licensee's corresponding Commercial Cannabis Permit(s). At the discretion of the City Manager, changes to the Security Plan may be considered minor amendments pursuant to Section 9.2 to this agreement.

6. PERIODIC REVIEW.

City shall conduct a review of this Agreement as set forth in the following subsections. However, City's failure to timely conduct such review shall not constitute a default or waiver under this Agreement.

6.1 Annual Review. City shall review the extent of good faith compliance by Licensee with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.

6.2 Notice. City shall notify Licensee in writing of the date of review at least thirty (30) days prior thereto.

6.3 Good Faith Compliance. During each annual review, Licensee is required to demonstrate good faith compliance with the terms of this Agreement.

6.4 Production of Documents and Other Evidence. Licensee agrees to furnish such reasonable evidence and adequate documentation of good faith compliance to City, in the exercise of its reasonable discretion, may require.

6.5 Cost of Annual Review. The reasonable costs incurred by City in connection with the annual review shall be borne by Licensee. Upon written request by City, Licensee shall pay City the greater of two thousand five hundred dollars ($2,500) or the actual cost of annual review (not to exceed Ten Thousand Dollars ($10,000) per review to cover City's costs. Failure, if any, by Licensee to pay the monies shall be grounds for declaring Licensee to be in default of this Agreement and/or in noncompliance thereof.

7. OBLIGATIONS OF LICENSEE.

7.1 General Obligations. In consideration of City entering into this Agreement, Licensee has agreed to comply with the requirements of this Agreement, and to perform certain obligations and provide certain contributions set forth therein.

7.2 Cooperation by Licensee. Licensee shall, in a timely manner, provide City with all documents, applications, plans, and other necessary information for City to carry out its obligations hereunder.

7.3 Governmental Permits. Licensee shall apply in a timely manner for such other permits and approvals from other governmental agencies as may be required by state law. Prior to commencing operation of the business, Licensee shall secure all required Governmental Permits and supply copies to the City for review.

7.4 Administrative Review Deposit. Prior to, or concurrently with, the Effective Date, Licensee has delivered to City the Administrative Review Deposit in the amount of five thousand dollars ($5,000). City may promptly deposit the Administrative Review Deposit in an interest-bearing account. Any interest accrued by the Administrative Review Deposit will be returned to the Licensee upon completion of review of this Agreement.

7.5 License and Permits. At all times, Licensee is required to maintain an active Business License and Commercial Cannabis Permit(s) with City, as well as all licenses required by the State of California.

7.6 Hiring of Local Employees. Licensee shall, to the fullest extent allowed by law, give preference to residents of the City of Pittsburg for employee hiring.

8. OBLIGATIONS OF CITY.

In consideration of Licensee entering into this Agreement, City has agreed to the following with respect to the operation of the Business:

8.1 Processing. Upon satisfactory completion by Licensee of all required preliminary actions to the satisfaction of City, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement.

9. AMENDMENTS.

9.1 Major Amendments. A "Major Amendment" shall be any modification that makes a substantive change, modification, or deviation in the terms of this Agreement or any Exhibit(s) attached hereto and incorporated herein. Approval of any Major Amendment shall be authorized by formal action of the City Council.

9.2 Minor Amendments. A "Minor Amendment" shall be any modification that does not make a substantive change, modification, or deviation in the terms of this Agreement or any Exhibit(s) attached hereto and incorporated herein, including but not limited to changes that may be specifically cited within this agreement as minor amendments. Minor amendments may be approved by the prior written consent of the City Manager.

10. TRANSFERS AND ASSIGNMENTS.

The transfer or assignment of this Agreement shall require authorization by the City Manager. Prior to authorizing a transfer or assignment, the City Manager may require additional information be provided, including but not limited to, additional background checks, financial disclosures, private party transfer agreements, or such other measures as determined necessary. The reasonable costs incurred by City in connection with the transfer or assignment review shall be borne by Licensee. Any such additional measures required shall be at the sole expense of Licensee. Any unauthorized transfer or assignment of this Agreement shall be considered grounds for termination of this Agreement.

11. DEFAULT.

Subject to any extensions of time by mutual consent in writing, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot be reasonable cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

11.1 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged default and the manner in which such default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

11.2 General Default Remedies. After notice and expiration of the thirty (30) day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement.

11.3 Remedies Cumulative. Any rights or remedies available to the non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement, shall be distinct, separate, and cumulative rights and remedies, whether or not exercised by the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

11.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

11.5 No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Licensee for any breach thereof. As such, the parties agree that in no event shall Licensee be entitled to recover damages against City for breach of this Agreement.

11.6 Effect of Licensee Default. No Commercial Cannabis Permit(s) shall be issued, and any existing Commercial Cannabis Permit(s) shall be suspended or revoked, after Licensee is determined by City to be in default of the terms and conditions of this Agreement, and until such default is thereafter cured by Licensee or is waived by City.

11.7 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to a of default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

11.8 Scope of Waiver. No express written waiver of any default shall affect any other default, or cover any other period of time specified in such express waiver.

11.9 Attorney's Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorney's fees, court costs and such other costs as may be fixed by the court.

11.10 Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Contra Costa, or in the United States District Court for the Northern District of California, as consistent with applicable law.

11.11 Survival. Notwithstanding termination of this Agreement for any reason, whether under Section 3.3 or Section 12, Section 17 (Hold Harmless) and Section 18 (Indemnification) shall be continuing obligations of Licensee and shall survive this Agreement.

12. TERMINATION

12.1 Mutual Consent. This Agreement may be terminated in whole or in part by the mutual written consent of the parties.

12.2 Failure to Obtain or Maintain Required State or Local Licenses. If Licensee fails to obtain or maintain in effect all California and City licenses and permits required for the Business, City may terminate this Agreement.

12.3 Surrender or Revocation of Commercial Cannabis Permit. If Licensee voluntarily surrenders their Commercial Cannabis Permit, or if their Commercial Cannabis Permit is revoked by City, Licensee shall immediately cease all operations at the Business, and this Agreement shall terminate automatically, without further action required by either Party.

13. RELATIONSHIP OF PARTIES.

13.1 Independent Contractors. The parties agree that the Business is a private endeavor and that neither party is acting as the agent of the other in any respect hereunder.

13.2 No Joint Venture or Partnership. City and Licensee hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Licensee joint venturers or partners.

13.3 No Third Party Beneficiaries. The only parties to this Agreement are Licensee and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

13.4 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Agreement. Therefore any ambiguities or uncertainties are not to be construed against or in favor of either party.

14. APPLICABLE LAW AND REGULATIONS.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

14.1 General. Licensee shall at all times comply fully with all current and future State and City laws and regulations applicable to Licensee's Business, and shall ensure such compliance by all of Licensee's employees, contractors, vendors, and members of the public invited or allowed access to the Business.

14.2 State License. Licensee shall promptly apply for and obtain all State licenses required for the Business's operations. Failure to obtain and maintain required State license(s) during the term of this Agreement shall constitute a default, and shall be grounds for termination of this Agreement.

15. CANNABIS BUSINESS TAX.

Licensee agrees to and acknowledges all provisions found in Chapter 3.10 of the Municipal Code.

15.1 Cannabis Business Tax. Licensee agree to pay City a cannabis business tax applied to all gross receipts on a monthly basis. "Gross receipts" shall have the same meaning as set forth in Chapter 3.10 of the Municipal Code. Payment for the preceding month must be delivered to City by the last business day of the succeeding month. The applicable tax rate shall be as follows:

- Five percent (5%) on all gross receipts up to ten million dollars ($10,000,000);
- Two and one-half percent (2.5%) on all gross receipts between ten million and one dollars ($10,000,001) and twenty million dollars ($20,000,000);
- Two percent (2.0%) on all gross receipts between twenty million and one dollars ($20,000,001) and fifty million dollars ($50,000,000);
- One percent (1.0%) on all gross receipts between fifty million and one dollars ($50,000,001) and one hundred million dollars ($100,000,000); and
- One-half percent (0.5%) on all gross receipts over $100,000,000.

15.2 Late or Delinquent Tax Payments. Late or delinquent Cannabis Business Tax payments by Licensee shall be subject to the penalties and interest rates stated in Chapter 3.10 of the Municipal Code.

15.3 Deficiency Determinations. If City is not satisfied with the veracity of reports filed by Licensee regarding the Business's total gross receipts, City may

compute and determine the amount of Cannabis Business Tax to be paid and make a deficiency determination upon the basis of the facts contained in the report(s), or upon the basis of any information in City's possession, or that may come become in City's possession within three years of the date the Cannabis Business Tax was originally due and payable. One or more deficiency determinations of the amount of Cannabis Business Tax due for a period or periods may be made.

15.4 Appeal. Licensee may appeal City's deficiency determination to City Council by filing notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of the Cannabis Business Tax due. The City Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to Licensee. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable.

15.5 Record Retention. Licensee shall keep, maintain, and preserve all records that may be necessary to determine the amount of Cannabis Business Tax owed by the Business for a period of three (3) years. City shall have the right to inspect such records at all reasonable times.

15.6 Cannabis Business Tax is debt to City. The amount of any Cannabis Business Tax , penalties, and interest imposed by this Agreement is deemed to be a debt to City. City may seek all remedies legally available to City, to recover any unpaid debts by Licensee.

15.7 Cannabis Business Tax Survival. Notwithstanding any other section of this Agreement, future legislation, decision(s) or other actions by any court of competent jurisdiction; local, regional, state, or federal regulatory action; or any other mechanism that invalidates or otherwise limits the applicability of the Cannabis Business Tax, Licensee expressly agrees to pay City the Cannabis Business Tax in the amounts, and in the manner set forth in this Section 15.

16. SUBSEQUENT LAWS OR JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

17. HOLD HARMLESS.

Licensee hereby agrees to, and shall defend, save, and hold City and its elected

and appointed boards, commissions, officers, agents, and employees, harmless from any and all claims, costs and liability for any damages, personal injury or death, which may arise directly or indirectly from Licensee's operations under this Agreement.

18. INDEMNIFICATION.

Licensee agrees to indemnify, defend, and hold harmless City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any action arising out of or stemming from this Agreement. Licensee may select its own legal counsel to represent Licensee's interests at Licensee's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Licensee shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Licensee agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney's fees and time referenced herein.

18.1 Licensee's Release of City. Licensee, on behalf of itself and anyone claiming by, through or under Licensee hereby waives its right to recover from and fully and irrevocably releases City, and their council members, board members , employees, officers , directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Licensee may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects , errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Business, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

18.2 Scope of Release. The release set forth in Section 19 hereof includes claims of which the Licensee is presently unaware or which Licensee does not presently suspect to exist which, if known by Licensee, would materially affect Licensee's release of the Released Parties. Licensee specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Licensee agrees, represents and warrants that Licensee realizes and acknowledges that factual matters now unknown to Licensee may have given or may hereafter give rise to causes of action, claims , demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Licensee further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Licensee nevertheless hereby intends to release, discharge and acquit City

from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Licensee, on behalf of itself and anyone claiming by, through or under Licensee, hereby assumes the above-mentioned risks and hereby expressly waives any right Licensee and anyone claiming by, through or under Licensee, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Licensee's Initials: _____

Notwithstanding the foregoing, this release shall not apply to, nor shall City be released from, City's actual fraud or misrepresentation.

18.3 Separate Agreement. The parties agree that Section 19 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 19, which shall survive such invalidation, nullification, or setting aside.

19. LIABILITY INSURANCE.

Licensee shall maintain, or cause to be maintained, in force during the term of this Agreement, public liability and property damage insurance, including personal injury, contractual, and owned and non-owned vehicles and equipment, with such coverage and limits as may be reasonably requested by City from time to time, but in no event for less than the sum of one million dollars aggregate ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate.

19.1 Public Liability Insurance. Public liability insurance policy or policies shall name City as an additional insured, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by City will be called upon to contribute to a loss under this coverage.

19.2 Certificate of Endorsement. Licensee shall provide City with a certificate and endorsement, in forms satisfactory to City, evidencing such insurance coverage or coverages shall be filed with City prior to construction of the Project, and the certificate and endorsement shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to City.

19.3 Coverage Reduction of Cancellation. Licensee shall, within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in

coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Licensee's expense, and Licensee shall promptly reimburse City for such expense upon receipt of billing from City.

20. NOTICES.

Any notice or communication required hereunder between the parties shall be in writing, and may be delivered either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

Notices to City shall be addressed to:

City of Pittsburg
Attn: City Manager
65 Civic Avenue
Pittsburg, CA 94565

With copies to:
City of Pittsburg
Attn: City Attorney
65 Civic Avenue
Pittsburg, CA 94565

Notices to Licensee shall be addressed to:

Robert M. DiVito, Jr.
Element 7 Pittsburg, LLC
8033 Sunset Blvd #987
Los Angeles, CA. 90046

21. EXHIBITS.

21.1 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain exhibit listed below, as determined by the accompanying letter designation.

EXHIBIT A: Property Description

EXHIBIT B: Site and Floor Plans (Confidential)

EXHIBIT C: Chemical Usage

EXHIBIT D: Manufactured Products

EXHIBIT E: Security Plan

21.2 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

22. SEVERABILITY.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

23. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof.

24. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

Executed at Pittsburg, California on _____.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the dates written above.

CITY OF PITTSBURG, **a municipal corporation**	**ELEMENT 7 PITTSBURG, LLC** **a California Corporation**
_____	_____
Garrett Evans, City Manager	**Name:**
	Title:
ATTEST:	
_____	
Alice E. Evenson, City Clerk	
APPROVED AS TO FORM:	
_____	
Donna Mooney, City Attorney	

EXHIBIT A: Property Description

1416 Bobo Court:

[LEGAL PROPERTY DESCRIPTION TO FOLLOW]

More commonly referred to as 1416 Bobo Court, Assessor's Parcel No.: 088-250-050.

EXHIBIT B: Site and Floor Plans (CONFIDENTIAL)

EXHIBIT C: Chemical Usage

Chemical	Volatile/Non-Volatile
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

EXHIBIT D: Manufactured Products

The table below is an exclusive list of products, including end-uses of each product, that will be manufactured by Licensee at the Business. Licensee agrees that no other cannabis derived products will be manufactured at the Business, other than those that appear on the table below. Licensee's manufacturing of a cannabis derived product that is not on the table below shall result in an automatic termination of this Agreement, and automatic revocation of their corresponding Commercial Cannabis Permit(s).

Products listed below are approved as of the effective date of this agreement. Changes to the list below shall be considered a "Major Amendment." Approval of any Major Amendment shall require a noticed hearing and must be authorized by formal action of the City Council.

Type of Product (oil, edible, etc.)/End Use of Product
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted]

EXHIBIT E: Security Plan

The following requirements shall be completed prior to commencing manufacturing of cannabis products, unless otherwise noted. Any changes to the security plan shall be subject to approval by the Chief of Police.

General Provisions:

A. All necessary steps shall be taken to minimize incidents of theft, vandalism, or any other instances stipulated by the Chief of Police that adversely impact the safety of the community. Should the business necessitate an increased police presence, the Chief of Police may require Licensee to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, hiring licensed and bonded security guards approved by the Police Department, or such other measures as determined necessary by the Chief of Police. Any such additional measures required by the Chief of Police shall be at the business owner's sole expense.

B. The total amount of concentrated THC stored at any one time shall be documented, and records shall be made available to the Chief of Police or his/her designee at all times. The Chief of Police shall reserve the right to establish a limit on the amount of THC stored at any time.

C. All inventory, testing, usage, or other logs shall be made available to the Police Department or City Manager upon request.

D. All cannabis concentrate shall be stored in a secure facility as shown in Exhibit B. The secure area shall remain locked at all times, and shall be accessible only by those individuals identified and approved as "Responsible Parties."

E. All signage shall be approved and placed in accordance with Title 19 of the Municipal Code, and shall not utilize any wording that would convey the presence of cannabis at the project site, including but not limited to the terms "cannabis," "marijuana," or any other commonly used phrase associated with cannabis or marijuana use. The Police Department and Planning Division shall reserve sole discretion in determining whether any word or phrase conveys the presence of cannabis at the project site.

Fencing/Gates:

F. All fencing shall meet the requirements of Pittsburg Municipal Code (PMC) Title 18, "Zoning" as applicable and shall be properly maintained. The chain link fencing directly adjacent to Bobo Court shall be replaced by steel or wrought iron gate a minimum six (6) feet in height (measured from grade). All remaining chain-link fencing shall be finished with vinyl privacy slats. Licensee shall be responsible for

obtaining all necessary permits from the City of Pittsburg Community Development Agency prior to installation.

Security Guard:

G. Licensee shall ensure a licensed and bonded security guard is present during all operational hours.

Security System: The following requirements shall apply to all locations identified within section 3.1 of this Agreement, unless otherwise noted.

H. All facilities shall be alarmed with a professionally installed and maintained and centrally-monitored security system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 et seq. and whose agents are properly licensed and registered under applicable law. Notice of the triggered alarm shall be sent to the Police Department.

I. The Licensee shall provide for the installation of 24-hour security surveillance cameras of at least high definition (HD) quality to monitor all entrances and exits to and from the premises, all interior spaces where cannabis, cash, or currency is being stored, and all interior spaces where diversion of cannabis could reasonably occur. Access to the security surveillance camera network shall be given to the Police Department.

J. The Licensee shall ensure the retention of 24-hour surveillance camera footage for a minimum of sixty (60) days. All surveillance camera footage shall be made immediately available to the Chief of Police or the Chief of Police's designee, or to any other state or local law enforcement, upon request.

K. Use of commercial-grade, non-residential locking mechanisms and access card readers shall be required at all points of ingress and egress to and from the exterior of the building, as well as to and from any areas where cannabis or cannabis products are stored. All card entries shall be logged for a minimum of sixty (60) days and made available to the Police Department upon request.

L. Sensors shall be installed to detect entry and exit from all secure areas.

M. The Licensee shall provide the Chief of Police building schematic plans (which shall be kept confidential) showing, at a minimum:

[redacted]

[redacted]

N. The applicant shall submit a final design/scope-of-work of the security system to be installed, which shall be approved by the Chief of Police. The final security system plan shall include, but is not limited to, the following features:

O. All facilities shall maintain adequate exterior lighting in the parking areas and entry/exit points.

Background Checks/Disqualifying Convictions:

P. The Commercial Medical Cannabis Permit holder(s), their business operator(s), and all employees shall be subject to background search by the California Department of Justice (DOJ) and local law enforcement. At the City's discretion, the Police Department may conduct a background search of any Commercial Medical Cannabis Permit holder, their business operators, and employees.

Q. Commercial medical cannabis business owners, operators, managers, and employees must not have felony convictions, as specified in Penal Code section 667.5(c) and section 1192.7(c), or a criminal conviction that substantially relates to the qualifications, functions, or duties of the business or profession, including a felony conviction involving fraud, deceit, or embezzlement or a criminal conviction for the sale or provision of illegal controlled substances to a minor.

Operation:

R. All cannabis and cannabis products not being manufactured or tested shall be stored in a secure room(s) which are only accessible by card reader entry. Access to these rooms shall be limited to the list of “responsible parties” provided to the Chief of Police pursuant to this agreement. All card entries shall be logged for a minimum of sixty (60) days and made available to the Police Department upon request.

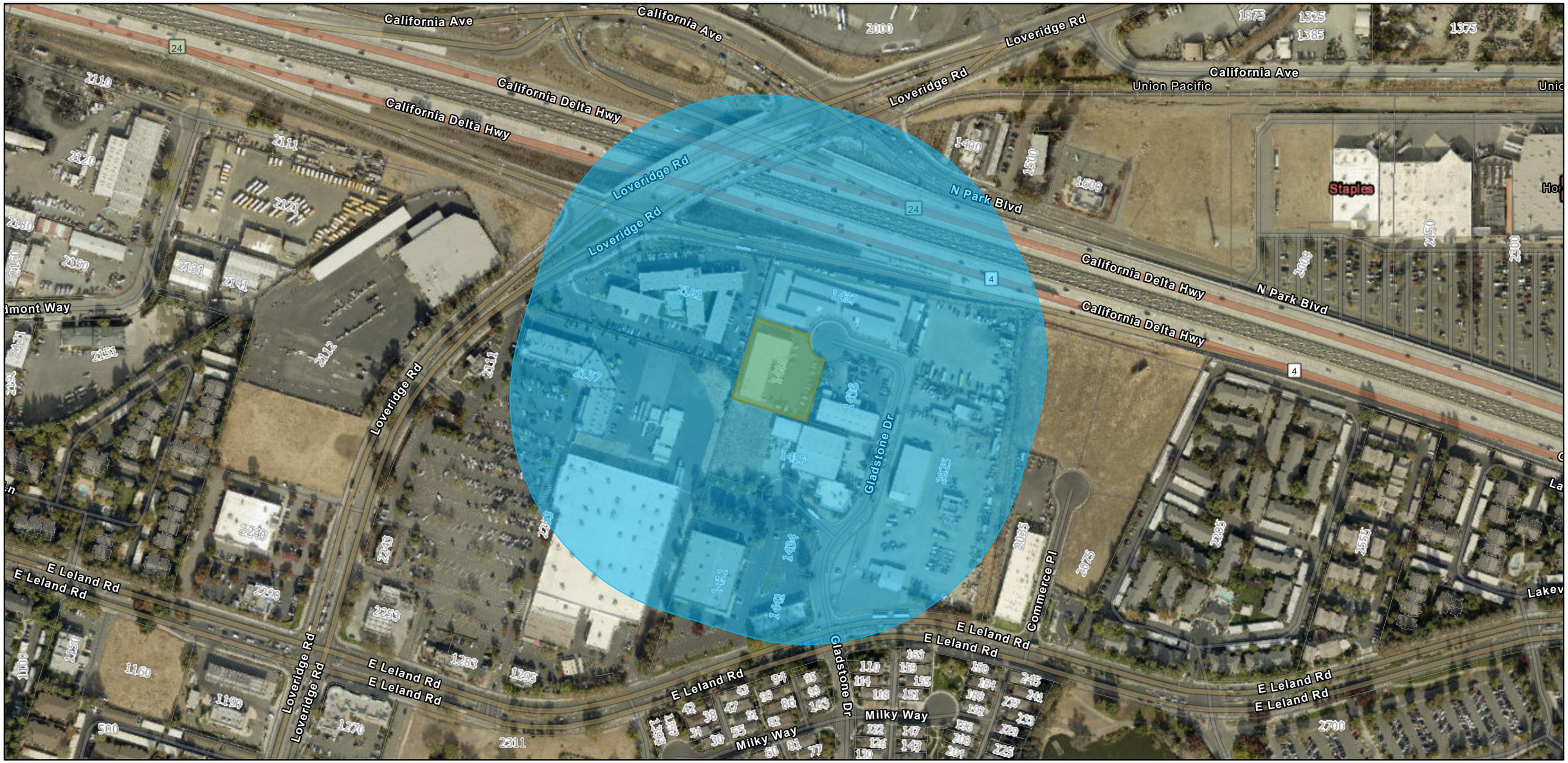
S. At least one person listed as a “responsible party,” shall be “on-call” at all times in case of incidents of theft, vandalism, or any other instances stipulated by the Chief of Police that require immediate notification by the Police Department. Upon any incidents of theft, vandalism, or any other instances stipulated by the Chief of Police, a “responsible party,” shall notify the Police Department immediately.

T. All cannabis deliveries to the site shall adhere to the following protocol:

[redacted]

U. All cannabis deliveries to and from the sites shall comply with section 4.5 of this agreement.

Map of Surrounding Uses - Element 7



1/5/2021, 6:07:17 PM

Override 1

Parcel

1:4,000

0 205 410 820 ft

0 62.5 125 250 m

USDA FSA, GeoEye, Maxar, Esri, HERE, Garmin, iPC, Sources: Esri, HERE, DeLorme, USGS, INCREMENT P, NRCan, © OpenStreetMap contributors, and the GIS User Community

Disclaimer: All reasonable effort has been made to assure the accuracy of the maps for its intended purpose.

City of Pittsburg
Community Development Department – Planning Division
65 Civic Avenue, Pittsburg, CA 94565 | Tel: (925) 252-4920 | Fax: (925) 252-4814

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the **CITY COUNCIL of the City of Pittsburg** will conduct a public hearing on:

DATE: **January 19, 2021**
TIME: **7:00 p.m.**
PLACE: **Streaming Video (see public advisory on next page)**

Concerning the following matter:

Introduction and Waive First Reading of an Ordinance Establishing a Limited Overlay District and Overlay Plan for a 1.03-Acre Site Located at 1416 Bobo Court and Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and E7 Pittsburg LLC ("Element 7"), AP-19-1435 and AP-19-1454.

This is a public hearing on a request for City Council approval of a zoning amendment establishing a limited overlay district to allow a 'Food and Drug Processing' use with limitations exclusively for commercial cannabis businesses as well as consideration of a request for City Council approval of 1) four commercial cannabis permits to allow for the use of cannabis within medical and nonmedical consumer product manufacturing; and 2) an operating agreement between the City and Element 7. The project site is located at 1416 Bobo Court in the CS (Service Commercial) District (Assessor's Parcel No. 088-570-009).

PROJECT CONTACT: Jordan Davis, (925) 252-4015 or jdavis@ci.pittsburg.ca.us

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Why am I receiving this notice?
You are receiving this notice because you have either previously requested notifications from the Planning Division, or a project has been proposed in your neighborhood and all property owners within a minimum 300-foot radius of the project site are being notified.

Where can I get more information about this project?
The file for this project is available for public inspection; please contact the project planner listed above to make necessary arrangements.

What can I do if I have comments on the project?
Comments or objections to the project can be made by writing or through oral testimony during the public hearing. Written comments citing the project name may be emailed to the project contact listed above or may be mailed or delivered to: Pittsburg City Manager's Office, Attention: Jordan Davis, 65 Civic Avenue, Pittsburg, CA 94565.

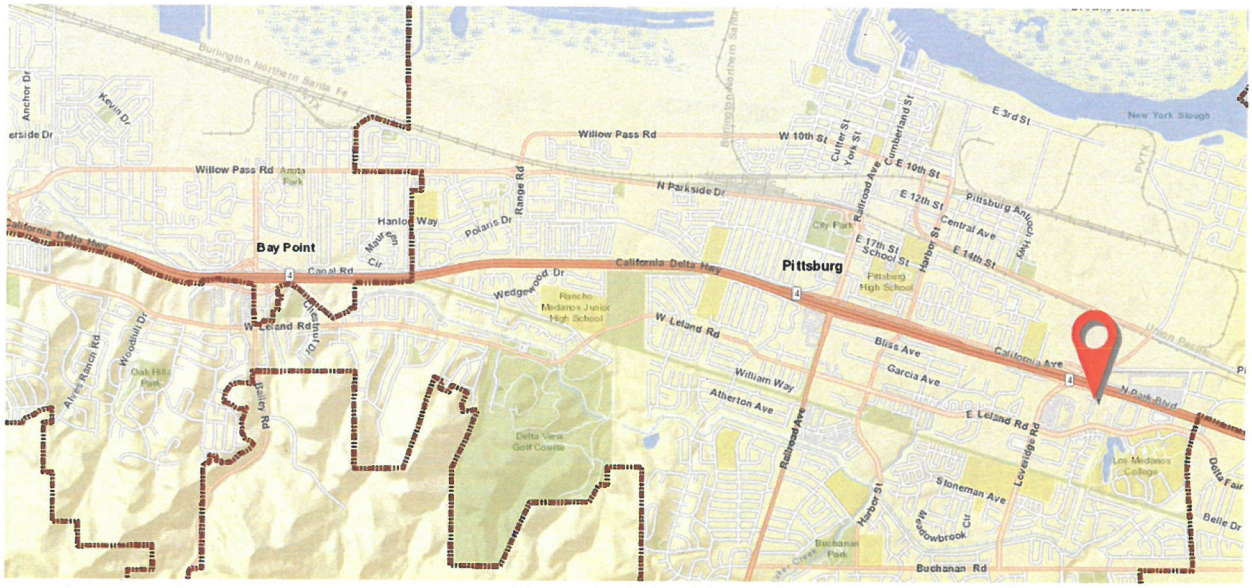
Pursuant to Section 65009 of the California Government Code, if you challenge this matter in court, you may be limited to those issues you or someone else raised at the public hearing described in this notice, or in written correspondence on the matter delivered to this agency at, or prior to the public hearing. Any written correspondence delivered to the address noted above before the hearing body's action on the matter will become a part of the administrative record.

Alice E. Evenson

ALICE E. EVENSON
CITY CLERK

Project Title: 1416 Bobo Court Overlay and Element 7 Commercial Cannabis Permit, AP-19-1435 and AP-19-1454

Location: 1416 Bobo Court (Assessor's Parcel No. 088-570-009)



PUBLIC ADVISORY: THE CITY COUNCIL CHAMBER WILL NOT BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the City Council on January 19, 2021 will be conducted telephonically via Zoom and broadcast live through Granicus on the City's website (www.ci.pittsburg.ca.us).

Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber will not be open for the meeting. The City Council will be participating telephonically and will not be physically present in the Council Chamber.

Written comments that are only to be provided to City Council and not read at the meeting will be distributed to the City Council prior to the meeting if received by 5:00 p.m. the date of the meeting. Comments via text and social media (Facebook, Twitter, etc.) will not be accepted.

The City of Pittsburg thanks you in advance for taking precautions to prevent spreading the COVID-19 virus.

City of Pittsburg

1416 Bobo Court Overlay/ Element 7 Commercial Cannabis Permits AP-19-1435 and AP-19-1454

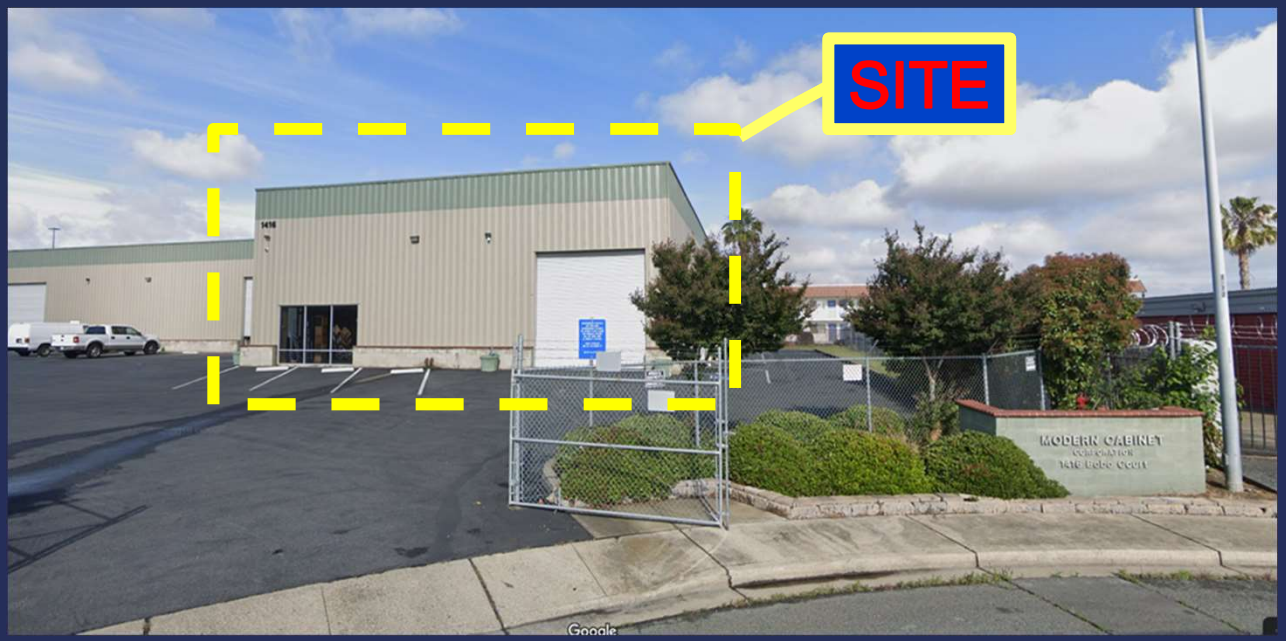
Project

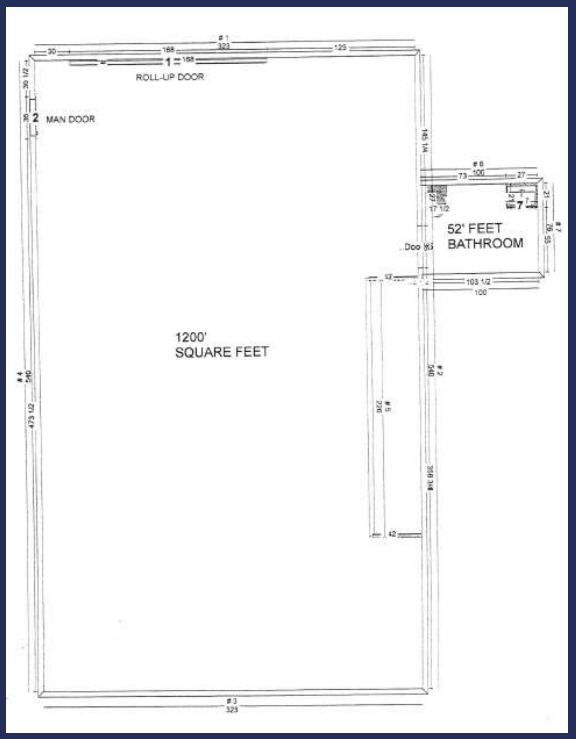
- Establish an overlay district
  - Add ‘Food and Drug Processing’ as an allowable land use
  - Facilitate Cannabis Manufacturing and Distribution Facility
- Approve an operating agreement with Element 7

CA. HWY 4
Pittsburg Mini Storage
Motel 6
SITE
Walmart Shopping Center
St. Vincent de Paul
New Destiny Church
LOVERIDGE RD
GLADSTONE DR
E LELAND RD
California Delta Hwy
California Ave
Loveridge Rd
N Park Blvd
NORTHPARK BLVD
STATE HWY 4
Staples
Home Depot
CC
IP
RH
PIEDMONT WAY
BOBO CT
SIMPSON CT
COMMERCE PL
DRIVEWAY
Lakeview Cir
LAKEVIEW CIR
E Leland Rd
LOVERIDGE CIR

Site

View from Bobo Court





Floor Plan

Food and Drug Processing

Currently permitted only in:

- IG (General Industrial)
- IL (Limited Industrial)
- IP (Industrial Park) Districts
- *'Business Commercial'* land use designation of the Railroad Avenue Specific Plan

SITE
PROPOSED
(CS-O)
Commercial
Service (CS)
Community
Commercial (CC)
950 feet
660 feet
IP
PD
Loveridge Rd
LOVERIDGE RD
California Right of Way
California Delta Hwy
STATE HWY 4
N Park Blvd
E Leland Rd
Gladstone Dr
PARKING LOT
Commerce Merger Pl
Simpson Ct
Bobcat Ct

Commercial Cannabis Regulations

PMC Chapters 18.88 and 5.70: manufacture, test, or distribute cannabis-related products requires Commercial Cannabis Permit, which is subject to City Council approval, and is mandated to include:

1) Business Operating Agreement;

2) Business Operating Plan; and

3) Business Security Plan approved by the Chief of Police

Element 7

- Operation:
  - Type 7 Manufacturer and
  - Type 11 Distributor
- The use would be allowed to extract
  - The extracted CBD and THC would be inserted into product formulations
- The proposed use is requesting the ability to operate 24 hours a day

Operating Plan

Element 7 would be required to:

- provide a list of responsible parties/employees
- provide a floor plan and process map
- require licensed delivery services for shipping
- make necessary site improvements
- keep records of all cannabis material
- opt into MCE green energy programs
- dispose of waste and by-products appropriately
- provide a hazardous materials management plan

Security Plan

Security plan would require:

- licensed and bonded security
- all inventory or other logs be available to PD
- 24-hour monitoring and 360-degree coverage
- commercial locking mechanisms/card readers
- background checks as required by PD
- manager-level employee on-call at all times
- Chief may also require additional measures at any time at sole cost of licensee

Miscellaneous

- Signage is not proposed.
  - Future requests shall not use wording that conveys the presence of cannabis
- Fencing.
  - The chain link fencing adjacent to Bobo Court to be replaced with steel/wrought iron (minimum 6) feet
  - All remaining chain-link fencing finished with vinyl privacy slats.

Fiscal Impact

- Cannabis business tax:
  - 5% on all gross receipts up to $10,000,000;
  - 2.5% on $10,000,001-$20,000,000;
  - 2% on $20,000,001-$50,000,000;
  - 1% on $50,000,001-$100,000,000; and
  - 0.5% on gross receipts over $100,000,000.
- Potential GF revenues >$100,000 annually

Findings

PMC 5.70.160(f): “Council may deny an application for Commercial…cannabis permits if it determines any of the following:

1. The applicant made one or more false or misleading statements or omissions on the registration application or during the application process;
2. The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to [PMC Chapter 5.70];
3. It is not in the best interest of the City, based upon the applicant’s application or operating agreement, to issue a Permit to the business;
4. Potential threats to…health and safety cannot be sufficiently mitigated;
5. Significant public opposition necessitates denial to preserve the health, safety, and general welfare of the City.”

Recommendation

Staff recommends the City Council open the public hearing, take public comment, close the public hearing and then:

1. Introduce, waive further reading and pass to second reading the attached ordinance establishing a limited overlay district at 1416 Bobo Court; and
2. Adopt a resolution (contingent on ordinance adoption) approving four commercial medical and nonmedical commercial cannabis permits and an operating agreement with Element 7.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Canna Analytical, Inc., AP-19-1414.

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

This item includes consideration of a request for City Council approval of: 1) commercial cannabis permits to allow for the testing of medical and nonmedical cannabis products at 1534 Willow Pass Road (Assessor's Parcel No.: 096-092-009); and 2) an operating agreement between the City and Canna Analytical Inc.

FISCAL IMPACT

Adoption of the proposed operating agreement would require Canna Analytical Inc. ("Canna") pay the City a cannabis business tax of 5% on all gross receipts up to $2,000,000 and 4% on all gross receipts over $2,000,000. Based on the applicant's projections, the City estimates this could potentially result in general fund revenues in excess of $100,000 a year for the term of the agreement.

RECOMMENDATION

Staff recommends the City Council adopt a resolution approving the requested commercial medical and nonmedical commercial cannabis permits and attached operating agreement.

BACKGROUND

In 2015, the state legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA) to regulate the medical cannabis industry. On November 8, 2016, the voters of the State of California passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("Prop 64"), while the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax on all commercial marijuana businesses that may operate within the City. As approved by the voters, the maximum marijuana business tax rate is 10% on all marijuana related transactions. In 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act

(MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp.

On March 19, 2018, the City Council adopted Ordinance No. 18-1442, amending PMC Title 5 to allow for use of cannabis within medical and nonmedical product manufacturing and establishing procedures for issuing medical and nonmedical commercial cannabis permits. These amendments limit the types of commercial cannabis businesses to those designated as Type 6 (Manufacturers), Type 7 (Manufacturers), Type 8 (Testing Laboratories), and Type 11 (Distributors). Commercial entities seeking to manufacture cannabis-related products are required to obtain a commercial cannabis permit, which is subject to City Council approval, and is mandated to include: 1) a Business Operating Agreement, which sets forth the terms and conditions under which the commercial medical cannabis business would operate; 2) a Business Operating Plan; and 3) a Business Security Plan approved by the Chief of Police. Cultivation, dispensaries, and retail deliveries of cannabis in the City of Pittsburg remain prohibited.

On October 21, 2019, the City Council adopted Ordinance No. 19-1465, amending PMC Title 5, Chapter 5.70, sections 5.70.051 and 5.70.160 in order to: 1) specify how required distances between cannabis businesses and potentially sensitive uses are measured; 2) clarify definitions of specific potentially sensitive uses; and 3) establish a minimum distance of 1,000 feet between cannabis dispensaries and potentially sensitive uses, in the event cannabis dispensaries are allowed in the future.

Environmental: The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Class 1, “Existing Facilities,” of the CEQA Guidelines, section 15301.

Public Notice: While not required, on or before January 9, 2021, a notice of the January 19, 2021, public hearing to consider this project was posted at City Hall and at or near the proposed project site and was mailed via first class or electronic mail to the applicant, to the property owner, to all owners of property within 600 feet of the project site, and to individuals who had previously filed written request for such notice. In addition, a copy of the notice was posted on the “Public Notices” section of the City’s website.

SUBCOMMITTEE FINDINGS

On June 28, 2019, and again on July 30, 2019, staff presented the proposed project to the Land Use Subcommittee, specifically, when discussing the proposed amendments to Title 5 regarding how distances between cannabis businesses and sensitive uses would be measured. Due to security concerns, staff did not present details of the security plan or project plans but provided a brief overview of general security requirements. The Subcommittee did not have further questions or concerns during the meeting.

STAFF ANALYSIS

Project: Canna is requesting approval of commercial cannabis permits to operate as a Type 8 testing facility of medical and nonmedical cannabis products.

The proposed project site is located in an area which allows for the proposed use and meets the distancing requirements contained in PMC Title 5. The proposal being considered incorporates all the previously recommended operational and security requirements, as well as additional measures determined by the Police Department to be necessary. Canna’s

parent company is McCampbell Analytical, Inc., which has operated a successful agricultural and scientific testing facility at the proposed location for over 20 years, and has recently worked with the state of California to provide COVID testing services. Staff concludes that, in conjunction with the approved security plan, significant measures have been taken to ensure security and public safety.

Operating Agreement: The applicant is required to enter into an Operating Agreement with the City which sets forth the terms and conditions under which the use would operate. The operating agreement has a term of five years, at which time the applicant would be required to renew both the agreement and all commercial cannabis permit(s). The Operating Agreement also establishes a “cannabis business tax,” rate, as described above, and includes an “operating plan,” and “security plan.”

The applicant is proposing to accept samples of raw or concentrated cannabis or isolate, or products containing cannabis, for testing. All raw cannabis shall be required to be kept in sealed and securely stored in areas specified within the operating agreement. Samples of raw or concentrated cannabis or isolate provided for testing shall be no larger than five grams; samples of products containing cannabis shall be limited to 454 grams (one [1] pound).

The applicant would be required to transport cannabis and/or cannabis products via a courier service(s) holding a valid State of California License. Deliveries within the City shall be made only to Canna facilities, while deliveries outside the City shall be made only to approved, legal destination points. Deliveries to and from the locations within the City shall be limited to the hours of 8:00 AM and 5:00 PM, Monday through Friday, and all transportation activity must comply with the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and implementing regulations.

Once Samples have been received and logged, they shall either be placed in an identified storage area, or tested in an identified laboratory area, which shall be locked and under camera surveillance at all times.

Operating Plan: As part of the proposed Operating Agreement, the applicant is required to submit an operating plan which details procedures and requirements the applicant would follow on a day-to-day basis. The operating plan establishes practices to assure and control cannabis quality. This requires Canna to, among other things:

1. provide a list of responsible parties and employees;
2. provide a floor plan and process map showing where cannabis material would be delivered, stored, and shipped, as applicable;
3. require licensed delivery services for all shipping;
4. make necessary site improvements, including potentially providing a new refuse containment area;
5. specify all chemicals used in testing;
6. keep records of all cannabis material shipments, from acceptance to shipment or disposal/destruction;
7. dispose of all waste and by-products per state and local requirements; and
8. provide a hazardous materials management plan (HMMP), as applicable, to the necessary agencies.

The applicant would also be required to submit to the City a list of all employees of the business, and consent to background checks by the Police Department as necessary.

Security Plan: The operating agreement also includes a security plan that has been reviewed and approved by the Police Department. In general, the security plan would require, among other things, the applicant to:

1. make all inventory, testing, or other logs as required by the operating agreement available to the Police Department upon request;
2. maintain a professionally installed and monitored security system with 24-hour monitoring and 360-degree coverage;
3. use of commercial-grade locking mechanisms and card readers at any location cannabis is stored and all ingress/egress points of buildings;
4. submit to background checks as required by the Police Department; and
5. ensure that one manager-level employee remain on-call at all times in case of emergency.

The Chief of Police may also require the operator to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, limiting the amount of cannabis material stored on site, or such other measures as determined necessary by the Chief of Police at the business owner's sole expense.

General Plan: The project site is within the 'Northwest River,' subarea of the General Plan, and has a land use designation of Industrial. This land use designation is intended to provide sites for manufacturing, wholesale, warehousing and distribution, commercial and business services, research and development, and storage uses are permitted, in addition to agricultural, food and drug, and industrial processing.

Zoning: The property is located within the IG (General Industrial) District. Pursuant to PMC Title 18, section 18.54.010 Limitation 175, "food and drug processing" businesses utilizing cannabis as a primary or accessory use shall comply with the requirements prescribed by PMC Chapters 5.70 and 18.88, which specify cannabis activities are permitted upon City Council approval of a Business Operating Agreement, Operating Plan, and Security Plan. Onsite tasting, sampling, or retailing of cannabis products to or by the public is prohibited.

Required Findings: While PMC Chapter 5.70, which establishes the process by which Commercial Cannabis Permits may be issued, does not identify specific findings that must be made in order to approve a permit, PMC sections 5.70.051(f) and 5.7.160 (f) state, respectively, that the City Council may deny an application for commercial medical and nonmedical cannabis permits if it determines any of the following:

1. The applicant made one or more false or misleading statements or omissions on the registration application or during the application process;
2. The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to [PMC Chapter 5.70];
3. It is not in the best interest of the City, based upon the applicant's application or operating agreement, to issue a Permit to the business;
4. Potential threats to public health and safety cannot be sufficiently mitigated; or
5. Significant public opposition necessitates denial to preserve the health, safety, and general welfare of the City.

ATTACHMENTS:

1. Proposed Resolution
2. Proposed Operating Agreement (portions redacted)
3. Map of Surrounding Uses
4. Public Hearing Notice
5. Staff Presentation

Report Prepared By: Jordan Davis, Assistant to the City Manager
John Dacey, Assistant Planner

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement to Allow for Testing of Cannabis at 1534 Willow Pass Road, for "Canna Analytical Inc., AP-19-1414.") RESOLUTION NO. 21-_____

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, on February 26, 2019, Theresa Johnson, on behalf of Canna Analytical, Inc., ("Canna") filed Planning Application No. 19-1414, requesting approval of Commercial Cannabis Permits to allow laboratory testing of medical and non-medical purposes cannabis within an existing chemical testing facility; and

WHEREAS, on November 8, 2016, the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax on all commercial marijuana businesses that may operate within the City, should land use regulations and applicable provisions of the PMC be amended to allow for such businesses and/or if local control over such businesses is removed by the courts, the Legislature, or statewide initiative in the future. Measure J passed with 13,693 (68.3%) "yes" votes and 6,364 (31.7%) "no" votes. As approved by the voters, the maximum marijuana business tax rate is 10% on all marijuana related transactions; and

WHEREAS, in 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp; and

WHEREAS, on June 18, 2018, the City Council adopted Resolution 18-13496, establishing and imposing the marijuana business tax rate which shall be ten percent (10%) on marijuana businesses gross receipts, unless otherwise modified by City Council resolution; and

WHEREAS, the proposal by Canna was brought before the Land Use Subcommittee on June 28, 2019, and July 30, 2019. During the study session, staff presented the proposed project to the Land Use Subcommittee, specifically, when discussing the proposed amendments to Title 5 regarding how distances between cannabis businesses and sensitive uses would be measured. Due to security concerns, staff did not present details of the security plan or project plans but provided a brief overview of general security requirements. The Subcommittee did not have further questions or concerns during the meeting; and

WHEREAS, on October 21, 2019, the City Council adopted Ordinance No. 19-1456, which served to specify how required distances between cannabis businesses and potentially sensitive uses are measured and clarify definitions of specific potentially sensitive uses; and

WHEREAS, while not required, on or before January 9, 2021, a notice of the January 19, 2021, consideration of this project was posted at City Hall and at or near the proposed project site and was mailed via first class or electronic mail to the applicant, to the property owner, to all owners of property within 600 feet of the project site, and to individuals who had previously filed written request for such notice. In addition, a copy of the notice was posted on the "Public Notices" section of the City's website; and

WHEREAS, while not required, on January 19, 2021, the City Council held a public hearing to consider the proposed application and operating agreement during a regularly scheduled public meeting, at which time oral and/or written testimony was considered.

NOW, THEREFORE, the City Council DOES RESOLVE as follows:

Section 1. Findings

A. Based on the City Council Staff Report entitled, "Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Canna Analytical, Inc., AP-19-1414," dated January 19, 2021, and based on all the information contained in the City files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the public hearing, the City Council finds that:

1. All recitals above are true and correct and are incorporated herein by reference.

2. The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Class 1, "Existing Facilities," of the CEQA Guidelines, section 15301.

3. The applicant has not made any false or misleading statements or omissions during the application process.

4. The proposed operating agreement with Canna will ensure that the commercial cannabis operation is consistent with the all regulations imposed by Chapter 5.70 of the Pittsburg Municipal Code and State law.

5. It is in the best interest of the City to issue commercial cannabis permits to the applicant, in that the operating agreement will require the applicant pay a cannabis business tax in the amount of: 5% on all gross receipts up to $2,000,000 and 4% on all gross receipts over $2,000,000. This potential tax revenue would result in additional General Fund revenues, which would help the City reach and maintain its financial goals. The operating agreement and issuance of commercial cannabis permits will also support the City's continued effort to develop a research and development use and to promote economic diversification, ensure appropriate location, and maximize growth opportunities, while retaining and expanding existing businesses (6-P-12).

6. Potential threats to public health and safety will be sufficiently mitigated, in that the proposed operating agreement includes a security plan approved by the City's Chief of Police, which requires, among other things, the applicant to:

    a. make all inventory, testing, or other logs as required by the operating agreement available to the Police Department upon request;
    b. maintain a professionally installed and monitored security system with 24-hour monitoring and 360-degree coverage;
    c. use of commercial-grade locking mechanisms and card readers at any location cannabis is stored and all ingress/egress points of buildings;
    d. submit to background checks as required by the Police Department;
    e. ensure that one manager-level employee remain on-call at all times in case of emergency;
    f. only transport cannabis and/or cannabis products via a courier service(s) holding a valid State of California License. Deliveries outside the City shall be made only to approved, legal destination points. Deliveries to and from the locations identified within subsection 3.1 shall be limited to the hours of 8:00 AM and 5:00 PM, Monday through Friday; and
    g. that all existing chain-link fencing surrounding the entire parcel (commonly referred to as APN: 096-092-009) shall be properly maintained, and chain-link fencing along the northern parcel boundary shall be finished with vinyl privacy slats. The Chief of Police may also require the operator to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, limiting the amount of cannabis material stored on site, or such other measures as determined necessary by the Chief of Police at the business owner's sole expense.

7. The City Council has not received significant public opposition which would otherwise necessitate denial in order to preserve the health, safety, and general welfare of the City.

B. The Staff Report entitled, "Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Canna Analytical, Inc., AP-19-1414," dated January 19, 2021, is referenced hereto as additional support for findings.

Section 2. Decision

Based on the findings set forth above, the City Council hereby approves an Operating Agreement with Canna Analytical Inc., as well as commercial cannabis permits allowing the operator to function at 1534 Willow Pass Road as: 1) a Type 8 Testing Facility of medical cannabis products; and 2) a Type 8 Testing Facility of nonmedical cannabis products.

Section 3. Execution of Agreement

The City Manager is hereby authorized to execute the Operating Agreement and take any and all other actions necessary to carry out this Resolution.

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

OPERATING AGREEMENT BETWEEN THE CITY OF PITTSBURG AND CANNA ANALYTICAL, INC

THIS OPERATING AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the City of Pittsburg, a California municipal corporation ("City") and Canna Analytical, Inc, a California Corporation ("Licensee"), pursuant to the authority of Pittsburg Municipal Code Chapters 5.70 and 18.88.

RECITALS:

A. On February 26, 2019, Theresa Johnson, on behalf of Canna Analytical, Inc., filed Planning Application No. 19-1414, requesting approval of Commercial Cannabis Permits to allow laboratory testing of medical and non-medical purposes cannabis within an existing chemical testing facility.

B. On November 8, 2016, the voters of the City of Pittsburg approved Measure J, allowing for implementation of a Marijuana Business Tax of up to 10 percent on all commercial marijuana businesses that may operate within the City, should land use regulations and applicable provisions of the PMC be amended to allow for such businesses and/or if local control over such businesses is removed by the courts, the Legislature, or statewide initiative in the future.

C. In 2017, the State Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which harmonized MMRSA and Prop 64. Marijuana remains illegal under federal law, with the exception of hemp.

D. On March 19, 2018, the City Council adopted Ordinance No. 18-1442, amending PMC Title 5 to allow for use of cannabis within medical and nonmedical product manufacturing and establish procedures for issuing medical and nonmedical commercial cannabis permits. These amendments limit the types of commercial cannabis businesses to those designated as Type 6 (Manufacturers), Type 7 (Manufacturers), Type 8 (Testing Laboratories), and Type 11 (Distributors). Commercial entities seeking to manufacture cannabis-related products will be required to obtain a commercial cannabis permit, which would be subject to City Council approval, and shall be mandated to include: 1) a Business Operating Agreement which would set forth the terms and conditions under which the commercial medical cannabis business would operate; 2) a Business Operating Plan; and 3) a Business Security Plan approved by the Chief of Police.

E. On May 21, 2018, the City Council adopted Ordinance No. 18-1448, amending PMC Title 18 in order to allow for use of cannabis within medical and nonmedical product manufacturing. The adopted changes to Title 18 were consistent with those adopted by the City Council as part of the Title 5 amendment process, and

also modified the use definition of "food and drug processing," to specifically include commercial medical and nonmedical cannabis businesses, and added a limitation to specify that businesses utilizing cannabis as a primary or accessory use are not required to obtain a use permit, but rather shall comply with the requirements prescribed by Title 5 (including obtaining a Commercial Cannabis Permit along with an operating agreement, business operating plan, and security plan approved by the City Council), and prohibits onsite tasting, sampling, or retailing of cannabis products to or by the public.

F. On June 18, 2018, the City Council adopted Resolution No. 18-13496, establishing and imposing the marijuana business tax rate of up to 10 percent on marijuana businesses gross receipts.

G. In 2018, the state agencies responsible for promulgating regulations to implement the California Medicinal and Adult-Use Regulation and Safety Act issued final regulations.

H. On October 21, 2019, the City Council adopted Ordinance No. 19-1456, which served to specify how required distances between cannabis businesses and potentially sensitive uses are measured and clarify definitions of specific potentially sensitive uses.

I. On _____, 2021, the City Council held a public hearing, considered oral and/or written testimony and adopted Resolution No. 21-_____, approving the requested Commercial Cannabis Permits.

AGREEMENT

1. DEFINITIONS.

In this Agreement, unless the context otherwise requires, terms have the following meaning. Capitalized terms within the Exhibits not defined below have the meaning set out in the Exhibits.

1.1 "Administrative Review Deposit" means the good faith deposit provided by Licensee in the amount of $5,000, and all interest earned on the Administrative Review Deposit.

1.2 "Agreement" means this Operating Agreement, inclusive of all Exhibits attached hereto.

1.3 "Business" means the commercial medical or non-medical cannabis business that is the subject of this Agreement.

1.4 "Cannabis" means medical and non-medical cannabis as defined by Health and Safety Code Section 11362.5 and Business and Professions Code Sections 26000 *et seq.*

1.5 "Cannabis Business Tax" means the Marijuana Business Tax as defined by Chapter 3.10 of the Pittsburg Municipal Code.

1.6 "CBD" means Cannabidiol derived from cannabis.

1.7 "City" means the City of Pittsburg, including its agents, officers, employees, representatives, and elected and appointed officials.

1.8 "City Council" means the City Council of the City of Pittsburg.

1.9 "City Manager" means the City Manager of the City of Pittsburg, or her or his designee.

1.10 "Commercial Cannabis Permit" means a Commercial Medical Cannabis Permit and/or Commercial Nonmedical Cannabis Permit issued by City in accordance with Chapter 5 of the Municipal Code.

1.11 "Fees" means all charges, expenses, costs, monetary exactions, and any other monetary obligations imposed on Licensee by City, other than assessments, or regular or special taxes.

1.12 "Law" means ordinance, statutes, rules, regulations, or any order, decree, or directive of any court or any local, regional, State, or federal government agency, unless the context suggests a different meaning.

1.13 "Licensee" means Canna Analytical, Inc.

1.14 "Municipal Code" means the Municipal Code of the City of Pittsburg.

1.15 "Operating Plan" means the operating plan defined by Chapter 5 of the Municipal Code.

1.16 "Operations" means the operating of the Business upon receiving all necessary licenses, permits, and approvals.

1.17 "Sample" means the raw cannabis, concentrated cannabis or isolate, or cannabis product provided to the Licensee for testing.

1.18 "Security Plan" means the security plan defined by Chapter 5 of the Municipal Code, as approved by the Pittsburg Chief of Police.

1.19 "State" means the State of California.

1.20 "Term" means the term of the Agreement set forth in Section 3.3.

1.21 "THC" means tetrahydrocannabinol derived from cannabis.

2. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) City has entered into this Agreement pursuant to the Municipal Code and its authority to address public health, safety, and general welfare concerns of the public within City; (b) there is certain authority to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder; and (c) this Agreement sets forth the terms and conditions under which Licensee will operate.

3. GENERAL PROVISIONS.

3.1 Property Description. See Exhibit A.

3.2 Effective Date. This Agreement shall be binding as to Licensee upon Licensee's execution hereof, with an effective date ("Effective Date") as of the effective date of the Resolution adopting the Agreement.

3.3 Commercial Cannabis Permit. Licensee is permitted to operate as: 1) a State of California Type 8 Testing Laboratory of medical cannabis products; 2) a State of California Type 8 Testing Laboratory of nonmedical cannabis products at the location described in Exhibit A and Exhibit B of this Agreement, commonly known as 1534 Willow Pass Road, and as further specified below. Prior to commencing testing of any cannabis or cannabis products, Licensee shall provide the City Manager documentation certifying issuance of all required State of California licenses for such cannabis-related operations. Licensee shall be responsible for maintaining these licenses in good standing at all times during its operations within the City

3.4 Term. The term of this agreement shall commence upon the Effective Date and shall extend five (5) years thereafter, unless the term is otherwise terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the parties.

3.5 Expiration of Term. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect, unless the Agreement is renewed by approval of the City Council. The City Manager shall have the discretion to grant extensions of this Agreement in writing, for one or more periods of time, not to exceed a total of 180 days collectively for all extensions, if the City Manager determines in his/her sole discretion that the Licensee is pursuing a new Operating Agreement both diligently and in good faith.

3.6 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

3.7 Enforceability of Agreement. City and Licensee agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this

Agreement shall be enforceable by either party hereto notwithstanding any change hereafter.

3.8 Further Assurances. Licensee shall execute and deliver to City all such other further instruments and documents as may be reasonably required by City to execute this Agreement.

3.9 Changes in State and Federal Laws and Regulations. If California law allowing the use for which the Commercial Cannabis Permit is issued is amended or repealed resulting in the prohibition of such use, or City receives credible information that the federal government will commence enforcement measures against such businesses and/or local government that allow them, City shall retain the exclusive right to terminate this Agreement by giving Licensee 30 days prior written notice of such termination.

4. OPERATING PLAN.

4.1 Responsible Parties. Prior to operation of the commercial cannabis business, the applicant shall submit to the Chief of Police or his designee, an exhibit listing the names, addresses, telephone numbers, and responsibilities of the business owner and manager-level employees of the business ("Responsible Parties"). This list shall remain confidential. Any changes to this list shall be submitted to the Chief of Police as soon as reasonably possible. These changes shall not be considered an amendment to this agreement, and shall not require any prior approval.

4.2 Employee List. Prior to operation of the commercial cannabis business, the applicant shall submit to the Police or his designee, an exhibit listing the names, addresses, telephone numbers, and responsibilities of all employees not considered Responsible Parties. All employees must be twenty-one (21) years of age or older. This list shall remain confidential. Any changes to this list shall be submitted to the Chief of Police as soon as reasonably possible. These changes shall not be considered an amendment to this agreement, and shall not require any prior approval.

4.3 Hours of Operation. Licensee shall only operate cannabis testing operations during the hours of 8:00 AM – 5:00 PM Monday through Friday.

4.4 Floor Plan. The floor plans of the Business is attached hereto and incorporated herein as Exhibit B.

4.5 Transportation Plan. Licensee shall only transport cannabis and/or cannabis products via a courier service(s) holding a valid State of California License. Deliveries within the City shall be made only to those locations identified within subsection 3.1 of this agreement. Deliveries outside the City shall be made only to approved, legal destination points. [redacted] All deliveries shall be subject to all applicable requirements of Exhibit D. All transportation activity must comply with the California Medicinal and Adult-Use

Cannabis Regulation and Safety Act and implementing regulations as may be amended from time to time.

4.6 Mitigation Measures. Licensee acknowledges that minimizing the impacts on neighboring properties of the business is paramount. Licensee shall implement the following measures to mitigate potential negative impacts:

4.6.1 Licensee shall provide a hazardous materials management plan that complies with all federal, state, and local requirements for management of such substances. “Hazardous materials” includes any hazardous substance regulated by any federal, state, or local laws or regulations intended to protect human health or the environment from exposure to such substances.

4.6.2 All existing chain-link or other fencing surrounding the entire parcel (commonly referred to as APN: 096-092-009) shall be properly maintained and finished with vinyl privacy slats. All fencing shall meet the requirements of Pittsburg Municipal Code (PMC) Title 18, “Zoning” as applicable. Licensee shall be responsible for obtaining all necessary permits from the City of Pittsburg Community Development Department prior to installation. The final design and location of the fence shall be subject to approval by the Planning Division.

4.6.3 The City reserves the right to require additional measures be taken to ensure proper refuse collection at the 1534 Willow Pass Road location if the City Manager determines that the existing enclosure does not provide adequate or secure refuse storage space, including but not limited to an additional and/or expanded trash enclosure, larger bins, increased number of bins, and/or additional pickups to the maximum amount provided by the City-contracted refuse collection company. All enclosures shall meet the requirements of Municipal Code Title 18, “Zoning,” as applicable. Licensee shall be responsible for obtaining all necessary permits from the City of Pittsburg Community Development Department prior to any and all necessary construction. All changes to an existing enclosure shall be subject to approval by the Planning Division.

4.6.4 Licensee shall opt into and maintain enrollment in the Marin Clean Energy (MCE) “Deep Green” or “Local Sol” Programs, or similar programs offered by MCE.

4.7 Cannabis Quality Control/Quality Assurance. Licensee shall at all times comply with state law including but not limited to the manufactured cannabis safety regulations at 16 California Code of Regulations Division 42.

4.8 Cannabis Inventory Control. All inventory of cannabis materials, including raw, concentrated, isolate, and processed products, shall be kept in secured storage areas as identified in Exhibits B and E, to which only authorized personnel shall have access. (See section 5 of this agreement for additional details and requirements.) Use and movement of all cannabis materials shall be logged “cradle-to-grave” (i.e. acceptance of Samples for testing to disposal of Samples provided) for inventory

accuracy and management. Records shall be made available to the Pittsburg Police Department or any other agency with regulatory authority within 72 hours of written request therefor.

4.9 Employee Screening. In addition to complying with the requirements of the Pittsburg Municipal Code, Licensee agrees to implement the following:

4.9.1 All prospective employees shall submit to a live scan at a designated service provider and a background check by the California Department of Justice (DOJ) and local law enforcement. The cost of the background check shall be borne by the Licensee or the prospective employee.

4.9.2 Felony convictions, as specified in Penal Code section 667.5(c) and section 1192.7(c), or a criminal conviction that substantially relates to the qualifications, functions, or duties of the business or profession, including a felony conviction involving fraud, deceit, or embezzlement or a criminal conviction for the sale or provision of illegal controlled substances to a minor shall be grounds for disqualification of employment with the Licensee.

4.10 Laboratory Testing Process. [redacted]

4.11 Chemical Usage. See Exhibit C.

4.12 Products Tested. Products to be tested shall include raw cannabis, concentrated cannabis or isolate, and products manufactured with cannabis. All testing shall be conducted in accordance with Section 4.10 of this agreement.

4.13 Destruction and Disposal. Once testing is complete, the specimens shall be destructed and disposed of in accordance with California Code of Regulations Title 16 Division 42 Section 5000 et seq. By-products of the manufacturing process shall be disposed of pursuant to local and state laws.

4.14 Odor Management. While it is not anticipated that odors resulting from the testing of cannabis or cannabis products will occur based on the nature of the approved operation, the City Manager reserves the right to require additional measures be taken to eliminate odors, in the event odors resulting from cannabis are shown to have continually occurred. These measure may include, but are not limited to,

installation of industrial grade HEPA filtration and/or activated carbon filtration systems. Any requires measures shall be implemented at the sole cost of the Licensee.

4.15 Required Changes. City shall have the discretion to require changes to any of the terms within this section, upon reasonable notice to Licensee.

4.16 Proposed Changes. Any proposed change(s) to this section must be approved in writing by the City Manager, or City Manager's designee at least thirty (30) days before the proposed change(s) is/are to take effect.

5. SECURITY PLAN.

The Security Plan was approved by the Chief of Police as of the effective date of this agreement, and is attached hereto and incorporated herein as Exhibit D ("Security Plan"). Licensee acknowledges that failure to adhere to the Security Plan may result in suspension and/or termination of this Agreement, and suspension and/or revocation of Licensee's corresponding Commercial Cannabis Permit(s). At the discretion of the City Manager, changes to the Security Plan may be considered minor amendments pursuant to Section 9.2 to this agreement.

6. PERIODIC REVIEW.

City shall conduct a review of this Agreement as set forth in the following subsections. However, City's failure to timely conduct such review shall not constitute a default under this Agreement.

6.1 Annual Review. City shall review the extent of good faith compliance by Licensee with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.

6.2 Notice. City shall notify Licensee in writing of the date of review at least thirty (30) days prior thereto.

6.3 Good Faith Compliance. During each annual review, Licensee is required to demonstrate good faith compliance with the terms of this Agreement.

6.4 Production of Documents and Other Evidence. Licensee agrees to furnish such reasonable evidence and adequate documentation of good faith compliance to City, in the exercise of its reasonable discretion, may require.

6.5 Cost of Annual Review. The reasonable costs incurred by City in connection with the annual review shall be borne by Licensee. Upon written request by City, Licensee shall pay City the greater of two thousand five hundred dollars ($2,500) or the actual cost of annual review (not to exceed Ten Thousand Dollars ($10,000) per review to cover City's costs. Failure, if any, by Licensee to pay the monies shall be

grounds for declaring Licensee to be in default of this Agreement and/or in noncompliance thereof.

7. OBLIGATIONS OF LICENSEE.

7.1 General Obligations. In consideration of City entering into this Agreement, Licensee has agreed to comply with the requirements of this Agreement, and to perform certain obligations and provide certain contributions set forth therein.

7.2 Cooperation by Licensee. Licensee shall, in a timely manner, provide City with all documents, applications, plans, and other necessary information for City to carry out its obligations hereunder.

7.3 Governmental Permits. Licensee shall apply in a timely manner for such other permits and approvals from other governmental agencies as may be required by state law. Prior to commencing operation of the business, Licensee shall secure all required Governmental Permits and supply copies to the City for review.

7.4 Administrative Review Deposit. Prior to, or concurrently with, the Effective Date, Licensee has delivered to City the Administrative Review Deposit in the amount of five thousand dollars ($5,000). City may promptly deposit the Administrative Review Deposit in an interest-bearing account. Any interest accrued by the Administrative Review Deposit will be returned to the Licensee upon completion of review of this Agreement.

7.5 License and Permits. At all times, Licensee is required to maintain an active Business License and Commercial Cannabis Permit(s) with City, as well as all licenses required by the State of California.

7.6 Hiring of Local Employees. Licensee shall, to the fullest extent allowed by law, give preference to residents of the City of Pittsburg for employee hiring.

8. OBLIGATIONS OF CITY.

In consideration of Licensee entering into this Agreement, City has agreed to the following with respect to the operation of the Business:

8.1 Processing. Upon satisfactory completion by Licensee of all required preliminary actions to the satisfaction of City, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement.

9. AMENDMENTS.

9.1 Major Amendments. A "Major Amendment" shall be any modification that makes a substantive change, modification, or deviation in the terms of this Agreement or any Exhibit(s) attached hereto and incorporated herein. Approval of any Major Amendment shall be authorized by formal action of the City Council.

9.2 Minor Amendments. A "Minor Amendment" shall be any modification that does not make a substantive change, modification, or deviation in the terms of this Agreement or any Exhibit(s) attached hereto and incorporated herein, including but not limited to changes that may be specifically cited within this agreement as minor amendments. Minor amendments may be approved by the prior written consent of the City Manager.

10. TRANSFERS AND ASSIGNMENTS.

The transfer or assignment of this Agreement shall require authorization by the City Manager. Prior to authorizing a transfer or assignment, the City Manager may require additional information be provided, including but not limited to, additional background checks, financial disclosures, private party transfer agreements, or such other measures as determined necessary. The reasonable costs incurred by City in connection with the transfer or assignment review shall be borne by Licensee. Any such additional measures required shall be at the sole expense of Licensee. Any unauthorized transfer or assignment of this Agreement shall be considered grounds for termination of this Agreement.

11. DEFAULT.

Subject to any extensions of time by mutual consent in writing, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot be reasonable cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

11.1 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged default and the manner in which such default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

11.2 General Default Remedies. After notice and expiration of the thirty (30) day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement.

11.3 Remedies Cumulative. Any rights or remedies available to the non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement, shall be distinct, separate, and cumulative rights and remedies, whether or not exercised by the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

11.4 Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

11.5 No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Licensee for any breach thereof. As such, the parties agree that in no event shall Licensee be entitled to recover damages against City for breach of this Agreement.

11.6 Effect of Licensee Default. No Commercial Cannabis Permit(s) shall be issued, and any existing Commercial Cannabis Permit(s) shall be suspended or revoked, after Licensee is determined by City to be in default of the terms and conditions of this Agreement, and until such default is thereafter cured by Licensee or is waived by City.

11.7 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to a of default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

11.8 Scope of Waiver. No express written waiver of any default shall affect any other default, or cover any other period of time specified in such express waiver.

11.9 Attorney's Fees. Should legal action be brought by either party for breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorney's fees, court costs and such other costs as may be fixed by the court.

11.10 Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Contra Costa, or in the United States District Court for the Northern District of California, as consistent with applicable law.

11.11 Survival. Notwithstanding termination of this Agreement for any reason, whether under Section 3.3 or Section 12, Section 17 (Hold Harmless) and Section 18 (Indemnification) shall be continuing obligations of Licensee and shall survive this

Agreement.

12. TERMINATION

12.1 Mutual Consent. This Agreement may be terminated in whole or in part by the mutual written consent of the parties.

12.2 Failure to Obtain or Maintain Required State or Local Licenses. If Licensee fails to obtain or maintain in effect all California and City licenses and permits required for the Business, City may terminate this Agreement.

12.3 Surrender or Revocation of Commercial Cannabis Permit. If Licensee voluntarily surrenders their Commercial Cannabis Permit, or if their Commercial Cannabis Permit is revoked by City, Licensee shall immediately cease all operations at the Business, and this Agreement shall terminate automatically, without further action required by either Party.

13. RELATIONSHIP OF PARTIES.

13.1 Independent Contractors. The parties agree that the Business is a private endeavor and that neither party is acting as the agent of the other in any respect hereunder.

13.2 No Joint Venture or Partnership. City and Licensee hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Licensee joint venturers or partners.

13.3 No Third Party Beneficiaries. The only parties to this Agreement are Licensee and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever.

13.4 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Agreement. Therefore any ambiguities or uncertainties are not to be construed against or in favor of either party.

14. APPLICABLE LAW AND REGULATIONS.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

14.1 General. Licensee shall at all times comply fully with all current and future State and City laws and regulations applicable to Licensee's Business, and shall ensure

such compliance by all of Licensee's employees, contractors, vendors, and members of the public invited or allowed access to the Business.

14.2 State License. Licensee shall promptly apply for and obtain all State licenses required for the Business's operations. Failure to obtain and maintain required State license(s) during the term of this Agreement shall constitute a default, and shall be grounds for termination of this Agreement.

15. CANNABIS BUSINESS TAX.

Licensee agrees to and acknowledges all provisions found in Chapter 3.10 of the Municipal Code.

15.1 Cannabis Business Tax. Licensee agrees to pay City a cannabis business tax applied to all gross receipts resulting from the testing of cannabis products on a monthly basis. "Gross receipts" shall have the same meaning as set forth in Chapter 3.10 of the Municipal Code. Payment for the preceding month must be delivered to City by the last business day of the succeeding month. The applicable tax rate shall be as follows:

- Five percent (5%) on all gross receipts up to $2,000,000; and
- Four percent (4%) on all gross receipts over $2,000,000.

15.2 Late or Delinquent Tax Payments. Late or delinquent Cannabis Business Tax payments by Licensee shall be subject to the penalties and interest rates stated in Chapter 3.10 of the Municipal Code.

15.3 Deficiency Determinations. If City is not satisfied with the veracity of reports filed by Licensee regarding the Business's total gross receipts, City may compute and determine the amount of Cannabis Business Tax to be paid and make a deficiency determination upon the basis of the facts contained in the report(s), or upon the basis of any information in City's possession, or that may come become in City's possession within three years of the date the Cannabis Business Tax was originally due and payable. One or more deficiency determinations of the amount of Cannabis Business Tax due for a period or periods may be made.

15.4 Appeal. Licensee may appeal City's deficiency determination to City Council by filing notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of the Cannabis Business Tax due. The City Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to Licensee. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable.

15.5 Record Retention. Licensee shall keep, maintain, and preserve all records that may be necessary to determine the amount of Cannabis Business Tax

owed by the Business for a period of three (3) years. City shall have the right to inspect such records at all reasonable times.

15.6 Cannabis Business Tax is debt to City. The amount of any Cannabis Business Tax , penalties, and interest imposed by this Agreement is deemed to be a debt to City. City may seek all remedies legally available to City, to recover any unpaid debts by Licensee.

15.7 Cannabis Business Tax Survival. Notwithstanding any other section of this Agreement, future legislation: decision(s) or other actions by any court of competent jurisdiction; local, regional, state, or federal regulatory action; or any other mechanism that invalidates or otherwise limits the applicability of the Cannabis Business Tax, Licensee expressly agrees to pay City the Cannabis Business Tax in the amounts, and in the manner set forth in this Section 15.

16. SUBSEQUENT LAWS OR JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

17. HOLD HARMLESS.

Licensee hereby agrees to, and shall defend, save, and hold City and its elected and appointed boards, commissions, officers, agents, and employees, harmless from any and all claims, costs and liability for any damages, personal injury or death, which may arise directly or indirectly from Licensee's operations under this Agreement.

18. INDEMNIFICATION.

Licensee agrees to indemnify, defend, and hold harmless City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any action arising out of or stemming from this Agreement. Licensee may select its own legal counsel to represent Licensee's interests at Licensee's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Licensee shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in

defense of any such action or other proceeding, plus staff and attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Licensee agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney's fees and time referenced herein.

18.1 Licensee's Release of City. Licensee, on behalf of itself and anyone claiming by, through or under Licensee hereby waives its right to recover from and fully and irrevocably releases City, and their council members, board members , employees, officers , directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that Licensee may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to: (i) the condition (including any construction defects , errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Business, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

18.2 Scope of Release. The release set forth in Section 19 hereof includes claims of which the Licensee is presently unaware or which Licensee does not presently suspect to exist which, if known by Licensee, would materially affect Licensee's release of the Released Parties. Licensee specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, Licensee agrees, represents and warrants that Licensee realizes and acknowledges that factual matters now unknown to Licensee may have given or may hereafter give rise to causes of action, claims , demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Licensee further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Licensee nevertheless hereby intends to release, discharge and acquit City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, Licensee, on behalf of itself and anyone claiming by, through or under Licensee, hereby assumes the above-mentioned risks and hereby expressly waives any right Licensee and anyone claiming by, through or under Licensee, may have under Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Licensee's Initials: _____

Notwithstanding the foregoing, this release shall not apply to, nor shall City be released from, City's actual fraud or misrepresentation.

18.3 Separate Agreement. The parties agree that Section 19 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 19, which shall survive such invalidation, nullification, or setting aside.

19. LIABILITY INSURANCE.

Licensee shall maintain, or cause to be maintained, in force during the term of this Agreement, public liability and property damage insurance, including personal injury, contractual, and owned and non-owned vehicles and equipment, with such coverage and limits as may be reasonably requested by City from time to time, but in no event for less than the sum of one million dollars aggregate ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate.

19.1 Public Liability Insurance. Public liability insurance policy or policies shall name City as an additional insured, and any policy or policies shall contain cross-liability endorsements. An endorsement shall be provided which states the coverage is primary insurance and that no other insurance affected by City will be called upon to contribute to a loss under this coverage.

19.2 Certificate of Endorsement. Licensee shall provide City with a certificate and endorsement, in forms satisfactory to City, evidencing such insurance coverage or coverages shall be filed with City prior to construction of the Project, and the certificate and endorsement shall provide that such insurance coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to City.

19.3 Coverage Reduction of Cancellation. Licensee shall, within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Licensee's expense, and Licensee shall promptly reimburse City for such expense upon receipt of billing from City.

20. NOTICES.

Any notice or communication required hereunder between the parties shall be in writing, and may be delivered either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses

designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

Notices to City shall be addressed to:	City of Pittsburg Attn: City Manager 65 Civic Avenue Pittsburg, CA 94565
With copies to:	City of Pittsburg Attn: City Attorney 65 Civic Avenue Pittsburg, CA 94565
Notices to Licensee shall be addressed to:	Theresa Johnson Canna Analytical Inc. 1534 Willow Pass Road Pittsburg, CA 94565

21. EXHIBITS.

21.1 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain exhibit listed below, as determined by the accompanying letter designation.

EXHIBIT A: Property Description

EXHIBIT B: Site and Floor Plans (*Confidential)*

EXHIBIT C: Chemical Usage

EXHIBIT D: Security Plan

21.2 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

22. SEVERABILITY.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

23. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof.

24. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE

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Executed at Pittsburg, California on _____.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the dates written above.

CITY OF PITTSBURG, **a municipal corporation**	**Canna Analytical, Inc,** **a California Corporation**
Garrett Evans, City Manager	Name: Title:

ATTEST:

Alice E. Evenson, City Clerk

APPROVED AS TO FORM:

Donna Mooney, City Attorney

EXHIBIT A: Property Description

1534 Willow Pass Road:

PARCEL ONE:

PORTION OF THE RANCHO LOS MEDANOS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THAT CERTAN PARCEL CONVEYED TO DOMINIC S. CARUSO, RECORDED APRIL 27, 1946, SERIES NO. 46-13620, OFFICIAL RECORDS; THENCE WESTERLY ALONG THE NORTHERLY LINE OF A STATE HIGHWAY, SOUTH 85 13' WEST, 121.86 FEET; THENCE ON A CURVE TO THE RIGH_T WITH A RADIUS OF 1402.50 FEET, AND TANGENT TO THE PROCEEDING COURSE, AN ARC DISTANCE OF 118.72 FEET; THENCE NORTH 89 56' WEST, 9.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SATO POINT OF BEGINNING WESTERLY ALONG THE NORTHERLY LINE OF SAID STATE HIGHWAY, NORTH 89 56' WEST, I 00.00 FEET; THENCE NORTH O 04' EAST, 459.30 FEET TO A POINT ON THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE EASTERLY ALONG SAID SOUTHERLY LINE ON A CURVE TO THE LEFT, THE CENTER OF WHICH BEARS NORTH 16 51' 26" EAST, 17,238.80 FEET, AN ARCE DISTANCE OF 104.39 FEET; THENCE SOUTH 0 04' WEST, 429.33 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF THE RANCHO LOS MEDANOS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAN PARCEL OF LAND CONVEYED TO CHIAPERO, ET AL, BY DEED RECORDED SEPTEMBER 17, 1946, SERIES NO. 34547, OFFICIAL RECORDS; THENCE NORTH 89 56' WEST ALONG THE NORTHERLY LINE OF THE STATE HIGHWAY LEADING FROM PITTSBURG TO MARTINEZ, 50.00 FEET; THENCE LEAVING SAID LINE NORTH 0 05' EAST, 474.47 FEET TO A POINT ON THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY, RIGHT OF WAY; THENCE EASTERLY ALONG SAID SOUTHERLY LINE ON A CURVE TO THE LEFT, THE CENTER OF WHICH BEARS NORTH 17 01' 51" EAST, 17,238.80 FEET, AN ARC DISTANCE OF 52.24 FEET TO THE NORTHWEST CORNER OF THE AFORESAID CHIAPERO PARCEL; THENCE SOUTH 0 04' WEST, ALONG THE WESTERLY LINE OF SAID CHIAPERO PARCEL 459.30 FEET TO THE POINT OF BEGINNING.

A.P.N.: 096-092-009-8

EXHIBIT C: Chemical Usage

Method/Test type	Chemical	Volatile/Non-Volatile
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

EXHIBIT D: Security Plan

The following requirements shall be completed prior to commencing manufacturing of cannabis products, unless otherwise noted. Any changes to the security plan shall be subject to approval by the Chief of Police.

General Provisions:

A. All necessary steps shall be taken to minimize incidents of theft, vandalism, or any other instances stipulated by the Chief of Police that adversely impact the safety of the community. Should the business necessitate an increased police presence, the Chief of Police may require Licensee to provide additional public safety measures, including but not limited to, additional video cameras, additional exterior lighting, hiring licensed and bonded security guards approved by the Police Department, or such other measures as determined necessary by the Chief of Police. Any such additional measures required by the Chief of Police shall be at the business owner's sole expense.

B. The total amount of concentrated THC stored at any one time shall be documented, and records shall be made available to the Chief of Police or his/her designee at all times. The Chief of Police shall reserve the right to establish a limit on the amount of THC stored at any time.

C. All inventory, testing, usage, or other logs shall be made available to the Police Department or City Manager upon request.

D. [redacted] The secure area shall remain locked at all times, and shall be accessible only by those individuals identified and approved as "Responsible Parties."

E. All signage shall be approved and placed in accordance with Title 19 of the Municipal Code, and shall not utilize any wording that would convey the presence of cannabis at the project site, including but not limited to the terms "cannabis," "marijuana," or any other commonly used phrase associated with cannabis or marijuana use. The Police Department and Planning Division shall reserve sole discretion in determining whether any word or phrase conveys the presence of cannabis at the project site.

Fencing/Gates:

F. All existing chain-link fencing surrounding the entire parcel (commonly referred to as APN: 096-092-009) shall be properly maintained, and chain-link fencing along the northern parcel boundary shall be finished with vinyl privacy slats. All fencing shall meet the requirements of Pittsburg Municipal Code (PMC) Title 18, "Zoning" as

applicable. Licensee shall be responsible for obtaining all necessary permits from the City of Pittsburg Community Development Agency prior to installation.

Security System: The following requirements shall apply to all locations identified within section 3.1 of this Agreement, unless otherwise noted.

G. All facilities shall be alarmed with a professionally installed and maintained and centrally-monitored security system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 et seq. and whose agents are properly licensed and registered under applicable law. Notice of the triggered alarm shall be sent to the Police Department.

H. The Licensee shall provide for the installation of 24-hour security surveillance cameras of at least high definition (HD) quality to monitor all entrances and exits to and from the premises, all interior spaces where cannabis, cash, or currency is being stored, and all interior spaces where diversion of cannabis could reasonably occur. Access to the security surveillance camera network shall be given to the Police Department.

I. The Licensee shall ensure the retention of 24-hour surveillance camera footage for a minimum of sixty (60) days. All surveillance camera footage shall be made immediately available to the Chief of Police or the Chief of Police's designee, or to any other state or local law enforcement, upon request.

J. Use of commercial-grade, non-residential locking mechanisms and access card readers shall be required at all points of ingress and egress to and from the exterior of the building, as well as to and from any areas where cannabis or cannabis products are stored. All card entries shall be logged for a minimum of sixty (60) days and made available to the Police Department upon request.

K. Sensors shall be installed to detect entry and exit from all secure areas.

L. [redacted]

M. Upon request, the Licensee shall provide the Chief of Police building schematic plans (which shall be kept confidential) showing, at a minimum:

[redacted]

N. The Licensee shall submit a final design/scope-of-work of the security system to be installed, which shall be approved by the Chief of Police. The final security system plan shall include, but is not limited to, the following features:

[redacted]

O. All facilities shall maintain adequate exterior lighting in the parking areas and entry/exit points.

Background Checks/Disqualifying Convictions:

P. The Commercial Medical Cannabis Permit holder(s), their business operator(s), and all employees shall be subject to background search by the California Department of

Justice (DOJ) and local law enforcement. At the City's discretion, the Police Department may conduct a background search of any Commercial Medical Cannabis Permit holder, their business operators, and employees.

Q. Commercial medical cannabis business owners, operators, managers, and employees must not have felony convictions, as specified in Penal Code section 667.5(c) and section 1192.7(c), or a criminal conviction that substantially relates to the qualifications, functions, or duties of the business or profession, including a felony conviction involving fraud, deceit, or embezzlement or a criminal conviction for the sale or provision of illegal controlled substances to a minor.

Operation:

R. [redacted]

S. At least one person listed as a "responsible party," shall be "on-call" at all times in case of incidents of theft, vandalism, or any other instances stipulated by the Chief of Police that require immediate notification by the Police Department. Upon any incidents of theft, vandalism, or any other instances stipulated by the Chief of Police, a "responsible party," shall notify the Police Department immediately.

T. All cannabis deliveries to the site shall adhere to the following protocol:

[redacted]

U. All cannabis deliveries to and from the sites shall comply with section 4.5 of this agreement.

V. [redacted]

Map of Surrounding Uses - Canna Analytical

1/4/2021, 6:32:34 PM

Override 1

1:4,000

0 205 410 820 ft

0 62.5 125 250 m

USDA FSA, GeoEye, Maxar, Esri, HERE, Garmin, iPC, Sources: Esri, HERE, DeLorme, USGS, INCREMENT P, NRCan, © OpenStreetMap contributors, and the GIS User Community

Disclaimer: All reasonable effort has been made to assure the accuracy of the maps for its intended purpose.

City of Pittsburg
Community Development Department – Planning Division
65 Civic Avenue, Pittsburg, CA 94565 | Tel: (925) 252-4920 | Fax: (925) 252-4814

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the **CITY COUNCIL of the City of Pittsburg** will conduct a public hearing on:

DATE: **January 19, 2021**
TIME: **7:00 p.m.**
PLACE: **Streaming Video (see public advisory on next page)**

Concerning the following matter:

Adoption of a City Council Resolution Approving Commercial Cannabis Permits and an Operating Agreement Between the City and Canna Analytical, Inc., AP-19-1414.

This item includes consideration of a request for City Council approval of: 1) commercial cannabis permits to allow for the testing of medical and nonmedical cannabis products at 1534 Willow Pass Road (APN: 096-092-009); and 2) an operating agreement between the City and Canna Analytical Inc.

PROJECT CONTACT: Jordan Davis, (925) 252-4015 or jdavis@ci.pittsburg.ca.us

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Why am I receiving this notice?
You are receiving this notice because you have either previously requested notifications from the Planning Division, or a project has been proposed in your neighborhood and all property owners within a minimum 300-foot radius of the project site are being notified.

Where can I get more information about this project?
The file for this project is available for public inspection; please contact the project planner listed above to make necessary arrangements..

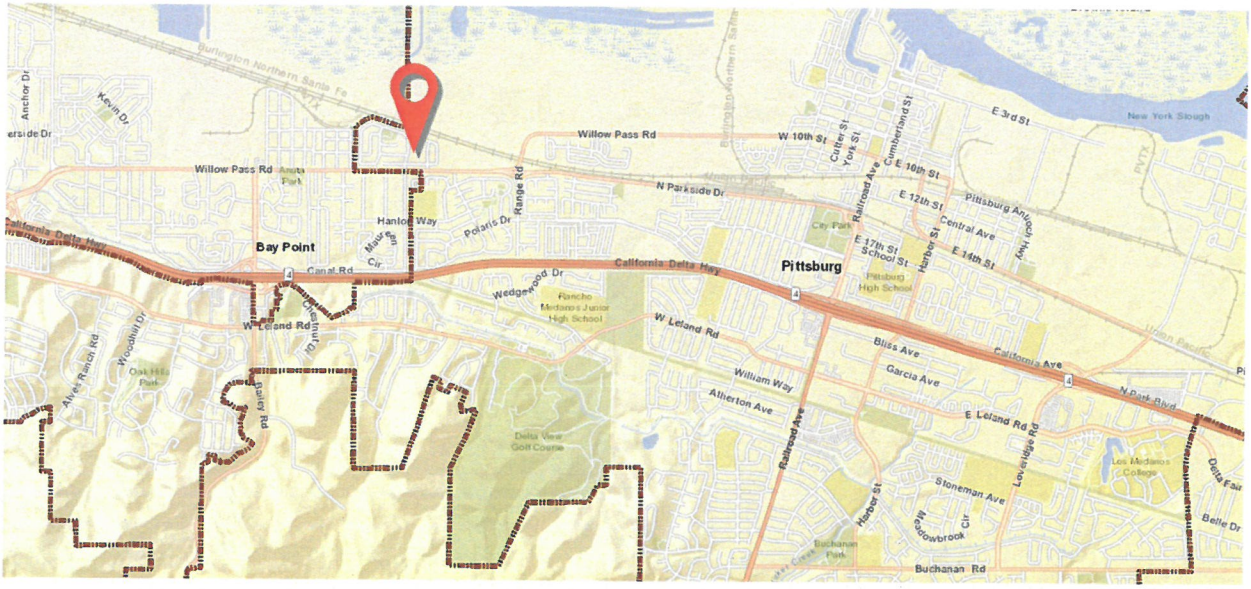
What can I do if I have comments on the project?
Comments or objections to the project can be made by writing or through oral testimony during the public hearing. Written comments citing the project name may be emailed to the project contact listed above or may be mailed or delivered to: Pittsburg City Manager's Office, Attention: Jordan Davis, 65 Civic Avenue, Pittsburg, CA 94565.

Pursuant to Section 65009 of the California Government Code, if you challenge this matter in court, you may be limited to those issues you or someone else raised at the public hearing described in this notice, or in written correspondence on the matter delivered to this agency at, or prior to the public hearing. Any written correspondence delivered to the address noted above before the hearing body's action on the matter will become a part of the administrative record.

Alice E. Evenson

ALICE E. EVENSON
CITY CLERK

Project Title: Canna Analytical Inc. Commercial Cannabis Permit, AP-19-1414
Location: 1534 Willow Pass Road (Assessor's Parcel No.: 096-092-009)



PUBLIC ADVISORY: THE CITY COUNCIL CHAMBER WILL NOT BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the City Council on January 19, 2021 will be conducted telephonically via Zoom and broadcast live through Granicus on the City's website (www.ci.pittsburg.ca.us).

Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber will not be open for the meeting. The City Council will be participating telephonically and will not be physically present in the Council Chamber.

Written comments that are only to be provided to City Council and not read at the meeting will be distributed to the City Council prior to the meeting if received by 5:00 p.m. the date of the meeting. Comments via text and social media (Facebook, Twitter, etc.) will not be accepted.

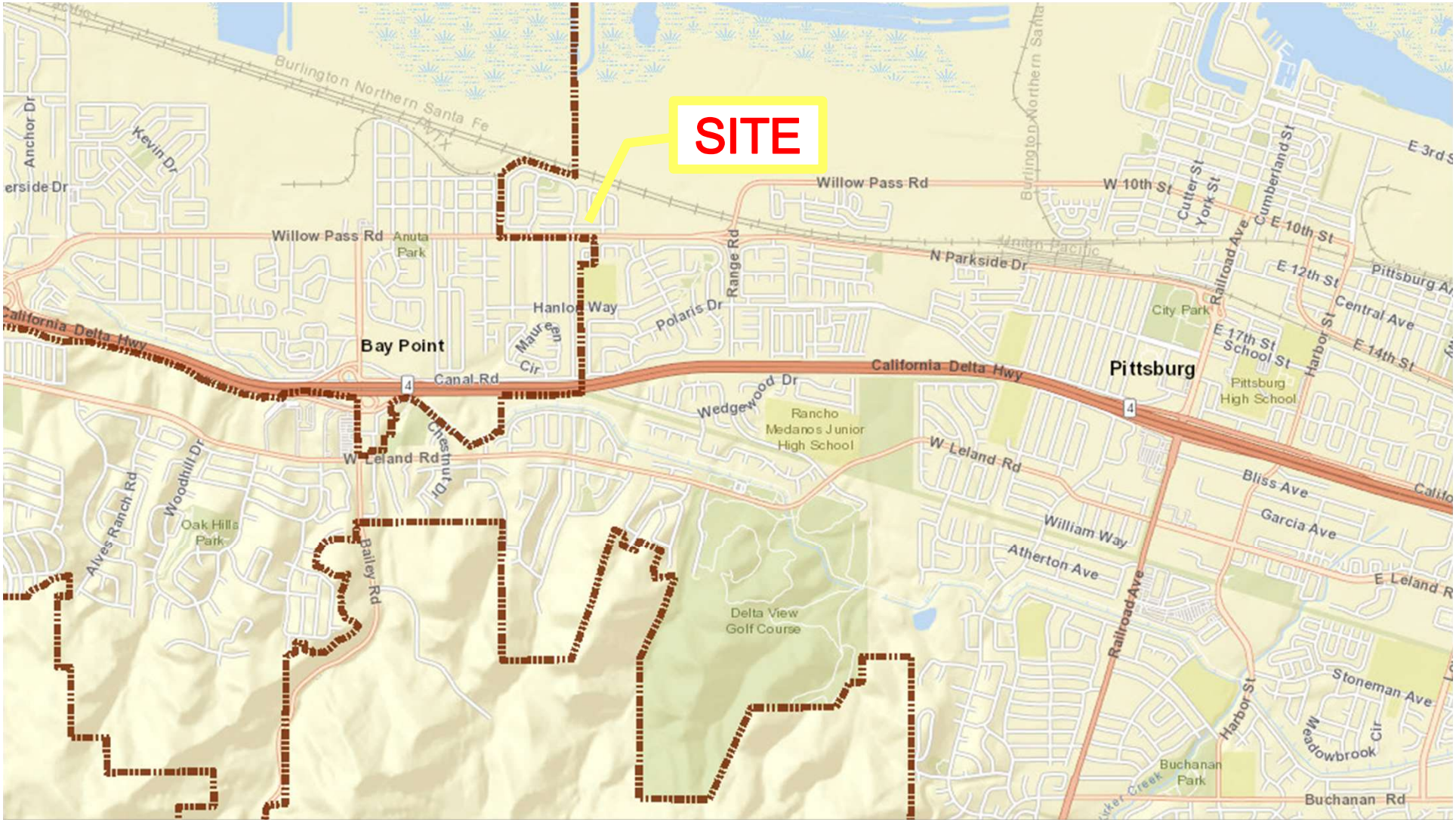
The City of Pittsburg thanks you in advance for taking all precautions to prevent spreading the COVID-19 virus.

City of Pittsburg

Canna Analytical Inc.
Commercial Cannabis Permits

Canna

- Operation:
    - Requesting approval to operate as a Type 8 testing facility of cannabis products.
- Project site meets the distancing requirements contained in PMC Title 5
    - >2,900’ path of travel to DeAnza Park
- McCampbell Analytical: agricultural and scientific testing facility at proposed location for 20+ years


SITE
Burlington Northern Santa Fe
Willow Pass Rd
Anuta Park
Hanlon Way
Maureen Cir
Polaris Dr
Range Rd
Bay Point
California Delta Hwy
Canal Rd
W Leland Rd
Chestnut Ct
Wedgewood Dr
Rancho Medanos Junior High School
Woodhill Dr
Alves Ranch Rd
Oak Hills Park
Bailey Rd
Delta View Golf Course
Pittsburg
N Parkside Dr
W 10th St
Cutler St
York St
Railroad Ave
Cumberland St
E 10th St
E 12th St
Central Ave
E 14th St
E 17th St
School St
Harbor St
Pittsburg High School
City Park
Bliss Ave
Garcia Ave
William Way
Atherton Ave
E Leland Rd
Stoneman Ave
Meadowbrook Cir
Buchanan Park
Buchanan Rd
Kevin Dr
Anchor Dr

SITE
>2,900'
Union Pacific
Willow Pass Rd
N Parkside Dr
Range Rd
E Trident Dr
RAMP

Commercial Cannabis Regulations

PMC Chapters 18.88 and 5.70: manufacture, test, or distribute cannabis-related products requires Commercial Cannabis Permit, which is subject to City Council approval, and is mandated to include:

1. Business Operating Agreement;
2. Business Operating Plan; and
3. Business Security Plan approved by the Chief of Police

Operating Plan

Canna would be required to:

- provide a list of responsible parties/employees
- provide a floor plan and process map
- require licensed delivery services for shipping
- make necessary site improvements
- keep records of all cannabis material
- dispose of waste and by-products appropriately
- provide a hazardous materials management plan as applicable

Security Plan

Security plan would require:

- all inventory or other logs be available to PD
- 24-hour monitoring and 360-degree coverage
- commercial locking mechanisms/card readers
- background checks as required by PD
- manager-level employee on-call at all times
- Chief may also require additional measures at any time at sole cost of licensee

Fiscal Impact

- Cannabis business tax:
  - 5% on all gross receipts up to $2,000,000;
  - 4% on gross receipts over $2,000,000.
- Potential GF revenues >$100,000 annually

Findings

PMC 5.70.160(f): “Council may deny an application for Commercial…cannabis permits if it determines any of the following:

1. The applicant made one or more false or misleading statements or omissions on the registration application or during the application process;
2. The applicant fails to meet the requirements of this chapter or any regulation adopted pursuant to [PMC Chapter 5.70];
3. It is not in the best interest of the City, based upon the applicant’s application or operating agreement, to issue a Permit to the business;
4. Potential threats to…health and safety cannot be sufficiently mitigated;
5. Significant public opposition necessitates denial to preserve the health, safety, and general welfare of the City.”

Recommendation

Staff recommends the City Council adopt a resolution approving the requested commercial medical and nonmedical commercial cannabis permits and an operating agreement with Canna Analytical.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a Minute Order Authorizing the Co-Sponsorship of the Contra Costa County COVID-19 Youth/Young Adult Ambassador Program

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

The City Council will consider the adoption of a minute order authorizing the participation in the Contra Costa County COVID-19 Youth/Young Adult Ambassador (YYA) Program providing for employment of Pittsburg youth and young adults.

FISCAL IMPACT

Participation in the YYA Program as a co-sponsor is a cost of Three Thousand One Fifty Dollars ($525 per ambassador) which will allow for six (6) participants in the program. Funding would be provided from the Fiscal Year 2020/2021 Recreation Summer Youth Account (Fund 110-41710-2199).

RECOMMENDATION

City Council adopt a minute order authorizing the participation in the Contra Costa County COVID-19 Youth/Young Adult Ambassador Program.

BACKGROUND

On March 4, 2020, the Governor of California proclaimed a state of emergency to exist in California as a result of the threat of novel coronavirus COVID-19 (“COVID-19”) an infectious disease to which there is no known natural immunity and for which there was no vaccine.

On March 10, 2020, Contra Costa County proclaimed the existence of a local emergency caused by the introduction of COVID-19 and its contribution to the shortage of essential health care supplies. On March 13, 2020, the President of the United States declared a national emergency and on March 16, 2020, the City of Pittsburg proclaimed a local emergency.

To date, the local, regional, state, and national emergency have not been terminated, and the number of COVID-19 cases and related deaths continue to increase. According to the Contra Costa County Health Data Dashboard, 6,868 youth and young adults between the ages of 14-24 were tested in June 2020. In that same month there were 4,460 total cases of which 437 or 10% of those cases where in the youth and young adult age group, with age 15 being the highest number of cases among the group.

The County's COVID-19 Youth/Young Adult Ambassador Program was created to address the need of reaching the youth and providing them an opportunity to learn new skills and use their platforms to advocate/educate their community about COVID-19. The program was rolled out in November 2020 in the City of Pablo with ten participants with Antioch's cohort beginning in January 2021 with 20 participants.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

Youth and young adults are powerful agents for change and transformation in their communities. Many communities like those in Contra Costa County are currently in crisis because of COVID-19. In an effort to help reduce the spread of the virus, the COVID-19 Youth/Young Adult Ambassadors have been established in Contra Costa County.

The primary role of the ambassadors is to help create youth/young adult focused messages about COVID-19 such as how to protect yourself from it, as well as how and where you can get tested for the virus. Once these messages are created the ambassadors will be asked to use their social media platforms to share these messages with family, friends, and social media platform followers. In addition, this cohort of ambassadors will be asked to serve as spokespersons for the City of Pittsburg and Contra Costa Health Services, and create brief presentations to present to other youth, members of the community, and key decision makers.

Youth and young adults between the ages of 15-24 who reside within the Pittsburg boundaries or the 94565 zip code will have the opportunity to participate in the program. Each participant will receive a $525 stipend for successful completion of 35 hours of service. Contra Costa Health Services will provide all training and supervision of the participants.

A key focus for Pittsburg has to been to provide additional programs and civic engagement opportunities that provide a platform for the youth voice.

If approved, staff would sign a letter agreement for sponsorship and assist with the solicitation of applicants.

Report Prepared By: Kolette Simonton, Assistant Director of Economic Development and Recreation

CITY OF PITTSBURG
CITY COUNCIL/AGENCY CONCURRENT MEETING MINUTES

DATE: December 21, 2020

LOCATION: Council Chamber, City Hall, 65 Civic Avenue, Pittsburg, CA 94565

CITY COUNCIL.AGENCY MEMBERS
Marilyn Craft, Mayor/Chair
Holland Barrett White, Vice-Mayor/Chair
Shanelle Scales-Preston, Council/Agency Member
Juan Antonio Banales, Council/Agency Member
Jelani Killings, Council/Agency Member
S.L. Floyd, Agency Member
Annie Hill Herring, Agency Member

APPOINTED OFFICIALS
Garrett Evans, City Manager/Executive Director
Donna Mooney, City Attorney/Legal Counsel
Alice E. Evenson, City Clerk/Agency Secretary (elected)
Nancy Parent, City Treasurer (elected)

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the City Council for December 21, 2020 was conducted electronically for Closed Session and through Zoom with broadcasting live through Granicus on the City's website. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber was not open for the meeting. Council Members participated electronically or through Zoom and were not physically present in the Council Chamber.

Mayor Craft called the meeting of the City Council to order at 7:10 P.M. in the City Council Chamber at City Hall, 65 Civic Avenue, Pittsburg, CA after convening in Closed Session at 5:30 P.M. for the following items:

1. LIABILITY CLAIM pursuant to Section 54956.95
   Claimant: Polarsports LLC/Paul Bates
   Agency claimed against: City of Pittsburg

2. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
   Significant exposure to litigation pursuant to Section 54956.9(d)(2)
   Number of cases: one

City Attorney Mooney stated the Council in closed session provided direction to the City Attorney on Item 1.

City Attorney Mooney stated there was no reportable action taken in closed session on Item 2.

ROLL CALL

All Members were present.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

PRESENTATION

3. 3rd Quarter Overview of Use of Force by Law Enforcement Personnel and Overview of Internal Affairs Investigations

Chief Addington presented the 3rd Quarter report.

CITY MANAGER REPORTS/REMARKS

City Manager Evans gave an update on the COVID-19 health order for the City of Pittsburg.

PUBLIC COMMENTS

Comments were received from:

Adrian Yee
Joanna Hernandez
Sheena Bell
Nicole Terrell
Andrew Becker

COMMITTEE REPORTS

Vice-Mayor White attended the Community Services subcommittee with Member Scales-Preston. He also attended the ECCRFFA and Transplan meetings and was chosen as a liaison.

Member Killings attended the 2x2 committee meeting, the finance subcommittee and the Economic Development committee.

Member Scales-Preston attended the Tri-Delta and CCTA meetings.

Mayor Craft attended the CCTA meeting.

CONSIDERATION

4. Adoption by Minute Order of Council Member Committee Assignments for 2021

On Motion by Vice-Mayor White, seconded by Member Banales to adopt and carried unanimously.

5. Adoption of a Minute Order Approving the Landscape Maintenance Master Plan

Comments were received by:

Karen Lewis
Sarah Foster

On Motion by Vice-Mayor White, seconded by Member Scales-Preston to adopt and carried unanimously.

6. Adoption of a City Council Resolution Approving an Addendum to the Five-Year Capital Improvement Program and Allocating Funds to Projects

On Motion by Member Banales, seconded by Member Scales-Preston to adopt and carried unanimously.

CONFLICT OF INTEREST STATEMENT

There were no conflict of interests stated.

COMBINED CITY COUNCIL, PITTSBURG ARTS AND COMMUNITY FOUNDATION, PITTSBURG POWER COMPANY AND SOUTHWEST PITTSBURG GHAD II AND SUCCESSOR AGENCY CONSENT CALENDAR

City Attorney Mooney stated there were several revisions to be made to Items 11 and 16 and outlined the revisions, which will be reflected in the final documents.

Comments on Item 10 were received and read prior to adoption of the Consent Calendar by:

Joanne Fanucchi
Mark Linde

On Motion by Member Banales, seconded by Vice-Mayor/Chair White to adopt and carried unanimously.

7. Minutes of December 7, 2020

8. Receive and File the Southwest Pittsburg Geologic Hazard Abatement District II (GHAD) Annual Pre-Winter Inspection Report 2020

9. Adoption of Pittsburg Arts and Community Foundation and City of Pittsburg Resolutions Approving a Financing Agreement Between the Pittsburg Arts and Community Foundation and the City of Pittsburg for the Renovation of the California Theatre

10. Adoption of City Council and Pittsburg Power Resolutions Approving the Third Amendment to the Exclusive Negotiating Rights Agreement Between the City of Pittsburg, Pittsburg Power Company, and Energy Delivery Solutions LLC

11. Adoption of Two City Council Ordinances to: 1) Amend the San Marco PD District and Development Plan, and 2) Approve the 4th Amendment to the San Marco Development Agreement for the San Marco Commercial Center Project, AP-18-1349 (GP, RZ, DA)

12. Adoption of a City Council Resolution to Amend the Master Pay Schedule as Required by California Public Employees' Retirement System

13. Adoption of a City Council Resolution Allocating Funds and Authorizing Additional Construction Contingency for Project 5208, Montezuma Slough Pump Station Reconstruction Project

14. Adoption of a City Council Resolution Accepting Safe Routes to BART (SR2B) Grant for the BART Pedestrian and Bicycle Connectivity Project

15. Adoption of a City Council Resolution Allocating Funds for Replacement of Water and Sewer Pipelines on East 9th Street

16. Adoption of a City Council Resolution Approving a Subdivision Improvement Agreement for Subdivision 8406 Bailey Estates

17. Receive and File Report on the Review of Development Impact Fees Received by the City of Pittsburg that are Subject to AB 1600 Reporting Requirements

18. Adoption of a City Council Resolution Accepting the Plans and Specifications, and Awarding Project 2205, West Leland Road Street Lighting

19. Adoption of City Council Resolution Authorizing City Manager to Execute a Purchase Order for Police Vehicle Equipment

20. Adoption of Nine City Council Resolutions to Find Developers in Compliance with their Respective Development Agreements for: Southwest (San Marco), Garaventa, Tuscany Meadows, Liberty, Trans Bay Cable, Edgewater, Belle Harbor (Waterstone), Sky Ranch II, and Montruex

21. Adoption of a City Council Resolution to Amend the Salary Range of the Water Plant Superintendent

22. Receive and File the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ended June 30, 2020 and Other Miscellaneous Audit Reports

23. Adoption of a City Council Resolution to Approve the City Hall Boiler Replacement Project and Authorize the City Manager to Negotiate and Execute a Contract with California Boiler Works of Clayton, Calif.

24. Adoption of a City of Pittsburg Resolution Authorizing the City Manager Amend a Professional Services Agreement with Architectural Resources Group

COUNCIL REQUEST FOR FUTURE AGENDA ITEMS

Vice-Mayor White asked for a Future Agenda Item researching the creation of a Public Safety Subcommittee that would encompass the following:

"The purpose of this Sub Committee is to make policy recommendations, hear issues, and make program and service improvements related to our police department, educating our community; crime prevention; gang prevention and intervention; civil and human rights compliance; domestic violence intervention.

"Committee members will research and evaluate crime trends and identify the highest risks to public safety. Committee members will also make recommendations to the City Council, City Commissions and City staff regarding threats to public safety, crime reduction and prevention strategies based on their research and community outreach.

"More specifically to partner with the police department to ensure that the city council is an active participant in all aspects of the Strategic Planning Process for the multi-year Pittsburg police department Strategic Plan. I envision 2 members of the City Council, 2 members of the CAC and our Police Chaplain Program. If ok with the Council, I would like to volunteer to serve on this committee and nominate Councilmember Shanelle Scales Preston to serve with me."

On Motion by Vice-Mayor White and seconded by Member Scales-Preston to create a Public Safety Subcommittee and appoint Vice-Mayor White and Member Scales-Preston as committee members and approved unanimously.

Vice-Mayor White asked for a Future Agenda Item researching creation of a Government Performance Ad Hoc Committee to encompass the following:

"The purpose of this Sub Committee is to make policy recommendations, hear issues, and make program and service improvements related to customer service; government performance and accountability; city workforce development and diversity; process improvements; inter-governmental relations; transparency and values; strategic planning; performance management; information technologies.

"More specifically, to work with staff to develop a new framework for annual council goals to ensure that all goals recommended by the Council or Staff have explicit Key Performance Indicators (KPIs) and other benchmarks for success.

"In addition I envision this ad-hoc working to identify, collect, analyze, and report on indicators that show how well our organization (being the City of Pittsburg) performs, both internally and in the delivery of services to the public, and how that performance compares with its targets or with peer organizations. More importantly, as a management tool, performance data is intended not as an end result, but rather as a means to more informed decision making and a more engaged community. Again, If ok with my colleges, I would like to volunteer to serve on this committee and nominate Councilmember Banales to serve with me."

On Motion by Vice-Mayor White and seconded by Member Banales to create a Government Performance Ad Hoc Subcommittee and appoint Vice-Mayor White and

Member Banales as committee members and approved unanimously.

Comments for both Items 25 and 26 were received from:

Pittsburg Youth Action:
Manisha Rattu
Mohammed Azeel
Christine Carpio
Fatima Salgado
Dikshya Koirala
Clarisse Carpio

25. Consideration of a City Council Request for a Future Agenda Item Related to Review of "Policies and Procedures for the City Council" and By Minute Order Establishing an Ad Hoc Committee on City Council Policy and Procedures and Appointing Two Committee Members

On Motion by Member Banales, seconded by Vice-Mayor White to appoint Member Banales and Mayor Craft to an ad hoc committee for review of Policies and Procedures for the City Council and adopted unanimously.

26. Future Agenda Item Regarding Evaluation of Actions During November 2, 2020 City Council Meeting, if a Violation of the City Council's Policy and Procedure Occurred and Actions to Correct the Violation

Mayor Craft noted she was unsure if there was a violation of the Brown Act or the City Council's Policy and Procedure; however, she stated there was a violation of the public trust. She suggested working with the City Attorney to draft a letter regarding the issue.

Member Killings stated he wanted it on record that there was no violation of either the Brown Act or the City Council's Policy and Procedure.

On Motion by Member Banales, seconded by Vice-Mayor White to approve a letter drafted by the City Attorney and Mayor Craft and adopted by the following vote:

AYES: Banales, Scales-Preston, White, Craft
ABSTAIN: Killings

Vice-Mayor White asked to re-open the item for discussion. Member Banales supported further discussion. Member Scales-Preston noted there was a violation of someone's First Amendment right, but noted it was possible to defer to the committee that will be reviewing the City Council's Policy and Procedure.

City Attorney Mooney recommended a formal motion to withdraw the previous motion and a new motion to either forgo a future agenda item on a policy violation or a motion that would clarify that the ad hoc committee will be addressing items such as subject matter jurisdiction in public comments.

On Motion by Mayor Craft, seconded by Vice-Mayor White that the decision on Item

25 stand and the subcommittee created therein and that Item 26 be addressed through the ad hoc subcommittee when reviewing the City Council Policy and Procedures and approved by the following vote:

AYES: Banales, Scales-Preston, White, Craft
ABSTAIN: Killings

COUNCIL MEMBER REPORTS AND REMARKS

Member Scales-Preston wished everyone happy holidays.

Vice Mayor White wished everyone happy holidays.

Mayor Craft wished everyone happy holidays.

ADJOURNMENT

The City Council meeting adjourned at 9:32 P.M. to January 19, 2021.

Respectfully submitted,

Alice E. Evenson, City Clerk

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Pittsburg Power Company Resolution Approving the "On-Call" Utility Electrical Engineering Professional Services List

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Pittsburg Power Company (PPC), a joint powers agency, provides utility retail electric and natural gas services on Mare Island, Vallejo in the name of Island Energy (IE). In its normal course of business, PPC utilizes professional electric consulting and design services to support customer service and utility reliability projects.

Utility electrical engineering consulting and design professional services can be specialized. PPC identified 10 companies providing such utility services, of which five provided qualifications. All five were deemed qualified to provide professional utility services to PPC.

FISCAL IMPACT

Agency approval of the "On-Call" Utility Electrical Engineering Professional Services List has no direct fiscal impact to the City and the General Fund. Funds for such professional services will be from Island Energy's capital project and operating budgets previously approved by the City Council.

Island Energy proposes to enter into an "On-Call" professional utility services agreement with each company for $200,000. As services are needed, Island Energy will issue task orders to perform the services. The anticipated amount for each task order is generally in a range of $2,000 to $10,000 on average.

RECOMMENDATION

The Governing Board of the PPC approve the "On-Call" Utility Electrical Engineering Professional Services List and authorize the Executive Director to execute such professional services agreements.

BACKGROUND

From time to time, PPC, performing as Island Energy on Mare Island, Vallejo, requires professional engineering services from companies qualified and experienced in providing electric utility high-voltage, medium voltage and secondary voltage customer support projects.

Such activities and services can include utility reliability projects and design, outage forensics, system expansion or redundancy design and equipment specification. Customer projects can include new commercial services and expansion of existing services including requiring utility circuit enhancements and equipment specification.

SUBCOMMITTEE FINDINGS

The “On-Call” Utility Electrical Engineering Professional Services List has not been presented to the PPC Subcommittee.

STAFF ANALYSIS

In order to provide the most reliable service and highest efficacy of project design and customer support, PPC necessarily seeks the support of qualified utility professional services companies.

PPC has historically used third-party electrical engineering services in support of both utility and customer projects. Such utility projects including system design, reliability, redundancy and modernization engineering can often exceed the experience of staff. Further, third-party expertise brings a broader range of qualifications and experience to PPC utility projects.

Staff identified 10 companies that have relevant qualifications and experience. Of the 10 companies, five expressed interest and provided qualifications. Upon review, all five were deemed qualified to provide utility electrical engineering services to PPC.

Staff is recommending proceeding with executing individual agreements with the five companies:

1. Power Engineers, Inc.
2. Versa Engineering, Inc
3. Eichleay, Inc.
4. Commonwealth Associates, Inc
5. EETS, Inc.

In utilizing each of these companies, PPC would enter into an on-call agreement and issue a task order for each specific engineering service. The task order will set forth, anticipated resources and materials, schedule, deliverables and any other pertinent information. The engineering company would subsequently be requested to provide a quote to perform the work. Several companies will be requested to provide a quote for projects expected to exceed $50,000. Given historical examples, projects are generally in a range of $2,000 to $10,000 on average.

Staff is further proposing that each company agreement be limited to an amount not to exceed $200,000 per agreement which will expire June 30, 2023.

ATTACHMENTS: Resolution
Exhibit A – On-Call Utility Electrical Engineering Professional Service List

Report Prepared By: Douglas Buchanan, Power Company Manager

BEFORE THE GOVERNING BOARD OF THE PITTSBURG POWER COMPANY

In the Matter of:

Approving the On-Call Utility Electrical)
Engineering Professional Service List) RESOLUTION NO. 21-

The Governing Board of the Pittsburg Power Company FINDS AND DETERMINES as follows:

WHEREAS, Pittsburg Power Company (PPC), performing as Island Energy on Mare Island, Vallejo, has a need for professional utility electrical engineering services; and

WHEREAS, staff requested qualifications from 10 qualified utility electrical engineering firms with directly relevant and/or previous experience with PPC, or had requested to be included in the selection process: and

WHEREAS, of the 10 companies, staff received a statement of qualifications and experience from five utility electrical engineering consulting firms and has deemed all five firms to be qualified to perform professional utility electrical engineering services; and

WHEREAS, staff recommends that the PPC Executive Director be authorized to execute agreements for professional services with firms on the “On-Call” Utility Electrical Engineering Professional Services List; and

WHEREAS, all professional services work shall be performed under a detailed task order, to include a specific scope of work, product deliverables and a cost quote for performing such services, and where quotes may be received from multiple firms in compliance with the Purchasing Policy; and

WHEREAS, the anticipated amount for each task order is generally in a range of $2,000 to $10,000 on average; and

WHEREAS, staff recommends the maximum, aggregate, task orders amount per On-Call professional services agreement not exceed $200,000; and

WHEREAS, task orders will be paid from Island Energy project capital or operating budgets as previously approved and adopted by the City Council.

NOW, THEREFORE, the Governing Board of the Pittsburg Power Company DOES RESOLVE as follows:

Section 1. The “On-Call” Utility Electrical Engineering Professional Services List of five qualified utility electrical engineering firms, attached as Exhibit A, is approved.

Section 2. The PPC Executive Director is authorized to execute on-call professional services agreements with the electrical engineering firms on the "On-Call" Utility Electrical Engineering Professional Services List for use on PPC utility projects through task orders. Each agreement shall not exceed $200,000 and shall expire June 30, 2023.

PASSED AND ADOPTED by Governing Board of the Pittsburg Power Company at a regular meeting on the 19th day of January 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Chair

ATTEST:

_____
Garrett Evans, Executive Secretary

Exhibit A

Pittsburg Power Company qualified utility electrical engineering professional services companies:

1. Power Engineers, Inc.
2. Versa Engineering, Inc
3. Eichleay, Inc.
4. Commonwealth Associates, Inc
5. EETS, Inc.

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Chair and Governing Board Members

FROM: Garrett Evans, Executive Director

SUBJECT: Adoption of a Successor Agency Minute Order Approving the July 1, 2021 – June 30, 2022 Recognized Obligation Payment Schedule

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

The Successor Agency for the Redevelopment Agency of the City of Pittsburg (Successor Agency) has prepared its Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2021 – June 30, 2022 (ROPS 21-22), pursuant to AB 26x1, also referred to as the "Dissolution Act".

FISCAL IMPACT

There is no fiscal impact to adopting ROPS 21-22. Rather, ROPS 21-22 identifies the Successor Agency's anticipated financial obligations for July 1, 2021 – June 30, 2022. ROPS 21-22 will be reflected in the Successor Agency's budget that will be considered along with the City's budget in June 2021 for Fiscal Year 2021-2022.

RECOMMENDATION

Staff recommends that the Successor Agency Governing Board approve ROPS 21-22.

BACKGROUND

On June 29, 2011, the Governor signed into law the Dissolution Act, which automatically suspended redevelopment activities and on December 29, 2011, the California State Supreme Court upheld the provisions of the Dissolution Act, thereby dissolving all redevelopment agencies on February 1, 2012.

While redevelopment successor agencies may not initiate any new activities nor incur new indebtedness, they are nevertheless required under legislative statute and court order to continue making those payments necessary for day to day operations pursuant to contractual commitments/enforceable obligations, regulatory authorities, and indebtedness entered into prior to the enactment of the Dissolution Act.

On June 27, 2012, the Governor signed into law budget trailer bill AB 1484. AB 1484 imposed new requirements on successor agencies with regard to the submittal of the ROPS.

Budget trailer bill SB 107 was approved and signed by the Governor and took immediate effect on September 22, 2015. The primary purpose of SB 107 is to make technical and substantive amendments to the existing Dissolution Act. Pursuant Section 34177, as amended, changed the review of ROPS from semi-annual to annual.

Pursuant to Health and Safety Code Section 34179 (j), on and after July 1, 2018 in each county where more than one oversight board was created, there shall be only one countywide oversight board. As of July 1, 2018, the California Department of Finance (DOF) will only recognize the Contra Costa County Oversight Board (Countywide Oversight Board). The Successor Agency's ROPS and other actions may not be submitted to the DOF without the Countywide Oversight Board's approval.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a subcommittee.

STAFF ANALYSIS

ROPS 21-22 consists of debt service related expenses, administrative expenses, and other eligible enforceable obligation. Staff will submit ROPS 21-22 to the Countywide Oversight Board for its consideration on January 25, 2021. Upon receiving Countywide Oversight Board approval, ROPS 21-22 will be submitted to the DOF, the County Auditor-Controller's Office, and the California State Controller's Office on or before February 1, 2021.

ATTACHMENTS: Recognized Obligation Payment Schedule for the period of July 1, 2021 – June 30, 2022

Report Prepared By: Maria M. Aliotti, Director of Community Services
William Zenoni, Interim Finance Director
Janielyn Bayona, Finance Division Manager

Recognized Obligation Payment Schedule (ROPS 21-22) - Summary
Filed for the July 1, 2021 through June 30, 2022 Period

Successor Agency: Pittsburg

County: Contra Costa

Current Period Requested Funding for Enforceable Obligations (ROPS Detail)	21-22A Total (July - December)	21-22B Total (January - June)	ROPS 21-22 Total
A Enforceable Obligations Funded as Follows (B+C+D)	**$ 406,282**	**$ 31,157**	**$ 437,439**
B Bond Proceeds	-	-	-
C Reserve Balance	-	-	-
D Other Funds	406,282	31,157	437,439
E Redevelopment Property Tax Trust Fund (RPTTF) (F+G)	**$ 15,468,751**	**$ 17,914,313**	**$ 33,383,064**
F RPTTF	15,285,125	17,730,687	33,015,812
G Administrative RPTTF	183,626	183,626	367,252
H Current Period Enforceable Obligations (A+E)	**$ 15,875,033**	**$ 17,945,470**	**$ 33,820,503**

Certification of Oversight Board Chairman:

Pursuant to Section 34177 (o) of the Health and Safety code, I hereby certify that the above is a true and accurate Recognized Obligation Payment Schedule for the above named successor agency.

Name Title

/s/

Signature Date

Pittsburg
Recognized Obligation Payment Schedule (ROPS 21-22) - ROPS Detail
July 1, 2021 through June 30, 2022

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 21-22 Total**	**ROPS 21-22A (Jul - Dec)**					**21-22A Total**	**ROPS 21-22B (Jan - Jun)**					**21-22B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
								$285,052,755		$33,820,503	$-	$-	$406,282	$15,285,125	$183,626	$15,875,033	$-	$-	$31,157	$17,730,687	$183,626	$17,945,470
2	TAB 1999	Bonds Issued On or Before 12/ 31/10	11/03/ 1999	09/01/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & principal) 822-41272-2303/ 2304 (TAB 1999)	Los Medanos	71,590,000	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-
3	TAB 1999	Fees	11/03/ 1999	09/01/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agent fees 822-41272-2318 (TAB 1999)	Los Medanos	30,405	N	$2,652	-	-	1,326	-	-	$1,326	-	-	1,326	-	-	$1,326
10	HSG TAB 06A	Bonds Issued On or Before 12/ 31/10	12/14/ 2006	09/01/2037	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 844-41284-2303/ 2304 (HSG 2006A)	Los Medanos	10,557,632	N	$197,968	-	-	-	-	-	$-	-	-	-	197,968	-	$197,968
11	HSG TAB 06A	Fees	12/14/ 2006	09/01/2037	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agents/ PFM Invest 844-41284-2318 (HSG 2006A)	Los Medanos	47,752	N	$2,370	-	-	1,185	-	-	$1,185	-	-	1,185	-	-	$1,185
27	Prefund August debt service of Senior & Housing	Bonds Issued On or Before 12/ 31/10	11/03/ 1999	09/01/2030	Bank of New York Mellon Trust Company N.A. 100	Prefund senior & housing bonds debt service to fiscal agent (1999, & 2014	Los Medanos	13,983,968	N	$13,983,968	-	-	-	-	-	$-	-	-	-	13,983,968	-	$13,983,968

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Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 21-22 Total**	**ROPS 21-22A (Jul - Dec)**					**21-22A Total**	**ROPS 21-22B (Jan - Jun)**					**21-22B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
	Bonds (1999, 2014 & Housing Bonds)				Pine Street, Suite 3100 San Francisco, CA 94111	TABS & 2016A Hsg & 2006A HSG bonds) Balance Calendar Yr 2018																
45	auditing	Professional Services	07/01/ 2018	06/30/2019	Maze & Assoc 3748 Buskirk Ave. Suite 215 Pleasant Hill, CA 94523	administration 801-41202-2102	Los Medanos	-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-
46	equipment rental	Admin Costs	07/01/ 2018	06/30/2019	City of Pittsburg	administration 801-41202-2231	Los Medanos	-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-
62	utilities-gas	Property Maintenance	07/01/ 2018	06/30/2019	PG&E	Successor Agency programs (properties owned) 801-41370-1391	Los Medanos	-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-
63	utilities-electric	Property Maintenance	07/01/ 2018	06/30/2019	PG&E	Successor Agency programs (properties owned) 801-41370-1392	Los Medanos	-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-
68	maintenance & repairs	Property Maintenance	07/01/ 2018	06/30/2019	TBD	Successor Agency programs (properties owned) 801-41370-2219	Los Medanos	8,500	N	$8,500	-	-	4,250	-	-	$4,250	-	-	4,250	-	-	$4,250
69	property tax	Property Maintenance	07/01/ 2018	06/30/2019	Contra Costa Tax Assessor	Successor Agency programs (properties owned) 801-41372-2361	Los Medanos	20,550	N	$20,550	-	-	10,275	-	-	$10,275	-	-	10,275	-	-	$10,275
71	1999 RDA Bonds	Fees	11/03/ 1999	09/01/2030	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	BLX Payments administrative fees-Fund 822	Los Medanos	46,216	N	$4,032	-	-	2,016	-	-	$2,016	-	-	2,016	-	-	$2,016
81	utilities-water	Property Maintenance	07/01/ 2018	06/30/2019	City of Pittsburg Water Dept.	Successor Agency programs (properties owned)	Los Medanos	-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	ROPS 21-22 Total	ROPS 21-22A (Jul - Dec)					21-22A Total	ROPS 21-22B (Jan - Jun)					21-22B Total
											Fund Sources						Fund Sources					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
						801-41370-1394																
105	2014 RDA Refunded Bonds	Refunding Bonds Issued After 6/27/12	07/01/ 2014	12/01/2029	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 833-41285-2303/ 04 (TAB 2014)	Los Medanos	21,922,250	N	$520,750	-	-	-	-	-	$-	-	-	-	520,750	-	$520,750
107	2014 RDA Refunded Bonds	Fees	06/25/ 2014	12/01/2029	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service fiscal agent fees/ PFM Investment 833-41280-2318 (TAB 2014)		25,867	N	$2,546	-	-	1,273	-	-	$1,273	-	-	1,273	-	-	$1,273
109	2014 RDA Refunded Bonds	Fees	06/25/ 2014	12/01/2029	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	Payment for Disclosre and Arbitrage calculation services	Los Medanos	52,319	N	$5,150	-	-	2,575	-	-	$2,575	-	-	2,575	-	-	$2,575
111	Administration	Admin Costs	07/01/ 2018	06/30/2019	City of Pittsburg	Administration 801-41202-xxxx Various Administrative Costs	Los Medanos	367,252	N	$367,252	-	-	-	-	183,626	$183,626	-	-	-	-	183,626	$183,626
118	HSG TAB 2016A Refunding	Refunding Bonds Issued After 6/27/12	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 845-41278-2303/ 2304 (HSG 2016A Refunding Bond)		9,417,352	N	$180,251	-	-	-	-	-	$-	-	-	-	180,251	-	$180,251
119	2016A RDA Refunding Bonds	Refunding Bonds Issued After 6/27/12	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100	debt service (Interest & Principal) 834-41281-2303/ 2304 (2016A Refunding Bond)		150,359,375	N	$12,024,875	-	-	375,125	8,802,000	-	$9,177,125	-	-	-	2,847,750	-	$2,847,750

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Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 21-22 Total**	**ROPS 21-22A (Jul - Dec)**					**21-22A Total**	**ROPS 21-22B (Jan - Jun)**					**21-22B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
					San Francisco, CA 94111																	
121	2016C RDA Refunding Bonds	Refunding Bonds Issued After 6/27/12	02/10/ 2016	12/31/2022	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	debt service (Interest & Principal) 836-41270-2303/ 2304 (2016C Refunding Bond)		6,483,125	N	$6,483,125	-	-	-	6,483,125	-	$6,483,125	-	-	-	-	-	$-
122	HSG TAB 2016A Refunding Bonds	Fees	02/10/ 2016	12/31/2030	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	Payment for Disclosre and Arbitrage calculation services 845-41278-2318		20,928	N	$2,060	-	-	1,030	-	-	$1,030	-	-	1,030	-	-	$1,030
123	2016A RDA Refunding Bonds	Fees	02/10/ 2016	12/31/2030	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	Payment for Disclosre and Arbitrage calculation services 834-41281-2318		39,763	N	$3,914	-	-	1,957	-	-	$1,957	-	-	1,957	-	-	$1,957
125	2016C RDA Refunding Bonds	Fees	02/10/ 2016	12/31/2022	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	Payment for Disclosre and Arbitrage calculation services 836-41270-2318		2,060	N	$2,060	-	-	1,030	-	-	$1,030	-	-	1,030	-	-	$1,030
126	HSG TAB 2016A Refunding Bonds	Fees	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	Debt Service Fiscal Agent Fees 845-41278-2318		23,021	N	$2,266	-	-	1,133	-	-	$1,133	-	-	1,133	-	-	$1,133
127	2016A RDA Refunding Bonds	Fees	02/10/ 2016	12/31/2030	Bank of New York Mellon Trust Company N.A. 100 Pine Street,	Debt Service Fiscal Agent Fees 834-41281-2318		27,206	N	$2,678	-	-	1,339	-	-	$1,339	-	-	1,339	-	-	$1,339

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
Item #	Project Name	Obligation Type	Agreement Execution Date	Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Obligation	Retired	**ROPS 21-22 Total**	**ROPS 21-22A (Jul - Dec)**					**21-22A Total**	**ROPS 21-22B (Jan - Jun)**					**21-22B Total**
											Fund Sources						**Fund Sources**					
											Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF		Bond Proceeds	Reserve Balance	Other Funds	RPTTF	Admin RPTTF	
					Suite 3100 San Francisco, CA 94111																	
129	2016C RDA Refunding Bonds	Fees	02/10/ 2016	12/31/2022	Bank of New York Mellon Trust Company N.A. 100 Pine Street, Suite 3100 San Francisco, CA 94111	Debt Service Fiscal Agent Fees 836-41270-2318		2,300	N	$2,300	-	-	1,150	-	-	$1,150	-	-	1,150	-	-	$1,150
131	Hsg TAB 2006A	Fees	12/14/ 2006	09/01/2037	BLX Group LLC Dept 34461 PO Box 39000 San Francisco, CA 94139	Payment for Disclosre and Arbitrage calculation services 844-41284-2318		24,914	N	$1,236	-	-	618	-	-	$618	-	-	618	-	-	$618
132	Investment Advisory Services for Bond Reserves (1999 and 2014 Bonds)	Fees	07/01/ 2018	09/01/2030	Chandler Asset Management 6225 Lusk Blvd., San Diego, CA 92121	Payment for Investment Management Services (replaces PFM investment services)		-	N	$-	-	-	-	-	-	$-	-	-	-	-	-	$-

Pittsburg
Recognized Obligation Payment Schedule (ROPS 21-22) - Report of Cash Balances
July 1, 2018 through June 30, 2019
(Report Amounts in Whole Dollars)

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

A	B	C	D	E	F	G	H
	ROPS 18-19 Cash Balances (07/01/18 - 06/30/19)	**Fund Sources**					**Comments**
		Bond Proceeds		**Reserve Balance**	**Other Funds**	**RPTTF**	
		Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, grants, interest, etc.	Non-Admin and Admin	
1	**Beginning Available Cash Balance (Actual 07/01/18)** RPTTF amount should exclude "A" period distribution amount.	1,413,752	13,038,693		1,489,268		
2	**Revenue/Income (Actual 06/30/19)** RPTTF amount should tie to the ROPS 18-19 total distribution from the County Auditor-Controller	74,821	339,527		838,209	35,609,370	
3	**Expenditures for ROPS 18-19 Enforceable Obligations (Actual 06/30/19)**	70,000	920,756		572,584	33,094,272	Items C3 and D3 include transfer of interest earning (414,438) from Bond Proceeds (expense), to item F2 as interest earnings (revenue).
4	**Retention of Available Cash Balance (Actual 06/30/19)** RPTTF amount retained should only include the amounts distributed as reserve for future period(s)	1,418,573	12,457,464		1,317,454	2,515,098	C4, D4 include reserves retained by fiscal agent. F4 Funds to be used on future ROPS cycle. G4 includes Accrued Exp not reportable on PPA-RPTTF.
5	**ROPS 18-19 RPTTF Prior Period Adjustment** RPTTF amount should tie to the Agency's ROPS 18-19 PPA form submitted to the CAC		No entry required				

Pursuant to Health and Safety Code section 34177 (l), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

A	B	C	D	E	F	G	H
	ROPS 18-19 Cash Balances (07/01/18 - 06/30/19)	**Fund Sources**					**Comments**
		Bond Proceeds		**Reserve Balance**	**Other Funds**	**RPTTF**	
		Bonds issued on or before 12/31/10	Bonds issued on or after 01/01/11	Prior ROPS RPTTF and Reserve Balances retained for future period(s)	Rent, grants, interest, etc.	Non-Admin and Admin	
6	**Ending Actual Available Cash Balance (06/30/19) C to F = (1 + 2 - 3 - 4), G = (1 + 2 - 3 - 4 - 5)**	**$-**	**$-**	**$-**	**$437,439**	**$-**	

Pittsburg
Recognized Obligation Payment Schedule (ROPS 21-22) - Notes
July 1, 2021 through June 30, 2022

Item #	Notes/Comments
2	
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OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting the Plans and Specifications and Authorizing Award of Project 4063, 2020/2021 CDBG ADA Curb Ramp Installation Project

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Project 4063, 2020/2021 CDBG ADA Curb Ramp Installation Project (the "Project') is for the construction of 18 curb ramps in the neighborhoods located in the High School Village and Westwood Gardens subdivisions. Adoption of this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to M4 Concrete & Drywall, Inc. of Turlock, California.

FISCAL IMPACT

The City Council previously approved allocation of $232,508 from Community Development Block Grant (CDBG) funds. This Resolution will authorize a construction contract for a total contract amount of $87,339.80 and authorize the use of $109,264 as construction contingency. A Project Budget Summary is attached to this report.

RECOMMENDATION

City Council adopt the attached Resolution to accept the plans and specifications and authorizing the City Manager to execute a Contract for Project 4063 with M4 Concrete & Drywall, Inc. for a total contract amount of $87,339.80 for construction of the Project.

Staff recommends the City Council adopt the Resolution establishing a construction contingency of $109,264 for unanticipated costs and to construct additional ramps.

Staff further recommends that the City Engineer be authorized to approve contract change orders for the Project for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for the Project for a total amount not to exceed 100% of the contingency amount.

BACKGROUND

On April 20, 2020, the City Council adopted Resolution 20-13766 approving the Community Development Block Grant 2020-2021 Annual Action Plan and approving the CDBG subcommittee recommendation and authorize funding the project in the amount of $232,508.

Advertising for the Project began on Wednesday, November 11, 2020. Bids for construction of the Project were opened on December 16, 2020. M4 Concrete & Drywall, Inc. was the lowest responsive responsible bidder with a base bid in the amount of $87,339.80.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a Subcommittee.

STAFF ANALYSIS

Staff received twelve bid proposals for the construction of the Project. The scope of work for the Project is for construction of 18 curb ramps in the High School Village and Westwood Gardens subdivisions.

The bids received have been checked for arithmetical errors, completeness, and conformance with the bid requirements. The bid proposal submitted by M4 Concrete & Drywall, Inc. is responsive, competitive and the base bid is approximately forty three percent less than the Engineer's estimate.

The contingency requested is higher than typical for this type of project in order to use the remaining grant funds available on the construction of additional curb ramps in authorized locations.

ATTACHMENTS: Resolution
Project Budget Summary

Report Prepared By: Andrew Peters, Engineering Technician II

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

A Resolution Accepting the Plans and)
Specifications and Authorizing Award)
of Project 4063, 2020/2021 CDBG) RESOLUTION NO. 21-
ADA Curb Ramp Installation Project)

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, Project 4063, 2020/2021 CDBG ADA Curb Ramp Installation Project (the "Project') is for construction of 18 curb ramps in the High School Village and Westwood Gardens subdivisions; and

WHEREAS, on April 20, 2020, the City Council adopted Resolution 20-13766 approving the Community Development Block Grant 2020-2021 Annual Action Plan and approving the CDBG subcommittee recommendation for funding the project in the amount of $232,508; and

WHEREAS, bids for construction of the Project were opened on December 16, 2020. M4 Concrete & Drywall, Inc. was the lowest responsive responsible bidder with a base bid in the amount of $87,339.80; and

WHEREAS, staff recommends that the City Council accept the plans and specifications for the Project; and

WHEREAS, staff recommends that the City Manager be authorized to execute a contract in the amount of $87,339.80 with M4 Concrete & Drywall, Inc. for construction of the project; and

WHEREAS, staff recommends authorizing the use of all available remaining funds as construction contingency ($109,264) for unforeseen expenses and construction of additional curb ramps as allowed within the Project budget; and

WHEREAS, staff recommends that the City Engineer or his designee be authorized to approve contract change orders for this Project for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for this Project for a total amount not to exceed 100% of the contingency amount.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg hereby finds and determines as follows:

Section 1.
The plans and specifications for the Project are hereby accepted.

Section 2.
The City Manager is hereby authorized to execute a contract in the amount $87,339.80 with M4 Concrete & Drywall, Inc. for construction of the Project.

Section 3.
City Council hereby authorizes the use of all available remaining funds as construction contingency ($109,264) for unforeseen expenses and to construct additional curb ramps.

Section 4.
City Council authorizes the City Engineer or his designee to approve contract change orders for the Project for a total amount not to exceed 50% of the contingency and the City Manager is authorized to approve change orders for the Project for a total amount not to exceed 100% of the contingency amount.

Section 5.
The City Manager is hereby authorized to execute such further documents and take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to the Contract.

Section 6.
The City Clerk shall certify to the adoption of this Resolution.

Section 7.
This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Project Budget Summary

Contract 2020-01, 2020/2021 CDBG ADA Curb Ramp Installation Project

Project 4063

Project Funding:	2020/2021 CDBG Grant		$232,508
		Funding Total	**$232,508**

Project Expenditures:

Design: (Code 2122)	Consultant Design		$0
		Subtotal	$0
Miscellaneous: (Code 1399)	Advertising		$638
	Reproduction		$100
	Postage		$100
		Subtotal	$838
Construction: (Code 2281)	Base Bid		$87,339.80
	Construction Contingency		$101,330.00
		Subtotal	$188,670
Staff Time: (Code 1101)	Staff Costs During Design		$8,000
	Staff Costs During Construction Management		$35,000
		Subtotal	$43,000
Administrative Overhead: (Code 2372)	Staff Costs During Design		$0
	Staff Costs During Construction Management		$0
		Subtotal	$0
		Estimated Expenditures Total	**$232,508**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting the Plans and Specifications, and Awarding Project 3115, Stoneman Avenue Safety Improvements Project

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Project 3115, Stoneman Avenue Safety Improvements Project (the "Project"), is for safety improvements at three intersections on Stoneman Avenue. Adoption of this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to Redgwick Construction Co. of Oakland, California.

FISCAL IMPACT

This project is currently funded with $880,000 from Highway Safety Improvement Program (HSIP) Cycle 8 grant, $300,000 Road Maintenance and Rehabilitation Account Gas Tax Fund (RMRA) Fund 228 for a total project budget of $1,180,000.

A detailed Project Budget Summary is attached to this report.

RECOMMENDATION

City Council adopt the attached Resolution to accept the plans and specifications and authorizing the City Manager to execute a Contract for Project 3115 with Redgwick Construction Co. for a total contract amount of $854,508 for construction of the Project.

Staff recommends that the City Council adopt the attached Resolution establishing a construction contingency of $85,451 (10% of the contract amount) for unanticipated costs and construction contract change orders.

Staff further recommends that the City Engineer be authorized to approve contract change orders for this Project in a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for this Project in a total amount not to exceed 100% of the contingency amount.

BACKGROUND

City staff identified a need to improve safety conditions on Stoneman Avenue from Harbor Street to Loveridge Road. The Project includes installation of pedestrian activated High-Intensity Activated Crosswalk (HAWK) beacon for existing crosswalks at three intersections on Stoneman Avenue (at Meadowbrook Avenue, Meadowbrook Circle, and Briarcliff Drive) and other safety improvements to striping and signage.

On February 5, 2018, the City Council adopted Resolution 18-13428 accepting a Highway Safety Improvement Program Grant ("HSIP") grant in the amount of $880,000 and established a project budget for design and construction of the Project.

On May 18, 2020, the City Council adopted Resolution 20-13782 approving a list of projects to be funded by SB1, the Road Repair and Accountability Act of 2017 for Fiscal Year 2020/21. This Project was included on that list.

On December 21, 2020, the City Council adopted Resolution 20-13859, approving Addendum 1 to the Five Year Capital Improvement Program for Fiscal Years 2019/20 through 2023/24 and allocating funds for several capital projects, including $300,000 from RMRA (Fund 228) for a total project budget of $1,180,000

Advertising for the Project began on Wednesday, November 11, 2020. Bids for construction of the Project were opened on December 16, 2020 and Redgwick Construction Co. was the lowest responsive, responsible bidder with a base bid in the amount of $854,508.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a Subcommittee.

STAFF ANALYSIS

Staff received three bid proposals for the construction of the Project. The bids received have been checked for arithmetical errors, completeness, and conformance with the bid requirements. The bid proposal submitted by Redgwick Construction Co. was the lowest responsive, responsible bid and is approximately 4 percent more than the Engineer's estimate.

The recommended construction contingency of $85,451 is 10% of the construction contract and will provide funding for unanticipated change orders that are often required with work that involves excavation. A Bid Summary is attached to this report.

ATTACHMENTS: Resolution
Project Budget Summary
Bid Summary

Report Prepared By: Andrew Peters, Engineering Technician II

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

A Resolution Accepting the Plans and Specifications and Authorizing Award of Project 3115, Stoneman Avenue Safety Improvements Project	))))	RESOLUTION NO 21-

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, the City has been awarded, a Federal Highway Safety Improvement Program (HSIP) Cycle 8 grant in the amount of $880,000 for Project 3115, Stoneman Avenue Safety Improvements Project (the "Project"); and

WHEREAS, the Project includes installation of pedestrian activated High-Intensity Activated Crosswalk (HAWK) beacon for existing crosswalks at three intersections on Stoneman Avenue (at Meadowbrook Avenue, Meadowbrook Circle, and Briarcliff Drive) and other safety improvements to striping and signage; and

WHEREAS, on February 5, 2018, the City Council adopted Resolution 18-13428 accepting a Highway Safety Improvement Program Grant ("HSIP") grant in the amount of $880,000 and established a project budget for design and construction of the Project; and

WHEREAS, on May 18, 2020, the City Council adopted Resolution 20-13782 approving a list of projects to be funded by SB1, the Road Repair and Accountability Act of 2017 for Fiscal Year 2020/21 and this Project was included on that list; and

WHEREAS, on December 21, 2020, the City Council adopted Resolution 20-13859, approving Addendum 1 to the Five Year Capital Improvement Program for Fiscal Years 2019/20 through 2023/24 and allocating funds for several capital projects, including $300,000 from RMRA (Fund 228) for a total project budget of $1,180,000; and

WHEREAS, bids for construction of the Project were opened on December 16, 2020. Redgwick Construction Co. was the lowest responsive responsible bidder with a base bid in the amount of $854,508; and

WHEREAS, staff recommends that the City Council accept the plans and specifications for the Project; and

WHEREAS, staff recommends that the City Manager be authorized to execute a contract in the amount of $854,508 with Redgwick Construction Co. for construction of the project; and

WHEREAS, Staff recommends establishing a contingency in an amount $85,451 (10% of the construction contract) for unforeseen expenses; and

WHEREAS, staff recommends that the City Engineer or his designee be authorized to approve contract change orders for this Project for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for this Project for a total amount not to exceed 100% of the contingency amount.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg as follows:

Section 1. City Council hereby accepts the plans and specifications for the Project.

Section 2. The City Council authorizes the City Manager to award a construction contract in the amount of $854,508 to Redgwick Construction Co. for construction of the Project.

Section 3. The City Council authorizes a construction contingency in the amount of $85,451 for unforeseen expenses.

Section 4. The City Engineer is authorized to approve contract change orders for the Project for a total amount not to exceed 50% of the contingency and the City Manager shall be authorized to approve contract change orders for the Project for a total amount not to exceed 100% of the contingency amount.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Contract 2017-02, Stoneman Avenue Intersection Improvements Project
Project 3115

Project Funding

	Highway Safety Improvement Program (HSIP) Grant	$880,000
	RMRA	$300,000
	Funding Total	**$1,180,000**

Project Expenditures:

Design:	Consultant Design	$134,254
(Code 2122)	PG&E	$51,623
	Subtotal	$185,877
Miscellaneous:	Advertising	$1,000
(Code 1399)	Reproduction	$1,000
	Postage	$1,000
	Subtotal	$3,000
Construction:		
(Code 2281)	Engineer's Estimate	$854,508
	Bid Escalation + Contingency (~10%)	$85,451
	Material Testing	$5,000
	Subtotal	$944,959
Staff Time:	Design	$12,000
(Code 1101)	Construction	$12,000
	Subtotal	$24,000
Administrative		
Overhead:	Staff Design	$10,164
(Code 2372)	Staff Construction Management	$12,000
	Subtotal	$22,164
	Estimated Total Expenditures	**$1,180,000**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Accepting the Plans and Specifications, Allocating Funds and Awarding Project 5066, Water Treatment Plant Filter Gallery Valve Replacement Project

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Project 5066, Water Treatment Plant Filter Gallery Valve Replacement Project (the "Project"), is for the removal and replacement of filter valves and piping repairs at the City's Water Treatment Plant. If approved, this Resolution will accept the plans and specifications for the Project and authorize the City Manager to award a construction contract to Con-Quest Contractors of San Leandro, California.

FISCAL IMPACT

Staff requests an allocation of $370,000 from Water Operations Fund (Fund 501) to Project 5066 for design and construction of the Project. A Project Budget Summary is attached to this report.

RECOMMENDATION

City Council adopt the attached Resolution allocating $370,000 from the Water Operations Fund (Fund 501) to the Project.

City Council adopt the attached Resolution to accept the plans and specifications and authorizing the City Manager to execute a Contract for Project 5066 with Con-Quest Contractors for a total contract amount of $224,000 for construction of the Project.

Staff recommends that the City Council adopt the attached Resolution establishing a construction contingency of $22,400 (10% of the contract amount) for unanticipated costs and construction contract change orders.

Staff further recommends that the City Engineer be authorized to approve contract change orders for this Project in a total amount not to exceed 50% of the contingency and the City

Manager be authorized to approve change orders for this Project in a total amount not to exceed 100% of the contingency amount.

BACKGROUND

The Water Treatment Plant has determined a need to repair piping, valves, and actuators that serve the filters at the Water Treatment Plant.

On June 12, 2019, the City received a current Condition Assessment Report (the "Report") from consultant Brown and Caldwell that looked at valves, actuators and piping that serve filters five through eight at the Water Treatment Plant. The Report noted signs of deterioration of piping and valves and recommended replacement of all pipes and selected valves over the next 4 to 5 years. This infrastructure is more than 30 years old.

On May 5, 2020, the City issued a task order to Brown and Caldwell in the amount of $86,400 to prepare plans, specifications and estimate for the Project. These design expenses were initially paid from Project 5050, Water Treatment Plant Capital Repairs.

Advertising for the Project began on Wednesday, November 25, 2020. Bids for construction of the Project were opened on December 22, 2020 and Con-Quest Contractors was the lowest responsive, responsible bidder with a base bid in the amount of $224,000.

SUBCOMMITTEE FINDINGS

This item was not reviewed by a Subcommittee.

STAFF ANALYSIS

Staff received six bid proposals for the construction of the Project. The bid received has been checked for arithmetical errors, completeness, and conformance with the bid requirements. The bid proposal submitted by Con-Quest Construction was the lowest responsive, responsible bid and is approximately 16% percent less than the Engineer's estimate.

The recommended construction contingency of $22,400 is 10% of the construction contract and will provide funding for unanticipated change orders.

ATTACHMENTS: Resolution
Project Budget Summary
Bid Summary

Report Prepared By: Gina Haynes, Senior Civil Engineer

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

A Resolution Accepting the Plans and Specifications and Authorizing Award of Project 5066, Water Treatment Plant Filter Gallery Valve Replacement Project	))))	RESOLUTION NO 21-

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, the Water Treatment Plant has determined a need to replace piping, valves, and actuators that serve the filters at the Water Treatment Plant; and

WHEREAS, Project 5066, Water Treatment Plant Filter Gallery Valve Replacement Project (the "Project"), includes the installation of seven valves, 11 actuators, spot repairs and associated electrical work in filter bays five through eight at the Water Treatment Plant; and

WHEREAS, on June 12, 2019, the City received a Condition Assessment Report (the "Report") from Brown and Caldwell that noted piping and valves in poor condition and recommended replacements and repairs; and

WHEREAS, on May 5, 2020, the City issued a task order to Brown and Caldwell in the amount of $86,400 to prepare plans, specifications and estimate for the Project, with these expenses initially paid by Project 5050 Water Treatment Plant Capital Repairs; and

WHEREAS, staff recommends allocation of $370,000 from Water Operations Fund, (Fund 501) to the Project for project expenses, including reimbursement of design costs previously paid by Project 5050; and

WHEREAS, bids for construction of the Project were opened on December 22, 2020 and Con-Quest Construction was the lowest responsive, responsible bidder with a base bid in the amount of $224,000 and

WHEREAS, staff recommends that the City Council accept the plans and specifications for the Project; and

WHEREAS, the Water Treatment Plant Filter Gallery Valve Replacement Project is Categorically Exempt from the CEQA review process per Class 2, Section 15302 "Replacement or Reconstruction" of the CEQA Guidelines; and

WHEREAS, Staff recommends that the City Manager be authorized to execute a contract in the amount of $224,000 with Con-Quest Construction for construction of the project; and

WHEREAS, Staff recommends establishing a contingency in an amount $24,400 (10% of the construction contract) for unforeseen expenses; and

WHEREAS, staff recommends that the City Engineer or his designee be authorized to approve contract change orders for this Project for a total amount not to exceed 50% of the contingency and the City Manager be authorized to approve change orders for this Project for a total amount not to exceed 100% of the contingency amount.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg as follows:

Section 1. City Council hereby approves the allocation of $370,000 from the Water Operations Fund (Fund 501).

Section 2. City Council hereby accepts the plans and specifications for the Project.

Section 3. The City Council authorizes the City Manager to award a construction contract in the amount of $224,000 to Con-Quest Construction for construction of the Project.

Section 4. The City Council authorizes a construction contingency in the amount of $24,400 for unforeseen expenses.

Section 5. The City Engineer is authorized to approve contract change orders for the Project for a total amount not to exceed 50% of the contingency and the City Manager shall be authorized to approve contract change orders for the Project for a total amount not to exceed 100% of the contingency amount.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021 by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

Contract 2018-11, Water Treatment Plant Filter Gallery Valve Replacement Project
Project 5066

Project Funding

	Water Operations Fund (501)	$370,000
	Funding Total	**$370,000**

Project Expenditures:

Design: (Code 2122)	Consultant Design	$86,400
	Subtotal	$86,400
Miscellaneous: (Code 1399)	Advertising	$1,000
	Reproduction	$1,000
	Postage	$1,000
	Subtotal	$3,000
Construction: (Code 2281)	Construction Contract	$224,000
	Contingency (~10%)	$22,400
	Spot Repairs Product	$20,200
	Subtotal	$266,600
Staff Time: (Code 1101)	Design	$2,000
	Construction	$5,000
	Subtotal	$7,000
Administrative Overhead: (Code 2372)	Staff Design	$2,000
	Staff Construction Management	$5,000
	Subtotal	$7,000
	Estimated Total Expenditures	**$370,000**

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption a City Council Resolution Approving an Agreement with Diablo Energy Storage LLC for Wetlands Ecosystem and Water Quality Educational Programs

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Diablo Energy Storage ("Diablo") is constructing and will operate a battery energy storage facility at 701 Willow Pass Road ("Project"). As part of the Project, Diablo is required to mitigate environmental impacts. As part of the required mitigation, Diablo will provide funds to the City in the amount of $55,000 to support the City's implementation of the Program for wetlands ecosystem and water quality educational programs within the City or the surrounding local community ("Grant").

FISCAL IMPACT

Diablo will provide funds to the City in the amount of $55,000 to support the City's implementation of the Grant. The Grant includes a contingency amount of $5,000 to offset unforeseen costs the City might incur in administering the Program.

RECOMMENDATION

Staff recommends the City Council adopt a resolution approving an agreement with Diablo Energy Storage LLC for wetlands ecosystem and water quality educational programs.

BACKGROUND

The City authorized the Project through Ordinance No. 18-1456 and Resolution No. 18-13531, adopted by the City Council on October 1, 2018 and September 17, 2018, respectively. The Project includes a high voltage electric tie line to connect to the PG&E Pittsburg Substation. A portion of this tie line will be located in areas determined to be "wetlands" and containing habitat suitable for Salt Marsh Harvest Mouse ("SMHM"). As a condition of approval of Ordinance 18-1456, the City required Diablo to mitigate disturbances to wetlands at a ratio of not less than 3:1 for long-term impacts.

In October 2019, Diablo filed applications for electric tie line construction permits with the Army Corps of Engineers, Regional Water Quality Control Board ("Regional Board") and the California Department of Fish and Wildlife. Like the City, the federal and state agencies also require that Diablo mitigate for temporary and permanent disturbance of wetlands and SMHM.

Effective August 4, 2020, the Regional Board issued that certain "Clean Water Act Section 401 Water Quality Certification and Order" for the Project ("Regional Board Order"). The Regional Board Order at Section 3.1 sets forth a description of the requirements for the Program.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

The City, through its Environmental Services Division and PACF, will use the Grant for a local public education program to fund instruction, field trips, distribution of written materials, or other educational media focused on wetlands ecosystem and water quality protection, natural water quality functions of wetlands, and wetland and aquatic ecosystem importance to the environment. Funds may be used for new wetland ecosystem and water quality education programs or to add or expand these topics to existing educational programs. Per the agreement, the City is not be responsible for failure to meet any specific requirements issued by the Regional Board.

Funding shall be provided to the City no later than February 1, 2021, with the Program commencing no later than January 1, 2022; however, this deadline may be extended in the City's discretion for a period equal to the time students within Pittsburg Unified School District are not in attendance in the classroom due to COVID-19, beginning January 1, 2021.

ATTACHMENTS

1. Resolution
2. Agreement for Wetlands – Water Quality Education Grant

Report Prepared By: Jordan Davis, Assistant to the City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption a City Council Resolution Approving an Agreement with Diablo Energy Storage LLC for Wetlands Ecosystem and Water Quality Educational Programs	)))))	RESOLUTION NO. 21-_____

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, Diablo Energy Storage ("Diablo") is constructing and will operate a battery energy storage facility at 701 Willow Pass Road ("Project"); and

WHEREAS, the City authorized the Project in Ordinance No. 18-1456 and Resolution No. 18-13531, adopted by the City Council on October 1, 2018 and September 17, 2018, respectively; and

WHEREAS, the Project includes a high voltage electric tie line to connect to the PG&E Pittsburg Substation. A portion of this tie line will be located in areas determined to be "wetlands" and containing habitat suitable for Salt Marsh Harvest Mouse ("SMHM"). As a condition of approval of Ordinance 18-1456, the City required Diablo to mitigate disturbances to wetlands at a ratio of not less than 3:1 for long term impacts; and

WHEREAS, in October, 2019, Diablo filed applications for electric tie line construction permits with the Army Corps of Engineers, Regional Water Quality Control Board ("Regional Board") and the California Department of Fish and Wildlife. Like the City, the federal and state agencies also require that Diablo mitigate for temporary and permanent disturbance of "wetlands" and SMHM; and

WHEREAS, Diablo desires to mitigate impacts to wetlands and SMHM, in part, by funding a local wetlands ecosystem and water quality education program in conjunction with the City ("Program"); and

WHEREAS, effective August 4, 2020, the Regional Board issued that certain "Clean Water Act Section 401 Water Quality Certification and Order" for the Project ("Regional Board Order"). The Regional Board Order at Section 3.1 sets forth a description of the requirements for the Program; and

WHEREAS, the purpose of this agreement between Diablo and the City is to implement the provisions of the Regional Board Order as to Diablo's grant and the Program.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg hereby approves an agreement with Diablo Energy Storage LLC for Wetlands Ecosystem and Water Quality Educational Programs, and authorizes the City Manager to execute the Agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

AGREEMENT FOR WETLANDS – WATER QUALITY EDUCATION GRANT

This AGREEMENT FOR WETLANDS – WATER QUALITY EDUCATION GRANT ("Agreement"), is entered into as of _____, 2021, (”Effective Date") by and between the CITY OF PITTSBURG, a municipal corporation ("City"), and DIABLO ENERGY STORAGE, LLC, a Delaware limited liability company ("Diablo"). City and Diablo may each be referred to as a “Party” and collectively, “Parties”. This Agreement is based upon the following facts:

A. Diablo is constructing and will operate a battery energy storage facility at 701 Willow Pass Road (“Project”). The City authorized the Project in Ordinance No. 18-1456 and Resolution No. 18-13531 adopted by the City Council on October 1, 2018 and September 17, 2018, respectively. The Project includes a high voltage electric tie line to connect to the PG&E Pittsburg Substation. A portion of this tie line will be located in areas determined to be “wetlands” and containing habitat suitable for Salt Marsh Harvest Mouse (“SMHM”). As a condition of approval of Ordinance 18-1456, the City required Diablo to mitigate disturbances to wetlands at a ratio of not less than 3:1 for long term impacts.

B. In October, 2019, Diablo filed applications for electric tie line construction permits with the Army Corps of Engineers, Regional Water Quality Control Board (“Regional Board”) and the California Department of Fish and Wildlife. Like the City, the federal and state agencies also require that Diablo mitigate for temporary and permanent disturbance of “wetlands” and SMHM.

C. Diablo desires to mitigate impacts to wetlands and SMHM, in part, by funding a local wetlands ecosystem and water quality education program in conjunction with the City (“Program”).

D. Effective August 4, 2020, the Regional Board issued that certain “Clean Water Act Section 401 Water Quality Certification and Order” for the Project (“Regional Board Order”). The Regional Board Order at Section 3.1 sets forth a description of the requirements for the Program, as set forth in Exhibit “A”, attached and incorporated here by reference.

E. The purpose of this Agreement is to implement the provisions of the Regional Board Order as to Diablo’s grant and the Program.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

Section 1. Grant

Either prior to or promptly upon execution of this Agreement, Diablo will provide funds to the City in the amount of fifty-five thousand dollars ($55,000.00) to support the City’s implementation of the Program for wetlands ecosystem and water quality educational programs within the City or the surrounding local community (“Grant”). The Grant includes a contingency amount of five thousand dollars ($5,000.00) as requested by the City and intended to offset unforeseen costs the City might incur in administering the Program.

Section 2. Program

The City shall utilize the Grant to carry out the Program. The City, through its Environmental Services Division and the PACF in City’s discretion, will use the Grant for a local

public education program to fund instruction, field trips, distribution of written materials, or other educational media focused on wetlands ecosystem and water quality protection, natural water quality functions of wetlands, and wetland and aquatic ecosystem importance to the environment. Funds may be used for new wetland ecosystem and water quality education programs or to add or expand these topics to existing educational programs. While using good faith, commercially reasonable efforts to implement the Program as described in the Regional Board Order, the City shall not be responsible for failure to meet any specific requirements issued by the Regional Board. The City's Program will commence no later than January 1, 2022. That commencement date shall be extended if reasonably necessary in the City's discretion due to students at Pittsburg Unified School District not being in attendance in classrooms due to Covid-19 restrictions, with the maximum period for any extension being equal to any period beginning January 1, 2021 when students are not in attendance because of such restrictions.

Section 3. General Provisions

3.1 Notices

Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party advance written notice of such change in address.

If to City:

City Manager
City of Pittsburg
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850
Fax: (925) 252-4851

With a copy to:

City Attorney
City of Pittsburg
65 Civic Avenue
Pittsburg, California 94565
Phone: (925) 252-4850
Fax: (925) 252-4851

If to Diablo:

Kevin R. Johnson
Diablo Energy Storage, LLC
5000 Hopyard Road, Suite 480
Pleasanton, CA 94588
Phone: (925) 201-5240
Fax: (925) 201 5230

3.2 Integration. This Agreement constitutes the entire agreement between the Parties regarding the Grant and the Program.

3.3 Modification. Any modification of this Agreement shall be in writing and executed by each Party.

3.4 Governing Law. The Parties agree that the laws of the State of California shall govern the construction and implementation of this Agreement. Venue shall lie in Contra Costa County.

3.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, shall not be affected.

3.6 Ambiguities. Each Party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

3.7 Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

3.8 Headings. The headings in this Agreement are included for convenience only and shall not affect the construction or interpretation of any provision in this Agreement or any of the rights or obligations of the Parties.

3.9 No Third-Party Beneficiaries. This Agreement is made and entered into solely for the benefit of City and Diablo and no other person shall have any right of action under or by reason of this Agreement.

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WHEREFORE, the Parties have executed this Agreement below, further agreeing that execution may be in multiple counterparts, each executed copy of which shall constitute an original of the same instrument, and that signatures may be provided by electronic means. Each Party represents and warrants that each individual executing this Agreement on such Party's behalf has the legal power, right and actual authority to do so.

DIABLO ENERGY STORAGE, LLC

By: _____

Name: _____

Title: _____

Date: _____

CITY OF PITTSBURG

Approved as to form:

By: _____
Donna Mooney
City Attorney

By: _____
Garrett Evans
City Manager

Attest:

By: _____
Alice E. Evenson
City Clerk

EXHIBIT "A"
EXCERPT FROM REGIONAL BOARD ORDER

At Section 3.1, the Regional Board Order provides as follows:

> *"The Permittee will mitigate for the Project's permanent and temporary impacts by restoring temporarily impacted wetlands onsite and funding a local wetlands ecosystem and water quality education program in conjunction with the City. The educational program is proposed as a mitigation alternative because opportunities to create mitigation wetlands to compensate for the temporal impacts were explored, but no feasible options could be identified. This program will be implemented through the Pittsburg Arts and Community Foundation (PACF), as described in a June 11, 2020, draft concept memo submitted by the Permittee. Diablo Energy will provide funds in the amount of $50,000 to support wetlands ecosystem and water quality educational programs within the City or the surrounding local community. The City, through its Environmental Services Division and the PACF, will use funds for a local public education program to fund instruction, field trips, distribution of written materials, or other educational media focused on wetlands ecosystem and water quality protection, natural water quality functions of wetlands, and wetland and aquatic ecosystem importance to the environment. Funds may be used for new wetland ecosystem and water quality education programs or to add or expand these topics to existing educational programs."*

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution to Authorize the City Manager to Execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement between and amongst the City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

To facilitate developer compliance with the Habitat Conservation Plan for the previously approved Sky Ranch subdivision, Montreux subdivision, and future potential Faria property development, staff recommends the City Council authorize the City Manager to execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement between and amongst the City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

FISCAL IMPACT

None from this action, as all mitigation fees paid in accordance to this agreement will be forwarded to the East Contra Costa County Habitat Conservancy.

RECOMMENDATION

City Council adopt a resolution authorizing the City Manager to execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development fee agreement between and amongst the City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

BACKGROUND

On October 2, 2006, the City Council adopted Resolution 06-10632 Certifying the Final Environmental Impact Report (EIR) for the Sky Ranch II Residential Subdivision, which includes up to 415 single family homes on 166.5 acres located immediately south of the existing Highlands Ranch Subdivision. During this time, the draft East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), was nearing completion, so the Sky Ranch II EIR was certified with options that allowed for compliance with the final HCP/NCCP (once adopted) as a means satisfying certain mitigation measures for biological resources. In 2007, following the 2006 EIR certification, the Planning Commission and City Council (as appropriate) approved environmental findings, pre-zoning for the site, a vesting tentative subdivision map and design review of architectural and site development plans for the Sky Ranch II Residential Subdivision.

On March 26, 2007, the City Council approved Resolution 07-10745 approving the Final Environmental Impact Report for the HCP/NCCP, approving the final HCP/NCCP, and approving and authorizing execution of the implementing agreement and a joint exercise of power agreement creating the East Contra Costa County Habitat Conservancy.

On November 19, 2007, the City Council adopted Ordinance 07-1293 implementing the HCP/NCCP by adding Chapter 15.108 to the Pittsburg Municipal Code.

In 2008, the Sky Ranch property was annexed into the City, and in 2017, the City Council approved a development agreement providing an extended term of project approval.

On August 17, 2015, the City Council adopted Resolution 15-13097 Certifying the Final EIR for the Montreux Residential Subdivision (owned by Altec Homes, Inc.), which includes 356 single family homes on a 148.3-acre site located west of Kirker Pass road, south of the city limits. Immediately following the EIR certification, the Planning Commission and City Council (as appropriate) approved environmental findings, pre-zoning for the site, a vesting tentative subdivision map and a development agreement providing an extended term of project approval. In 2016, the Montreux property was annexed into the City.

On July 28, 2020, the Planning Commission made a recommendation to approve a general plan amendment, pre-zoning amendment, and development agreement to set the development regulations for the future development of the Faria property, which encompasses approximately 606 acres southwest of the existing city limits, and would facilitate up to a maximum of 1,500 new single family homes. The City Council is expected to hold a public hearing on the project this year.

SUBCOMMITTEE FINDINGS

This item was not presented to a subcommittee.

STAFF ANALYSIS

East Contra Costa County provides habitat to a wide variety of rare plants and animals. In order to receive approval to develop within this region, developers of qualifying projects are required to obtain the necessary permits from agencies that protect these natural resources. These agencies include, as applicable, the U.S. Fish and Wildlife Service at the federal level, as well as the California Department of Fish and Wildlife at the State level.

The HCP/NCCP is a program that allows for the streamlined issuance of required permits from these state and federal agencies through a coordinated, regional approach to conservation and regulation. Developers within jurisdictions that adopted the HCP/NCCP can use this approach to receive permits through a single streamlined process.

Under the HCP/NCCP, developers may be assessed a variety of development-based fees that are intended to fund identified mitigation measures that will offset project impacts, which may include loss of habitat for species covered by the Plan. These fees include a development fee, wetland fee, rural road fee and temporary impact fee (collectively, Mitigation Fees).

Although the payment of Mitigation Fees is the typical means of satisfying the HCP/NCCP, developers may also seek to comply with the program by alternative methods, such as land dedication, wetland mitigation, deed restrictions for stream setbacks, or the like. Use of an alternative requires approval of the Board of the East Contra Costa County Habitat Conservancy (Conservancy), the joint power authority that administers the HCP/NCCP.

Pittsburg is a member of the Conservancy, and development projects within the City can obtain their necessary habitat permits through use of the HCP/NCCP. Discovery Builders, Inc., Skyranch Land Investors, LLC, Altec Homes, Inc., and Faria Land Investors, LLC, are all developers that own real property within the Pittsburg planning area and have submitted project applications to the City. Collectively, these developers (Landowner Parties) have requested that they be allowed to satisfy their HCP/NCCP obligations for three projects, Sky Ranch II Residential Subdivision, Montreux Residential Subdivision, and the future Faria property development, through dedication of land and payment of reduced Mitigation Fees.

To this end, the Conservancy and Landowner Parties have negotiated the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement (Agreement) that is before the City Council. The Agreement will memorialize the alternative measures agreed to by the parties for the Landowner Parties to comply with the HCP.

Key provisions of the Agreement are summarized below:

Land Dedication – Montreux
Under the Agreement, a conservation easement would be granted concurrently with, and as a condition of, the issuance of a grading permit and take authorization for the Montreux Project. The Montreux property is adjacent to the Thomas Home Ranch property (to the south), which is a Preserve System property. It is predominately steeply sloping grassland and a short segment of a tributary to Kirker Creek runs on the property adjacent to Kirker Pass Road. The property contains habitat suitable for HCP/NCCP covered species and would contribute to meeting HCP/NCCP biological goals and objectives.

Land Dedication – Faria Preserve
Under the Agreement, a conservation easement over most of the Faria Preserve Area (as depicted in the Agreement) would be granted concurrently with, and as a condition of, the issuance of the first grading permit and take authorization for the future Faria development project. Conservation easements would be recorded over additional portions of the Faria Preserve Area concurrent with the issuance of grading permits for subsequent phases of future development. The Faria Preserve is adjacent to the Concord Naval Weapons Station preserve area (to the southwest) and conservation of this area secures critical connectivity between the Concord Naval Weapons Station and

other conserved areas to the northeast. This connection has been identified as important to HCP/NCCP covered species, especially California tiger salamander. The Faria Preserve is entirely grassland and is important for achieving HCP/NCCP biological goals.

Development Fee Payment
In addition to the land dedications described above, the Applicants for the Montreux and Sky Ranch II projects would pay most of the HCP/NCCP development fees normally required under the HCP/NCCP for each covered project. For the future Faria Project, the Applicant would pay a higher amount than normally required for the HCP/NCCP development fees. The Applicants would also be required to pay any wetland impact fees, rural road fees, or temporary impact fees that may be required for the covered Projects, consistent with standard application of the HCP/NCCP. The Applicants propose to secure a substantial portion of each covered Project's development fees with performance bonds and to defer fee payments until building permits are issued for the projects. In consideration of the land dedications described above, the Conservancy and the City of Pittsburg have adjusted the development fees for each covered project (Montreux, Skyranch II, and Faria). The following is in 2019 dollars.

Montreux
Applicant would pay a total of $2,968,000; 45% of that amount ($1,355,600) would be due prior to the issuance of grading permits for each phase of the project; 55% ($1,632,400) of the total development fee amount would be due on a pro rata basis, at issuance of individual building permits. The Applicant would provide security in the amount of $1,632,400 for the payment of fees due at issuance of building permits, and as explained above, the Applicant would also grant a conservation easement on the Montreux Property prior to the issuance of the first grading permit for the Montreux Project.

Sky Ranch II
Applicant would pay a total development fee of $4,648,000; 45% of that amount (i.e., $2,091,600) would be due prior to issuance of a grading permit for each phase of the project; 55% ($2,556,400) of the total development fee amount would be due, on a pro rata basis, at issuance of individual building permits. The Applicant would provide security in the amount of $2,556,400 for the payment of fees due at issuance of building permits.

Faria
Applicant would pay a total development fee of $13,690,000; 50% of that amount (i.e., $6,845,000) would be due prior to issuance of grading permits for each phase of the project; 50% of that amount ($6,845,000) of the total development fee amount would be due, on a pro rata basis, at issuance of individual building permits. The Applicant would provide security in the amount of $6,845,000 for the payment of fees due at issuance of building permits, and as explained above, the Applicant must also grant a conservation easement over most of the Faria Preserve Area prior the issuance of a grading permit for the Faria Project, and grant conservation easements over the remaining portions of the Faria Preserve Area prior to the issuance of grading permits for subsequent phases of the Faria Project.

The Agreement also identifies the remedies available to the other signatories if one or more parties should fail to carry out their obligations, and provides certainty that the land owners will receive approvals if they comply with the Agreement and that they will not challenge the fees or fee methodology.

On January 8, 2021, the Conservancy Board considered the Agreement. City staff understands that the Landowner Parties have agreed to the terms set out in the Agreement and are prepared to sign it. The next step is for the City Council to consider authorization of to do the same.

The City's interests are served by executing the Agreement in that the City participates in the HCP/NCCP and shares the obligation to create and manage a preserve system for the species covered in the HCP/NCCP. This Agreement helps to reach that goal by providing for the dedication of key property for the preserve system, and other valuable additions.

In addition, the City has an obligation to ensure that projects covered by the HCP/NCCP, comply with the HCP/NCCP. This Agreement sets forth the terms and conditions under which HCP/NCCP Mitigation Fees will be paid and land will be dedicated for the covered projects, ensuring compliance for future development activity.

The Agreement with exhibits is attached to this Staff Report.

ATTACHMENTS: Resolution
Multi-Party Agreement with Attachments

Report Prepared By: Kristin Pollot, AICP, Planning Manager

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Resolution to Authorize the City Manager to Execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement Between and Amongst City of Pittsburg; East Contra Costa County Habitat Conservancy; Discovery Builders, Inc., Skyranch Land Investors; LLC; Altec Homes, Inc.; and Faria Land Investors, LLC	)	RESOLUTION NO. 21 -

The Pittsburg City Council FINDS AND DETERMINES as follows:

WHEREAS, On March 26, 2007, the City Council approved Resolution 07-10745 approving the Final Environmental Impact Report for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP), approving the final HCP/NCCP, and approving and authorizing execution of the implementing agreement and a joint exercise of power agreement creating the East Contra Costa County Habitat Conservancy (Conservancy); and,

WHEREAS, On November 19, 2007, the City Council adopted Ordinance 07-1293 implementing the HCP/NCCP by adding Chapter 15.108 to the Pittsburg Municipal Code; and,

WHEREAS, Discovery Builders, Inc., Skyranch Land Investors, LLC, Altec Homes, Inc., and Faria Land Investors, LLC (collectively, Landowner Parties), are developers who own real property within the Pittsburg Planning Area and have submitted project applications to the City of Pittsburg (also a member of the Conservancy). These projects are commonly known as Sky Ranch II Residential Subdivision, Montreux Residential Subdivision and Faria; and,

WHEREAS, all three projects are subject to the requirements of the HCP/NCCP; and,

WHEREAS, a Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement (Agreement) has been prepared to document the terms of Landowner Parties' compliance with the HCP/NCCP for all three projects; and,

WHEREAS, the City of Pittsburg's interests are served by executing this Agreement in that the City participates in the HCP/NCCP, and the City thus shares the obligation to create and manage a preserve system for the species covered by the HCP/NCCP. The Agreement assists in reaching that goal by providing for the dedication of key property for the preserve system by the Landowner Parties, as well as other valuable additions. In addition, Pittsburg also has an obligation to ensure that HCP/NCCP-covered projects, comply with the HCP/NCCP. This Agreement sets forth the terms and conditions under which the HCP/NCCP Mitigation Fees will be paid and land will be dedicated for all three projects; and,

WHEREAS, the City Council's authorization of the City Manager to enter into the proposed Agreement is not subject to the California Environmental Quality Act (CEQA, found at Public Resources Code 21000, et seq., as further governed by the CEQA Guidelines 14 CCR 15000, et seq.) as it does not have the potential to cause direct or reasonably foreseeable indirect physical changes in the environment. Rather, implementation of the Agreement will be dependent on the approval of the associated projects, which each require further discretionary review by the City and will be the subject of public meetings and CEQA review consistent with state and local law.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pittsburg hereby authorizes the City Manager to execute the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement Between and Amongst City of Pittsburg; the East Contra Costa County Habitat Conservancy; Discovery Builders, Inc.; Skyranch Land Investors, LLC; Altec Homes, Inc.; and Faria Land Investors, LLC.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January, 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Merl Craft, Mayor

ATTEST:

_____
Alice E. Evenson, City Clerk

MULTI-PARTY MITIGATION AND LAND DEDICATION IN-LIEU OF DEVELOPMENT FEE AGREEMENT

THIS MULTI-PARTY MITIGATION AND LAND DEDICATION IN-LIEU OF DEVELOPMENT FEE AGREEMENT ("**Agreement**") is entered into by and among the **EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY** (the "**Conservancy**"), the **CITY OF PITTSBURG** ("**Pittsburg**"), **DISCOVERY BUILDERS, INC.**, a California corporation ("**Discovery**"), **SKYRANCH LAND INVESTORS, LLC**, a California limited liability company ("**Skyranch**"), **ALTEC HOMES, INC.**, a California corporation ("**Altec**"), and **FARIA LAND INVESTORS, LLC**, a California limited liability company ("**Faria**"). Conservancy and Pittsburg are sometimes collectively referred to herein as the "**Permittees**." Discovery, Skyranch, Altec, and Faria are sometimes collectively referred to herein as the "**Landowner Parties**." The Permittees and Landowner Parties are sometimes hereinafter each individually referred to as a "**Party**" and collectively referred to as the "**Parties**."

1. RECITALS.

1.1 In December, 2006, the East Contra Costa County Habitat Conservation Plan Association completed preparation of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("**HCP/NCCP**"). The HCP/NCCP, among other things, provides a framework to protect natural resources in eastern Contra Costa County, provides the United States Fish & Wildlife Service ("**Service**") with a basis to issue an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act, and provides the California Department of Fish & Wildlife ("**CDFW**") with a basis to issue a Natural Community Conservation Plan ("**NCCP**") permit under Section 2835 of the California Fish and Game Code.

1.2 The conservation strategy included in the HCP/NCCP proposes a system of new preserves linked to existing protected land to form a network of protected areas (the "**Preserve System**"). One of the main purposes of the Preserve System is to offset the impacts to species and habitats of urban development. The HCP/NCCP is intended to streamline certain permitting processes for future development and to rely on fees and land dedications provided by future development to assemble a portion of the Preserve System.

1.3 The Conservancy was created on April 16, 2007, pursuant to a joint exercise of powers agreement, to implement key aspects of the HCP/NCCP, including assembly and management of the Preserve System in compliance with the terms of the HCP/NCCP. The County of Contra Costa and the Cities of Pittsburg, Brentwood, Oakley, and Clayton approved the HCP/NCCP, adopted implementing ordinances and executed the Implementing Agreement. The Contra Costa County Flood Control and Water Conservation District and the East Bay Regional Park District also approved the HCP/NCCP and executed the Implementing Agreement. Therefore, such local agencies are bound to adhere to the terms of the HCP/NCCP and Implementing Agreement to offset the impacts of development projects that may be approved by these local agencies and to otherwise conserve natural resources as set forth in the HCP/NCCP.

1.4 Based on the HCP/NCCP, on July 25, 2007, the Service issued an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act ("**Incidental Take Permit**"),

and on August 6, 2007, CDFW issued a Natural Community Conservation Plan Permit under Section 2835 of the California Fish and Game Code ("**NCCP Permit**"), for the Plan Area to the County of Contra Costa, the Cities of Pittsburg, Brentwood, Oakley, and Clayton, the Contra Costa County Flood Control and Water Conservation District, and the East Bay Regional Park District. The Incidental Take Permit and the NCCP Permit are sometimes jointly referred to herein as the "**Permits**." On May 4, 2012, the U.S. Army Corps of Engineers ("**ACOE**") issued a Regional General Permit for most types of development covered under the HCP/NCCP, which permit was renewed on June 6, 2017.

1.5 The Landowner Parties intend to develop certain properties and projects that are set forth herein. The Landowner Parties have disputes and issues with the validity, funding and operation of the HCP/NCCP Plan and the validity, applicability and amount of fee requirements that apply to these properties and projects pursuant to the HCP/NCCP, and they believe that alternative mitigation consistent with the HCP/NCCP is appropriate. Accordingly, they have explored these alternatives with the Permittees and are willing to enter into this Agreement in order to use such alternative mitigation.

1.6 In light of all information available to the Parties, including, but not limited to, the HCP/NCCP and relevant biological analyses, the Parties have developed alternative means of satisfying the HCP/NCCP requirement to pay a development fee ("**Development Fee**") for potential future development activities impacting certain properties within the Plan Area currently owned by the Landowner Parties and identified on ***Exhibit A*** attached hereto ("**Covered Properties and Dedication Properties**"). The alternatives, including dedication of conservation easements and reduced Development Fee amounts, were developed in accordance with HCP/NCCP and Implementing Agreement provisions regarding "land dedication in-lieu of development fee," which is more particularly described below, and are intended to comply with, and maintain the level of conservation identified in, the HCP/NCCP and its Biological Opinion. In conjunction with the other applicable conservation measures of the HCP/NCCP, the alternatives for meeting the HCP/NCCP requirement to pay a Development Fee provide a basis for the Permittees to extend Take Authorization for development activities that may be approved on the Covered Properties, as further defined in Section 2 below (the "**Covered Projects**").

1.7 While some of the alternatives set forth in this Agreement, including, specifically, the dedication of conservation easements and reduced Development Fee amounts set forth below, differ from the standard HCP/NCCP Development Fee, the Parties agree that the alternatives described herein will serve to provide compensatory mitigation for the Covered Projects' impacts to HCP/NCCP Covered Species that meets or exceeds the compensatory mitigation provided by payment of the standard Development Fee. In light of this fact, the alternatives described in this Agreement support and advance the implementation of the HCP/NCCP's conservation strategy, the overall viability of the Preserve System, and the Permittees' ability to achieve the HCP/NCCP goals and objectives. The Parties agree that the alternatives set forth in this Agreement will adequately mitigate the Covered Projects' impacts on the species and habitat covered in the HCP/NCCP ("**HCP/NCCP Covered Species**").

1.8 As represented in the letter attached hereto as ***Exhibit B***, the Service and CDFW acknowledge and agree that this Agreement, and the commitments and alternative mitigation measures set forth in this Agreement, if implemented and adhered to, are consistent with and will meet the compensatory mitigation requirements for the Covered Projects' impacts to HCP/NCCP Covered Species in accordance with the HCP/NCCP and its Biological Opinion, Implementing

Agreement, and the Permits identified in Recital 1.4, that no further mitigation or compensation is required thereunder and that the Covered Projects will be authorized for Take Authorization under the Permits, pursuant to the terms and conditions of this Agreement.

1.9 The purposes of this Agreement are to:

(a) Set forth the alternatives for fulfilling the HCP/NCCP requirement to pay a Development Fee in accordance with Chapter 8.6.7 of the HCP/NCCP and Section 13.2.2.2 of the Implementing Agreement, including dedications of conservation easements and reduced Development Fee amounts, that are agreed upon by the Parties and that – in conjunction with the other HCP/NCCP measures – provide a basis for the Permittees to extend Take Authorization for the Covered Projects;

(b) Describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement;

(c) Provide assurances to the Landowner Parties that upon performance of the terms and conditions in the Agreement and compliance with other applicable HCP/NCCP requirements, the Permittees will provide take authority for the Covered Projects, and the applicable Landowner Parties shall become Third Party Participants under the Implementing Agreement, the HCP/NCCP, and the Permits, with all the rights and benefits thereof; and

(d) Except as otherwise set forth herein, settle any and all disputes among the Parties relating to the HCP/NCCP, Implementing Agreement, and the Permits identified in Recital 1.4, including but not limited to the establishment, implementation and amount of the Development Fees applicable to the Covered Projects and any other projects proposed on any properties currently owned by any of the Landowner Parties or their affiliated entities except those disputes that may arise concerning the Parties' performance under this Agreement.

2. DEFINITIONS.

"**2019 Dollars**" means dollar amounts as adjusted each year based on the annual Home Price Index for the Oakland-Fremont-Hayward, CA Metropolitan Division for the prior calendar year (Office of Federal Housing Enterprise Oversight) and, for the non–land cost portion of the fee amounts, the CPI for the San Francisco–Oakland–San Jose Metropolitan Area (U.S. Bureau of Labor Statistics), as required in Chapter 9.3.1 of the HCP/NCCP. For the dollar amounts set forth in Section 4.3 of this Agreement, such adjustments shall commence in 2022.

"**ACOE**" means the U.S. Army Corps of Engineers.

"**Agreement**" means this Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement.

"**Altec**" means Altec Homes, Inc., one of the Landowner Parties, as well as the owner of one of the Dedication Properties, and its successors.

"**Building Permit**" means a building permit for one new for-sale single family residential unit, as well as a building permit for part of such a structure, such as a foundation-only permit. Where more than one building permit is required, "Building Permit" refers to the

first building permit for the subject unit (e.g., a single family residential unit) or Covered Project.

"**CDFW**" means California Department of Fish and Wildlife.

"**Conservancy**" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the County of Contra Costa and the Cities of Pittsburg, Brentwood, Oakley and Clayton.

"**Covered Project"** and **"Covered Projects**" means the development activities on the Covered Properties, as described in the Planning Survey Report for each Covered Project, that will receive Take Authorization under the terms and conditions of this Agreement, the HCP/NCCP, the Implementing Agreement and the Permits.

"**Covered Property**" and "**Covered Properties**" means only those properties identified in ***Exhibit A*** attached hereto owned by the Landowner Parties.

"**CVP Inclusionary Water Approval**" means approval by the U.S. Bureau of Reclamation of the addition of the entirety of an applicable Covered Project into the Central Valley Project service area for the Contra Costa Water District.

"**Dedication Property**" and "**Dedication Properties**" means those properties identified in ***Exhibit A*** attached hereto to be dedicated by conservation easement grant.

"**Development Fee**" means the development fee described in Chapter 9.3.1 of the HCP/NCCP.

"**Discovery**" means Discovery Builders, Inc., and its successors.

"**Effective Date**" means the effective date as set forth in Section 6.9.

"**EBRPD**" means the East Bay Regional Park District.

"**GHAD**" means the Southwest Pittsburg Geologic Hazard Abatement District.

"**Grading Permit**" means a grading permit or any other permit, including any ministerial permit or approval, authorizing a ground-disturbing activity.

"**Grantee**" means the recipient of a Dedication Property. For each Dedication Property, the Grantee will be the EBRPD or, if the EBRPD is unwilling or unable to accept the Dedication Property, the Conservancy or a 501(c)(3) entity designated by the Conservancy and approved by the applicable Landowner Party (such approval not to be unreasonably withheld).

"**HCP/NCCP**" means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, dated October 10, 2006, including December 19, 2006 corrections and updates.

"**Implementing Agreement**" means the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan dated January 22, 2007.

"**Incidental Take Permit**" means the incidental take permit issued by the Service on July 25, 2007 based on the HCP/NCCP and any extension or subsequent version of this permit.

"**JAMS**" means JAMS, Inc., an alternative dispute resolution provider.

"**Landowner Party**" and "**Landowner Parties**" mean the entities that own the Covered Properties and/or the Dedication Properties.

"**Limited Grading**" means any grading that occurs on a Covered Property, is not part of a Covered Project, and is for the limited purposes of temporary facilities and appurtenances, property maintenance such as erosion control measures, geotechnical reconnaissance, installation and reinstallation of fencing and utilities separate from the Covered Project, water tanks and their appurtenant utilities and access roads separate from the Covered Project, import or export soil or gravel stock piles and construction of their access/haul roads.

"**NCCP Permit**" means the Natural Community Conservation Plan Permit issued by CDFW on August 6, 2007 and any extension or subsequent version of this permit.

"**Notice of Default**" mean a Notice of Default as set forth in Section 6.2.

"**Party**" or "**Parties**" means the signatories to this Agreement individually and collectively.

"**Permanent Impact**" means any impact on vegetation or habitat that results in permanent vegetation or habitat removal, i.e. impervious surface or circumstances where vegetation or habitat is removed and is not substantially restored to pre-impact conditions by hydro-seeding or other measures.

"**Permits**" collectively means the Incidental Take Permit and NCCP Permit.

"**Permittee**" and "**Permittees**" have the same general meaning in this Agreement as in the HCP/NCCP, except that in this Agreement they refer specifically to the Conservancy and Pittsburg, which are a subset of the Permittees identified in the HCP/NCCP.

"**Plan Area**" means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP.

"**PSR**" means Planning Survey Report, the application form for coverage under the Permits, as further described in Chapter 6.2.1 of the HCP/NCCP.

"RWQCBs" means the Regional Water Quality Control Boards.

"**Service**" means the United States Fish and Wildlife Service.

"**Skyranch**" means Skyranch Land Investors, LLC, one of the Landowner Parties, and its successors.

"**Take Authorization**" means the extension of take authorization under the Permits for the Covered Projects in accordance with the Permits, the HCP/NCCP, the Implementing Agreement, and this Agreement.

"**Temporary Impact**" means any impact on vegetation or habitat that does not result in permanent vegetation or habitat removal, such as areas of impact that are substantially restored to pre-impact conditions by hydro-seeding or other measures.

"**Third Party Participant**" means a person or entity that qualifies for and receives Take Authorization from a Permittee in exchange for compliance with applicable conservation measures and other terms and conditions of the Implementing Agreement, the HCP/NCCP, and the Permits, as further described in Section 13.2 of the Implementing Agreement.

"**Title Company**" means Old Republic Title Company, 1000 Burnett Avenue, Suite 400, Concord, CA 94520, Attn: Donna Jones, (925) 687-7880.

"**Waive**" means a decision that it is not necessary or appropriate to cure some or all unacceptable title and/or site conditions and execution of a written waiver accepting those conditions within the sixty (60) day Cure period.

"**Wildlife Agencies**" means CDFW and the Service.

3. GRANTS OF CONSERVATION EASEMENTS.

The Permittees have determined that certain grants of conservation easements on properties proposed by the Landowner Parties (the "**Dedication Properties**") would meet the requirements of Section 13.2.2.2 of the Implementing Agreement and Section 8.6.7 of the HCP/NCCP and would both help to achieve the biological goals and objectives of the HCP/NCCP and fulfill, in part, the requirements in the HCP/NCCP for a Landowner Party to pay a Development Fee for the Covered Projects, if such Covered Projects are approved by the Permittees. Where used herein, and consistent with Section 2 above, the term "Grading Permit" does not include a grading permit issued for Limited Grading as defined in Sections 2 and 5.6.

3.1 **Montreux Property.** Altec is the owner of that certain approximately 160 acre undeveloped real property located in the City of Pittsburg and described in the **Montreux Title Report** attached hereto as ***Exhibit C*** (the "**Montreux Property**"). The Parties agree that Altec shall satisfy, in part, its obligation to pay the Development Fee under the HCP/NCCP for the Covered Project on the Montreux Property by the grant of a perpetual conservation easement over a portion of the Montreux Property as provided in this section.

(a) **Grant of Conservation Easement**. Concurrently with, and as a condition of, the issuance of a Grading Permit and Take Authorization for the Covered Project on the Montreux Property, Altec shall grant to the East Bay Regional Park District ("**EBRPD**") a conservation easement over 42.29 acres of the Montreux Property as depicted in Exhibit A ("**Montreux 42 Acres**") in substantially the form attached hereto as ***Exhibit D*** (the "**Montreux Conservation Easement**") provided, however, that if EBRPD is unwilling or unable to accept the grant within forty-five (45) days of Altec's delivery of the signed Montreux Conservation Easement, Altec will grant the Montreux Conservation Easement to the Conservancy or a 501(c)(3) entity that is designated by the Conservancy. A delay in accepting conveyance of the Montreux Conservation Easement shall not be construed as a waiver of the obligation to convey such easement. Notwithstanding Section 5.2, failure to accept the conveyance of the Montreux Conservation Easement in accordance with this Section within forty-five (45) days of Altec's delivery of the signed Montreux Conservation Easement shall not delay or adversely affect the

issuance of Take Authorization under this Agreement nor the issuance of a grading permit, provided Altec is in compliance with Sections 3.1(b), 4.1(b)(i) and 4.1(c) at such time.

(b) **Maintaining Current Conditions**. From and after the Effective Date, Altec shall not encumber (except for financing purposes which shall be released prior to the grant hereunder), transfer to a non-affiliated entity, or change title to the Montreux 42 Acres (except to create the Montreux 42 Acres as a legal parcel or to convey the Montreux 42 Acres to the GHAD as discussed below), nor shall it take or allow any action to physically change the condition of the Montreux 42 Acres in a manner that is inconsistent with the Montreux Conservation Easement or with the terms and conditions of this Agreement. Prior to recordation of the Montreux Conservation Easement, Altec shall maintain the Montreux 42 Acres in substantially its current condition, as shown in the **Montreux 42 Baseline Report** attached hereto as ***Exhibit E*** and in a manner that is consistent with the permitted uses and other covenants set forth in the Montreux Conservation Easement, which includes, but is not limited to, the right for Altec to complete grading and final improvements, soil stabilization, maintain, install, upgrade, and replace the existing improvements in situ, blade roads, and graze and weed abate, as more specifically set forth in the Montreux Conservation Easement and shown on the attached **Exhibit F ("Montreux Perimeter Grading Map").** For any grading in the Montreux 42 Acres resulting from Altec's exercise of its rights set forth in this Section 3.1(b), Altec shall pay a development fee of $28,000 per acre in 2019 Dollars for any permanent impacts, and shall pay a temporary impact fee for any temporary impacts consistent with standard application of the HCP/NCCP (except no temporary impact fees shall be imposed for work done to maintain, repair, or replace in situ, existing paved and unpaved roads and improvements). The parties acknowledge that the conditions of approval for the Montreux project require cooperation with the City in the event the City requires that an unpaved public trail be constructed on the Montreux 42 Acres. Any such trail shall comply with applicable HCP/NCCP requirements, including Conservation Measure 1.5 (HCP/NCCP, pp. 5-64 to 5-69.) Grantee shall work with the City and Altec should such a trail be required by the City.

(c) **Due Diligence**. The Permittees acknowledge that the Conservancy and the Permittee has completed the due diligence of the Montreux 42 Acres, including any environmental or other surveys, and they have jointly determined that the Montreux Conservation Easement is an acceptable dedication of land in lieu of a portion of the Development Fee for the Covered Project on the Montreux Property, in accordance with Chapter 8.6.7 of the HCP/NCCP, and Section 13.2.2.2 of the Implementing Agreement. Prior to, and as a condition to, Grantee's acceptance of the Montreux Conservation Easement grant described in Section 3.1(a):

(i) Altec shall provide the Conservancy written notice not less than sixty (60) days in advance of issuance of a Grading Permit for the applicable Covered Project on the Montreux Property pursuant to Section 3.1(a). Upon receipt of such written notice, Conservancy shall promptly identify the Grantee for the Montreux Conservation Easement in accordance with Section 3.1(a). If neither EBRPD or the Conservancy will be the Grantee, the Conservancy will identify an appropriate 501(c)(3) entity to be the Grantee.

(ii) Upon Conservancy's receipt of Altec's sixty (60) day written notice, Conservancy shall request that Grantee within forty-five (45) days, at its sole cost and expense, do both of the following:

- Review the title and site condition of the Montreux 42 Acres to confirm that: (1) there are no material changes to the condition of title described in the Montreux Title Report as they apply to the Montreux 42 Acres; and (2) site conditions do not differ significantly from those site conditions in place at the time of execution of this Agreement as shown in the Montreux 42 Baseline Report, except for those changes in such condition consistent with Altec's rights set forth in Section 3.1(b) or the adverse impact including loss of habitat due to natural phenomena, such as the impacts of fire, drought, landslides or climate change that are beyond the reasonable control of, and occur without the fault or gross negligence of, Altec; and

- Prepare the final Montreux Conservation Easement in recordable form, specifying Grantee as the recipient.

(iii) The Title Company shall confirm that it will issue an easement holder's title insurance policy in favor of the Grantee in the amount of _____ Dollars, subject only to those title exceptions described in the Montreux 42 Title Report. The parties acknowledge that the Montreux 42 Acres shall be included in the GHAD for the purpose of abating geologic hazards on the Montreux Property. Until such time as the GHAD assumes responsibility for the abatement of geologic hazards on the Montreux 42 Acres, Altec shall retain that responsibility, and any work done by Altec that is necessary to abate or prevent reasonably foreseeable geologic hazards on the Montreux Property, including any weed abatement, shall be undertaken in a manner consistent with the Montreux Conservation Easement and shall not be deemed to interfere with the ability of the Grantee to protect the conservation values on the property in perpetuity. The parties acknowledge that Altec may transfer fee title to the Montreux 42 Acres to the GHAD. In such event, the GHAD shall take title to the Montreux 42 Acres subject to the Montreux Conservation Easement and shall confirm in writing, in a form approved by the Grantee, that the GHAD will succeed to all rights and obligations of the grantor under the Montreux Conservation Easement except the grazing rights retained by Altec set forth in Section 3.1(e) below. Altec shall not transfer fee title to the Montreux 42 Acres to the GHAD unless and until it has granted the Montreux Conservation Easement to Grantee.

(d) **Acceptance of Conservation Easement**. In no event shall Grantee or Conservancy be required to accept, nor shall Altec be deemed to have granted, the Montreux Conservation Easement unless and until:

(i) Grantee confirms that there are no material changes to the condition of title or significant differences in the site conditions on the Montreux 42 Acres in accordance with Section 3.1(c)(ii). Any changes in site conditions consistent with the exercise by Altec of its rights set forth in Section 3.1(b) or the adverse impact including loss of habitat due to natural environmental phenomena, such as the impacts of fire, drought, landslides or climate change that are beyond the reasonable control of, and occurs without the fault or gross negligence of, Altec shall not constitute a change in site conditions covered by this Section; and

(ii) the Title Company issues a title insurance policy to Grantee in accordance with Section 3.1(c)(iii).

If Conservancy fails to provide a Notice of Default to Altec within sixty (60) days after receiving Altec's notice under Section 3.1(c)(i) above, then Grantee shall be automatically deemed to have Waived title and site conditions.

(e) **Grazing**. In any transfer of the fee interest in the Montreux 42 Acres by Altec to the GHAD, Altec may elect, at its sole option with no obligation to do so, to retain the right to graze (by itself or its designee) on the Montreux 42 Acres at no charge if consistent with Pittsburg's land use policies and zoning, as permitted in the Montreux Conservation Easement. , Altec shall forfeit such grazing right if it fails to graze the Montreux 42 Acres for three consecutive years (not counting any year of a statewide drought or a regional drought, as declared by the Governor of California or the applicable regional agency), and Grantee shall have the right to graze in any year in which Altec does not.

(f) **Closing Costs/Maintenance Costs**. All closing, escrow, recording, and title insurance costs associated with the recordation of the Montreux Conservation Easement shall be paid by the Grantee. Altec shall not be required to provide any monies or endowment for the long-term maintenance, monitoring or any other purpose of the Montreux Conservation Easement.

(g) **Right of Access.** From and after the Effective Date pending recordation of the Montreux Conservation Easement, Grantee shall have the right to access the Montreux 42 acres, with three (3) day advance written notice to Altec, only to complete due diligence and to monitor compliance with Altec's obligations under Section 3.1(b).

3.2 **Faria Preserve Area.** Faria is the owner of that certain approximately 607 acre undeveloped real property located in the County of Contra Costa within the sphere of influence of Pittsburg and described in the **Faria Title Report** attached hereto as ***Exhibit G*** **(**the "**Faria Property**." The Parties agree that Faria shall satisfy, in part, its obligation to pay the Development Fee under the HCP/NCCP for the Covered Project on the Faria Property by the grant of perpetual conservation easements over an approximately 265 acre portion of the Faria Property ("**Faria Preserve Area**") as provided in this section.

(a) **Grant of Conservation Easement**. Concurrently with, and as a condition of, the issuance of a Grading Permit and Take Authorization for the first phase of the Covered Project on the Faria Property, Faria shall grant to the East Bay Regional Park District ("**EBRPD**") a conservation easement over the **Initial Faria Preserve Area** consisting of not less than approximately 146 acres and shown on the attached ***Exhibit H,*** in substantially the form attached hereto as ***Exhibit I*** (the "**Faria Conservation Easement**") provided, however, if EBRPD is unwilling or unable to accept the grant within forty-five (45) days of Faria's delivery of the signed Faria Conservation Easement, Faria will grant the Faria Conservation Easement to the Conservancy or a 501(c)(3) entity designated by the Conservancy. A delay in accepting conveyance of the conservation easement shall not be construed as a waiver of the obligation to convey such easement. Notwithstanding Section 5.2, failure to accept the conveyance of the conservation easement in accordance with this Agreement within forty-five (45) days of Faria's delivery of the signed conservation easement grant shall not delay or adversely affect the issuance of the Take Authorization under this Agreement or issuance of the grading permit, provided Faria is in compliance with Sections 3.2(b), 4.3(b)(i) and 4.3(c) at the time of such conveyance. Faria shall also grant one or more conservation easements covering an additional approximately one-hundred twenty (120) acres shown on ***Exhibit J*** and described as "**Subsequent Preserve Area**" (subject to minor modifications needed to meet geo-technical requirements, as described below) upon completion by Faria of limited perimeter grading and other improvements in accordance with approved plans of Pittsburg or other applicable governing agencies, and acceptance thereof, where applicable. The parties

anticipate that such limited grading and other improvements will be completed for each phase of the Covered Project before the subsequent phase of the Covered Project is initiated. Concurrently with, and as a condition of, the issuance of a Grading Permit and Take Authorization for each phase of the Covered Project on the Faria Property, Faria shall grant to EBRPD a conservation easement, in substantially the same form as the Faria Conservation Easement, over those portions of the Subsequent Preserve Area included in any previous phase of the Covered Project. A conservation easement over any remaining portion of the Subsequent Preserve Area shall be granted prior to the issuance of the first building permit in the last phase of the Covered Project on the Faria Property, to complete the Faria Preserve Area as depicted in ***Exhibit K*** ("**Faria Preserve Area**"). Faria may expand the Initial Faria Preserve Area prior to granting the Faria Conservation Easement and thereby reduce the area of the Subsequent Preserve Area. Faria may also make minor modifications to the boundaries of the Subsequent Preserve Area as necessary to allow limited perimeter grading and other improvements necessary to meet geo-technical requirements imposed by Pittsburg or the GHAD, provided:

(i) such minor modifications do not increase or decrease the area of the Subsequent Preserve Area by more than five percent (5%);

(ii) any increase in the area of the Subsequent Preserve Area is limited to lands adjacent to the Subsequent Preserve Area as depicted in Exhibit J; and

(iii) the minor modifications do not remove any portion of the "Subsequent Preserve Core Area," as depicted in Exhibit J, from the Subsequent Preserve Area.

(b) **Maintaining Current Conditions**. From and after the Effective Date, Faria shall not encumber (except for financing and/or collateral purposes which shall be released upon transfer of the grant hereunder), transfer to a non-affiliated entity, or change title to the Faria Preserve Area (except to create the Faria Preserve Area as a legal parcel or to convey the Faria Preserve Area to the GHAD as discussed below), nor shall it take or allow any action to physically change the condition of the Faria Preserve Area in a manner that is inconsistent with the terms and conditions of this Agreement. Faria shall maintain the Faria Preserve Area in substantially its current condition, as shown in the **Faria Baseline Report** attached hereto as ***Exhibit L*** and in a manner that is consistent with the following terms and conditions.

(i) Prior to recordation of subsequent conservation easements over portions of the Subsequent Preserve Area , Faria shall, consistent with the Planning Survey Report for the Covered Project on the Faria Property and subject to reasonable design and other measures identified by the Conservancy to minimize habitat and species impacts, have the right within those portions of the Subsequent Preserve Area:

- to complete limited perimeter grading and final improvements if and as reasonably necessary for soil stabilization, slope stabilization, or slope repair on the Faria Preserve Area or adjacent properties;
- to conduct weed abatement and/or grazing in conformance with the Faria Conservation Easement;
- to construct the San Marco Boulevard extension within the Faria Preserve Area, with all appurtenant improvements and slope stabilization reasonably necessary for the San Marco Boulevard extension, as approved

by Pittsburg. Bridges shall not be required, but two culvert(s) shall be deemed sufficient to allow wildlife movement under San Marco Boulevard and shall be required. The culvert(s) shall have natural bottoms, shall be open at the top to provide natural light at the midpoint of each culvert in the road median, if there is one and if feasible, and shall have a minimum height of four feet as measured from the natural bottom to the top of each culvert. The final design of the culvert(s) shall be subject to the approval of the Conservancy and the City, which approval shall not be unreasonably withheld or unduly delayed;

- to construct the following if and as reasonably necessary for the development of adjacent properties and the San Marco Boulevard extension:
    - water, sewer, and utility poles and lines;
    - flood control and water quality/detention and clean water basin facilities; and
    - water tanks, pump stations and related appurtenances, concrete and natural ditches fences, lighting, infrastructure and utilities, including the right to grade, construct, and dedicate to Pittsburg, access roads to the water tanks and pump stations, if and as approved by Pittsburg;
- to perform emergency, geotechnical and flood repairs, including slope stabilization, ditches and slide repair necessary to address flood related and/or geological hazards that may occur within the Faria Preserve Area, or on adjacent properties; and
- to maintain, upgrade and replace existing improvements in situ, including blading of existing paved and unpaved roads.

(ii) Any perimeter grading, slope repair, or slope stabilization within the Subsequent Preserve Area that alters surface soils such that vegetation cannot be re-established substantially to pre-impact conditions or modifies the topography such that habitat connectivity or wildlife movement is affected (e.g., by installing concrete-lined J or V-ditches) shall be treated as a permanent impact.

(iii) The parties acknowledge that governmental and/or quasi-governmental entities may require the installation of utilities within the Faria Preserve Area in connection with the development of adjacent properties or as a part of their overall utility systems prior to the grant of the conservation easements hereunder. In such event, Faria and the Permittees shall work cooperatively with such entities to minimize the effects of any such installations on the Faria Preserve Area.

(iv) The parties acknowledge that the Faria Preserve Area may be included in the GHAD for the purpose of abating geologic hazards on the Faria Property. Until such time as the GHAD assumes responsibility for the abatement of geologic hazards on the Faria Property, Faria shall retain that responsibility, and any work done by Faria that is necessary to abate geologic hazards on the Faria Preserve Area, including any weed abatement and grazing, shall be undertaken in a manner consistent with the terms and conditions in the Faria Conservation Easement and shall be deemed to not interfere with the ability of the Grantee to protect the conservation values on the property in perpetuity. The parties acknowledge that Faria

may transfer fee title to the Faria Preserve Area to the GHAD. In such event, the GHAD shall take title to the Faria Preserve Area subject to all recorded conservation easements and shall confirm in writing, in a form approved by the Grantee, that the GHAD will succeed to all rights and obligations of the grantor under such conservation easements, except for the grazing rights set forth in Section 3.2(e) below. Faria shall not transfer title to any portion of the Faria Preserve Area to the GHAD until Faria has completed those improvements for that specific phase identified in section 3.2 (b)(i) above, to the extent they apply, and unless and until it has granted a conservation easement over that portion of the Faria Preserve Area to Grantee.

(v) For any grading in the Faria Preserve Area resulting from Faria's exercise of its rights set forth in this Section 3.2(b), Faria shall pay a development fee of $37,000 per acre in 2019 Dollars for any permanent impacts, and shall pay a temporary impact fee for any temporary impacts consistent with standard application of the HCP/NCCP (except no temporary impact fees shall be imposed for work done to maintain, repair, or replace in situ, existing roads and improvements).

(vi) The parties acknowledge that the conditions of approval for the Covered Project on the Faria Property project may require that an unpaved public trail be constructed on the Faria Preserve Area. Any such trail shall comply with applicable HCP/NCCP requirements, including Conservation Measure 1.5 (HCP/NCCP, pp. 5-64 to 5-69.) Grantee shall work with the City and Faria should such a trail be required by the City.

(c) **Due Diligence**. The Permittees acknowledge that the Conservancy has completed the due diligence of the Faria Preserve Area, including any environmental or other surveys, and they have jointly determined that dedication of conservation easements over the Faria Preserve Area is an acceptable dedication of land in lieu of a portion of the Development Fee for the Covered Project on the Faria Property, in accordance with Chapter 8.6.7 and Section 13.2.2.2 of the Implementing Agreement. Prior to, and as a condition to, Grantee's acceptance of a conservation easement grant described in Section 3.2(a):

(i) Faria shall provide the Conservancy written notice no less than sixty (60) days in advance of issuance of a Grading Permit for the first phase of the Covered Project on the Faria Property pursuant to Section 3.2(a). Upon receipt of such written notice, Conservancy shall within thirty (30) days identify the Grantee for the conservation easement for the Initial Faria Preserve Area in accordance with Section 3.2(a). If neither EBRPD or the Conservancy will be the Grantee, the Conservancy will identify an appropriate 501(c)(3) entity to be the Grantee.

(ii) Upon Conservancy's receipt of Faria's sixty (60) day written notice and any subsequent notice concerning the grant of subsequent conservation easements pursuant to section 3.2(a) above and, if applicable, Faria's approval of the 501(c)(3) entity as Grantee, Conservancy shall request that Grantee within forty-five (45) days, at its sole cost and expense, do both of the following:

- Review the title and site condition of the relevant portion of the Faria Preserve Area to confirm that: (1) there are no material changes to the condition of title described in the "**Faria Title Report**" attached hereto as **Exhibit G** that apply to the Faria Preserve Area (except as provided in Section 3.2(c)(i) above); and (2) site conditions do not differ significantly from those site conditions in place at the time of execution of this Agreement as shown in the Faria Preserve Area Baseline Report, except for those changes due to Faria's

rights set forth in Section 3.2(b) above, where applicable, or the adverse impact, including loss of habitat, due to natural phenomena, such as the impacts of fire, drought, landslides or climate change that are beyond the reasonable control of, and occur without the fault or gross negligence of, Faria.

- Prepare the final conservation easement(s) for that portion of the Faria Preserve Area in recordable form, specifying Grantee as the recipient.

(iii) The Title Company shall confirm that it will issue an easement holder's title insurance policy in favor of the Grantee in the amount of _____ Dollars for the grant of the conservation easement over the Initial Faria Preserve Area and _____ Dollars for the grant of any subsequent conservation easements as provided in section 3.2(a) above, subject only to those title exceptions described in the Faria Preserve Area Title Report.

(d) **Acceptance of Conservation Easement**. In no event shall Grantee or Conservancy be required to accept, nor shall Faria be deemed to grant, a conservation easement over a portion of the Faria Preserve Area unless and until:

(i) Grantee confirms that there are no material changes to the condition of title or significant differences in the site conditions on the relevant portion of the Faria Preserve Area in accordance with Section 3.2(c)(ii). Any changes in site conditions due to the exercise by Faria of its rights set forth in Section 3.2(b) or the adverse impact including loss of habitat due to natural environmental phenomena, such as the impacts of fire, drought, or climate change that are beyond the reasonable control of, and occur without the fault or gross negligence of, Faria shall not constitute a change in site conditions covered by this Section; and

(ii) the Title Company issues a title insurance policy to Grantee in accordance with Section 3.2(c)(iii).

If Conservancy fails to provide a Notice of Default to Faria within sixty (60) days after receiving Faria's notice under Section 3.2(c)(i) above, then Grantee shall be automatically deemed to have Waived title and site conditions.

(e) **Grazing License.** Faria shall have the right, at its sole option with no obligation to do so, to continue to graze the Faria Preserve Area itself or by its designee at no charge following conveyance to the Grantee, if consistent with Pittsburg's land use policies and zoning and the terms and conditions set forth in the Faria Conservation Easement. Faria shall forfeit such grazing right if it fails to graze the Faria Preserve Area for three consecutive years (not counting any year of a statewide or regional drought, as declared by the Governor of California or the applicable regional agency).

(f) **Closing Costs/Maintenance Costs**. All closing, escrow, recording, and title insurance costs associated with the recordation of conservation easements over portions of the Faria Preserve Area shall be paid by Grantee. Faria shall not be required to provide any monies or endowment for the long-term maintenance, monitoring or other purposes by the Grantee of the Faria Preserve Area.

(g) **Right of Access.** From and after the Effective Date pending recordation of the Faria Conservation Easement, Grantee shall have the right to access the Faria Preserve Area,

with advance written notice to Faria, only to complete due diligence and to monitor compliance with Faria's obligations under Section 3.2(c).

4. PAYMENT OF DEVELOPMENT FEES.

In consideration of the grants of conservation easements described in Section 3, the Permittees have determined that the Development Fees for each Covered Project will be reduced, and the Landowner Parties have agreed to pay the reduced Development Fees, as provided in this Section, if the Covered Project is approved by the applicable Permittee. Where used herein, and consistent with Section 2 above, the term "Grading Permit" does not include a grading permit issued for Limited Grading as defined in Section 2.

4.1 **Montreux Property.** Altec shall satisfy its obligation to pay the Development Fee under the HCP/NCCP for the Covered Project on the Montreux Property, including all appurtenant improvements included in the Covered Project, as set forth in this Section.

(a) **Development Fee Amount**. Altec shall pay an HCP/NCCP Development Fee in the total amount of two million nine hundred sixty-eight thousand dollars ($2,968,000) in 2019 Dollars for the Covered Project on the Montreux Property, as set forth in this Section.

(b) **Development Fee Cash Payments.**

(i) Concurrent with the issuance of a Grading Permit and the Take Authorization for each phase of the Covered Project on the Montreux, Altec shall pay a sum equal to forty-five percent (45%) of that portion of the development fee amount allocated to such phase, in 2019 Dollars to Pittsburg, the applicable Permittee. The portion of the development fee amount allocated to each phase shall be determined by dividing the number of acres included in each phase by the total number of acres included in the Covered Project on the Montreux Property.

(ii) Altec shall pay to Pittsburg, the applicable Permittee, the remaining fifty-five percent (55%) of the development fee amount for each phase, in 2019 Dollars, which sum shall be due at Building Permit issuance for single-family residential production units and paid on a pro rata basis at issuance of individual Building Permits based on the approved single-family residential unit count for such phase. At the issuance of a Building Permit for the last single family residential unit in each phase , Altec shall complete its payment of the total development fee amount allocated to such phase of the Covered Project on the Montreux Property. For model home units and their parking lots, the fees that would otherwise be due at Building Permit for a production unit shall be due prior to approval for occupancy, i.e., they shall be due at approval for occupancy, not at occupancy approval for model home use. At Altec's option, fees due at Building Permit can be pre-paid in blocks of ten (10) prior to issuance of the first Building Permit in each group of ten (10). The cumulative fee amount for the Covered Project on the Montreux Property will not change if the unit count changes for the Project.

(iii) Notwithstanding the above, the total development fee amount of $2,968,000 in 2019 Dollars shall in any event be due from Altec no later than July 1, 2032, unless the term of the Permits has been extended, in which case this time period shall be extended by the same amount of time that the term of the Permits is extended. If construction of the Covered Project on the Montreux Property has not started by July 1, 2032, the total development fee amount shall be due prior to issuance of a Grading Permit for the Covered

Project, provided the Grading Permit is issued and Take Authorization is granted before the expiration of the Permits, as extended, if applicable in accordance with the provisions of this Section 3.2.

(iv) All unpaid fee amounts set forth in this Section 4.1(b) will be adjusted automatically each year as provided for development fees in Chapter 9.3.1 of the HCP/NCCP (*Automatic Adjustment of Mitigation Fees*) but will not be subject to any other adjustments based on Development Fee revisions or audits unless future fee audits (not the currently pending one) cumulatively result in an overall reduction of the HCP/NCCP standard Development Fee. In such case, the reduced Development Fee for the Covered Project on the Montreux Property shall be reduced by the same percentage reduction.

(c) **Security for Fee Payments.** To secure performance of Altec's obligations under Section 4.1(b)(ii), prior to the issuance of a Grading Permit and Take Authorization for each phase of the Covered Project, Altec shall deposit with Pittsburg, for the express benefit of Pittsburg and the Conservancy, an adequate and satisfactory security in the amount of 55% of the Development Fee allocated to such phase in 2019 Dollars. The security may be a rated transferable bond or bonds by one or more duly authorized corporate sureties or an irrevocable standby letter of credit, as determined by Altec, in a form approved in advance in writing by the Pittsburg and the Conservancy, which approval shall not be unreasonably withheld or unduly delayed. Altec shall ensure that the full amount of the security required by this Section 4.1(c) shall remain in effect until Altec has fulfilled its obligations under Section 4.1(b)(ii). The Parties shall cooperate with Altec by promptly signing any necessary documentation requested should Altec seek to reduce and/or release the bond as the fees under Section 4.1(b)(ii) above are paid. However, any reduction in bond amounts shall account for adjustment of the remaining fees to be paid such that the remaining bond amount stays proportionate with the number of building permits not yet issued.

(d) **Fulfillment of Development Fee Requirement**. The sum of $2,968,000 (in 2019 Dollars), paid by Altec as described in Section 4.1(a) and Section 5.6, the deposit of security as described in Section 4.1(c), the grant of conservation easement described in Section 3.1, at the times set forth therein, together shall fulfill the HCP/NCCP requirement to pay a Development Fee for the Covered Project on the Montreux Property. No other fees or fee amounts shall be due under the HCP/NCCP for the maintenance of the Dedication Property or with respect to the Covered Project, except for any wetland impact fees, rural road fees, or temporary impact fees that may be required consistent with standard application of the HCP/NCCP (except no temporary impact or rural road fees shall be imposed for work done to maintain, repair, or replace in situ, existing roads and improvements); provided, however, that Altec shall pay for other costs provided in this Agreement, as well as any administrative fee imposed by Pittsburg. Once the Grading Permit fee set forth in Section 4.1(a)(i) is paid, no rural road or temporary impact fees shall thereafter be imposed on such phase.

4.2 **Skyranch II Property.** Skyranch is the owner of that certain approximately 166 acre undeveloped real property located in the City of Pittsburg known as the "**Skyranch II Property**." Skyranch shall satisfy its obligation to pay the Development Fee under the HCP/NCCP for the Covered Project on the Skyranch II Property, including all appurtenant improvements included in the Covered Project, as set forth in this Section.

(a) **Development Fee Amount**. Skyranch shall pay an HCP/NCCP Development Fee in the total amount of four million six hundred forty-eight thousand dollars ($4,648,000) in 2019 Dollars for the Covered Project on the Skyranch II Property, as set forth in this Section.

(b) **Development Fee Cash Payments**.

(i) Concurrent with the issuance of a Grading Permit and Take Authorization for each phase of the Covered Project on the Skyranch II Property, Skyranch shall pay a sum equal to forty-five percent (45%) of that portion of the development fee amount allocated to such phase in 2019 Dollars to Pittsburg, the applicable Permittee. The portion of the development fee amount allocated to each phase shall be determined by dividing the number of acres included in each phase by the total number of acres included in the Covered Project on the Skyranch II Property.

(ii) Skyranch shall pay to Pittsburg the remaining fifty-five percent (55%) of the development fee amount for each phase in 2019 Dollars, which sum shall be due at Building Permit issuance for single family residential production units and paid on a pro rata basis at issuance of individual Building Permits based on the approved single family residential unit count for such phase. At the issuance of a Building Permit for the last single family residential unit constructed in such phase, Skyranch shall complete its payment of the total development fee amount allocated to such phase. For model home units and their parking lots, the fees that would be due at Building Permit for a production unit shall be due prior to approval for occupancy, i.e., they shall be due at approval for occupancy, not at occupancy approval for model home use. At Skyranch's option, fees due at Building Permit can be pre-paid in blocks of ten (10) prior to issuance of the first permit in each group of ten (10). The cumulative fee amount for the Covered Project on Skyranch will not change if the unit count changes for the Project.

(iii) Notwithstanding the above, the total development fee amount of $4,648,000 in 2019 Dollars shall in any event be due no later than July 1, 2032, unless the term of the Permits has been extended, in which case this time period shall be extended by the same amount of time that the term of the Permits is extended. If construction of the Covered Project on Skyranch has not started by July 1, 2032, the total development fee amount shall be due prior to issuance of a Grading Permit for the Covered Project, provided the Grading Permit is issued and the Take Authorization is granted before the expiration of the Permits, as extended, if applicable.

(iv) All unpaid fee amounts set forth in this Section 4.2(b) will be adjusted automatically each year as provided for development fees in Chapter 9.3.1 of the HCP/NCCP (*Automatic Adjustment of Mitigation Fees*) but will not be subject to any other adjustments based on Development Fee revisions or audits unless future fee audits (not the currently pending one) cumulatively result in an overall reduction of the HCP/NCCP standard Development Fee. In such case, the reduced Development Fee for the Covered Project on the Skyranch II Property shall be reduced by the same percentage reduction.

(c) **Security for Fee Payments.** To secure performance of Skyranch's obligations under Section 4.2(b)(ii), prior to the issuance of a Grading Permit and Take Authorization for each phase of the Covered Project, Skyranch shall deposit with Pittsburg, for the express benefit of Pittsburg and the Conservancy, an adequate and satisfactory security in the amount of 55% of the development fee allocated to such phase in 2019 Dollars. The security may be a transferable rated bond or bonds by one or more duly authorized corporate sureties or an irrevocable standby letter of credit, as determined by Skyranch, in a form approved in advance in writing by Pittsburg and the Conservancy, which approval shall not be unreasonably withheld or unduly delayed. Skyranch shall ensure that the full amount of the security required by this Section 4.2(c) shall remain in effect until Skyranch has fulfilled its obligations under Section 4.2(b)(ii). The Parties shall cooperate with Skyranch by promptly signing any necessary documentation requested should Skyranch seek to reduce and/or release the bond as the fees under Section 4.2(b)(ii) above are paid. However, any reduction in bond amounts shall account for adjustment of the remaining fees to be paid such that the remaining bond amount stays proportionate with the number of building permits not yet issued.

(d) **Fulfillment of Development Fee Requirement.** The sum of $4,648,000 (in 2019 Dollars), paid by Skyranch as described in Section 4.2(a) and Section 5.6, the deposit of security as described in Section 4.2(c), and the grant of conservation easement described in Section 3.2, at the times set forth therein, together shall fulfill the HCP/NCCP requirement to pay the Development Fee for the Covered Project on the Skyranch II Property. No other fees or fee amounts shall be due under the HCP/NCCP for the maintenance of the Dedication Properties or with respect to the Covered Project, except for any wetland impact fees, rural road fees, or temporary impact fees that may be required consistent with standard application of the HCP/NCCP (except no temporary impact or rural road fees shall be imposed for work done to maintain, repair, or replace in situ, existing roads and improvements); provided, however, that Skyranch shall pay for other costs as provided in this Agreement, as well as any administrative fee imposed by Pittsburg. Once the Grading Permit fee set forth in Section 4.2(b)(i) above is paid, no rural road or temporary impact fees shall thereafter be imposed.

4.3 **Faria Property.** Faria shall satisfy its obligation to pay the Development Fee under the HCP/NCCP for the Covered Project on the Faria Property, including all appurtenant improvements included in the Covered Project, as set forth in this Section.

(a) **Development Fee Amount.** Faria shall pay an HCP/NCCP Development Fee in the total amount of thirteen million six hundred ninety thousand dollars ($13,690,000) in 2019 Dollars for the Covered Project on the Faria Property, as set forth in this Section.

(b) **Development Fee Cash Payments**.

(i) Concurrent with the issuance of a Grading Permit and Take Authorization for each phase of the Covered Project on the Faria Property, Faria shall pay a sum equal to fifty percent (50%) of that portion of the development fee allocated to such phase in 2019 Dollars to Pittsburg, the applicable Permittee. The portion of the development fee amount allocated to each phase shall be determined by dividing the number of acres included in each phase by the total number of acres of the Covered Project on the Faria Property.

(ii) Faria shall pay to Pittsburg the remaining fifty percent (50%) of the development fee for each phase in 2019 Dollars, which sum shall be due at Building Permit issuance for single family residential production units and paid on a pro rata basis at issuance of

individual Building Permits based on the approved single family residential unit count for such phase. At the issuance of a Building Permit for the last single family residential unit constructed as part of each phase of the Covered Project on the Faria Property, Faria shall complete its payment of the total development fee amount allocated to such phase. For model home units and their parking lots, the fees that would be due at Building Permit for a production unit shall be due prior to approval for occupancy, i.e., they shall be due at approval for occupancy, not at occupancy approval for model home use. At Faria's option, fees due at Building Permit can be pre-paid in blocks of ten (10) prior to issuance of the first permit in each group of ten (10). The cumulative fee amount for the Covered Project on the Faria Property will not change if the unit count changes for the Project.

(iii) Notwithstanding the above, the total development fee amount of $13,690,000 in 2019 Dollars shall in any event be due no later than July 1, 2032, unless the term of the Permits has been extended, in which case this time period shall be extended by the same amount of time that the term of the Permits is extended. If construction of the Covered Project on the Faria Property has not started by July 1, 2032, the total development fee amount shall be due prior to issuance of a Grading Permit for the Covered Project, provided the Grading Permit is issued and Take Authorization is granted before the expiration of the Permits, as extended, if applicable.

(iv) Commencing in 2022, all unpaid fee amounts set forth in this Section 4.3(b) will be adjusted automatically each year as provided for development fees in Chapter 9.3.1 of the HCP/NCCP (*Automatic Adjustment of Mitigation Fees*) but will not be subject to any other adjustments based on Development Fee revisions or audits unless future fee audits (not the currently pending one) cumulatively result in an overall reduction of the HCP/NCCP Development Fee. In such case, the reduced Development Fee for the Covered Project on the Faria Property shall be reduced by the same percentage reduction.

(c) **Security for Fee Payments.** To secure performance of Faria's obligations under Section 4.3(b)(ii), prior to the issuance of a Grading Permit for each phase of the Covered Project, Faria shall deposit with Pittsburg, for the express benefit of Pittsburg and the Conservancy, an adequate and satisfactory security in the amount of 50% of the development fee allocated to such phase in 2019 Dollars. The security may be a transferable rated bond or bonds by one or more duly authorized corporate sureties or an irrevocable standby letter of credit, as determined by Faria, in a form approved in advance in writing by Pittsburg and the Conservancy, which approval shall not be unreasonably withheld or unduly delayed. Faria shall ensure that the full amount of the security required by this Section 4.3(c) for that phase shall remain in effect until Faria has fulfilled its obligations in paying the fees due at Building Permit issuance for such phase under Section 4.3(b)(ii). The Parties shall cooperate with Faria by promptly signing any necessary documentation requested should Faria seek to reduce and/or release the bond as the fees under Section 4.3(b)(ii) above are paid. However, any reduction in bond amounts shall account for adjustment of the remaining fees to be paid such that the remaining bond amount stays proportionate with the number of building permits not yet issued.

(d) **Fulfillment of Development Fee Requirement.** The sum of $13,690,000 (in 2019 Dollars), paid by Faria as described in Section 4.3(a) and Section 5.6, the deposit of security as described in Section 4.3(c), and the grant of conservation easements described in Section 3.2, at the times set forth therein, together shall fulfill the HCP/NCCP requirement to pay the Development Fee for the Covered Project on the Faria Property. No other fees or fee amounts

shall be due under the HCP/NCCP with respect to the Covered Project, except for any wetland impact fees, rural road fees, or temporary impact fees that may be required consistent with standard application of the HCP/NCCP (except no temporary impact or rural road fees shall be imposed for work done to maintain, repair, or replace in situ, existing roads and improvements); provided, however, that Faria shall pay for other costs provided in this Agreement, as well as any administrative fee imposed by Pittsburg. Once the Grading Permit fee set forth in Section 4.3(a)(i) above is paid, no rural road or temporary impact fees shall thereafter be imposed.

(e) **Adjustment of Fee Obligation.** The Parties acknowledge that, as of the Effective Date, the Covered Project for the Faria Property has not yet been approved by the City of Pittsburg or annexed into the City of Pittsburg. Accordingly, the Parties acknowledge that the Faria Property may be approved for or developed as a project that results in significantly less ground-disturbing activity or a significantly larger Faria Preserve Area than currently contemplated by the Parties. In such event, the Parties agree to meet and confer to address the necessity to adjust the fee obligation set forth in this Section 4.3.

5. ADDITIONAL TERMS AND CONDITIONS.

5.1 **Memoranda of Take Authorization.** Within thirty (30) days after receiving a Take Authorization for a Covered Project, the applicable Landowner Party shall cause a memorandum of take authorization to be recorded against the applicable Covered Property in the Official Records of the County of Contra Costa. The memorandum shall be in the form attached hereto as ***Exhibit M***. The purpose of the memoranda of take authorization shall be to provide record notice of the terms and conditions and ensure that they run with the land. Such memorandum shall further provide that it shall be automatically released from title to each single family home transferred to a third party single family home buyer. After the initial recordation of such memoranda and at the reasonable request of any Party, the Parties shall cooperate to re-record any memorandum as reasonably necessary to fulfill the purpose of this Section. Upon request of a Landowner Party following the expiration or termination of a Take Authorization, Pittsburg and the Conservancy, shall deliver to the Landowner Party a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records of the County of Contra Costa and in a form and content reasonably satisfactory to the Landowner Party, for the purpose of evidencing in the public records the expiration or termination of the Take Authorization.

5.2 **Extension of Take Authorization**. Take authorization shall be provided for each Covered Project individually under the terms and conditions of this Agreement. Except as specifically provided in this Agreement, all applicable terms and conditions of the HCP/NCCP, Implementing Agreement, and permits will apply to the Take Authorization for each Covered Project. Take coverage for the Covered Properties will be provided in accordance with, and will remain in effect as provided in, Section 13.2.2 of the Implementing Agreement and Section 6.2 of the HCP/NCCP, including any extensions of the term of the Permits. Take authorization will be provided for each phase of each Covered Project by Pittsburg, once all of the following have occurred with regard to the Covered Project in accordance with this Agreement, except as otherwise specifically provided in this Agreement:

(i) the HCP/NCCP permit application and Planning Survey Reports ("**PSRs**") for the Covered Project is deemed complete by Pittsburg;

(ii) HCP/NCCP terms and conditions (e.g., avoidance and minimization measures) for the project have been determined by the Permittee and made binding conditions of approval for the Covered Project. The Parties acknowledge that such HCP/NCCP terms and conditions have already been identified and covered in the PSRs and CEQA review and are binding conditions of approval for the Sky Ranch II and Montreux projects;

(iii) Pittsburg determines that the Covered Project as described in the permit application and PSR is consistent with this Agreement and the HCP/NCCP and includes this Agreement and the applicable HCP/NCCP terms and conditions as conditions of approval;

(iv) the development fee amounts identified in Sections 4.1(b)(i), 4.2(b)(i), and 4.3(b)(i), where applicable, are paid in accordance with this Agreement;

(v) the security for fee payments identified in Sections 4.1(c), 4.2(c), and 4.3(c), where applicable, is provided in accordance with this Agreement; and

(vi) the grants of conservation easements identified in Sections 3.1 and 3.2, where applicable, are completed in accordance with this Agreement.

(a) **Fee Amounts Due at Issuance of Building Permit**. The Parties acknowledge that the fee amounts identified in Sections 4.1(b)(ii), 4.2(b)(ii) and 4.3(b)(ii) are not due until after a Take Authorization has been provided for the applicable Covered Project. However, such Take Authorizations shall be contingent on payment of such fee amounts, such that the Conservancy or Pittsburg may suspend the Take Authorizations if such payments are not made in accordance with this Agreement. In addition, Pittsburg shall include as a condition of approval for each Covered Project a requirement to pay such fee amounts and shall suspend issuance of Building Permits for any Covered Project for which such payments are not timely made in accordance with this Agreement.

(b) **Wetland Mitigation**. Wetland mitigation and other standard HCP/NCCP measures have been adequately covered through the preparation of PSRs and CEQA review in the January 2011 PSR for the Sky Ranch II and the July 2015 PSR for the Montreux Covered Projects. The PSRs for Sky Ranch II and Montreux may be updated in accordance with the standard requirements of the HCP/NCCP. Such requirements and measures shall be covered in a PSR for the Faria Property prior to issuance of a Grading Permit for the Covered Project on the Faria Property. The Conservancy shall cooperate with the applicable Landowner Party to facilitate the processing, review, and approval of the PSRs by Pittsburg. If requested by an applicable Landowner Party, the Conservancy shall promptly and reasonably respond to requests for wetland delineation verification to confirm compliance with HCP/NCCP requirements. The applicable Landowner Party shall cover the Conservancy's reasonable costs in doing so. The Parties acknowledge that the baseline reports attached hereto as Exhibits E and L were prepared only for the purpose of documenting the existing condition of the respective Dedication Properties and were not prepared or intended to serve as formal biological or hydrologic surveys or wetlands/waters delineations for purposes of complying with state or federal environmental laws, and no Party, third party or grantee shall rely on the baseline reports for such purposes.

5.3 **Cooperation on Clean Water Act Compliance PSR Preparation**. The Conservancy shall cooperate with the applicable Landowner Party in its efforts to obtain necessary ACOE and Regional Water Quality Control Board ("**RWQCB**") permits for the Covered Projects and Central Valley Project Inclusionary Water Approvals for the Skyranch II,

Faria and Montreux properties. The Conservancy shall also cooperate with the Landowner Parties in their efforts to ensure that wetland mitigation provided in accordance with the HCP/NCCP is credited to mitigation obligations necessary to receive coverage under the ACOE Regional General Permit and related permits that may be necessary from the RWQCBs. For example, should the RWQCB require off-site mitigation for such impacts, and such off-site mitigation meets the requirements of the HCP/NCCP, the off-site mitigation shall be credited against the wetland mitigation requirements of HCP/NCCP accordingly. The Conservancy shall further cooperate with the Permittees and the Landowner Parties to expedite the processing, review and approval of PSRs for the Covered Projects on the Faria Property.

5.4 **Consultation**. The Parties shall cooperate to support the use of this Agreement and the HCP/NCCP as satisfying the consultation requirements under Section 7 of the Endangered Species Act for the inclusion of the Montreux, Skyranch II and Faria projects into the Central Valley Water Project. Such cooperation shall be at no additional cost to any Party. As stated in the letter attached hereto as **Exhibit B**, the Service and CDFW have approved this Agreement and provided that consultation under Section 7 of the Endangered Species Act with the U. S. Bureau of Reclamation related to processing a letter of inclusion into the Central Valley Water Project for these projects shall be consistent with Biological Opinion issued for the HCP/NCCP and that they will not seek to impose requirements on covered activities related to covered species in excess of the requirements of the Permits, the HCP/NCCP or the Implementing Agreement. Should such agencies seek to require more mitigation for a Covered Project than is provided for under this Agreement, then at the applicable Landowner's written request, the Conservancy and Pittsburg will immediately initiate the dispute resolution procedure set forth in Section 21.1 of the Implementing Agreement, as provided in Section 16 of the Implementing Agreement, it being the intent of all Parties hereto that there shall be no increase in the amount and cost of mitigation provided by Landowners for the Covered Projects.

5.5 **No Opposition to Covered Projects.** The Conservancy agrees to not oppose, either directly or indirectly, the approval by the applicable agency of development authorizations and approvals for the Covered Projects. For purposes of this section "development authorizations and approvals" means, but is not limited to, annexation into the City of Pittsburg (where applicable); a CEQA notice of determination; a vesting tentative map application or approval; a development agreement; a permit or other authorization from the U.S. Army Corps of Engineers, to the extent required by law; a certification or other authorization from the Regional Water Quality Control Board, to the extent required by law; and application for CVP Inclusionary Water Approval (where applicable) and other agency permits or authorizations that may or will be needed for a Covered Project. Notwithstanding the above, the Conservancy shall retain the right to comment on HCP/NCCP related matters, including but not limited to HCP/NCCP compliance under the terms and conditions of this Agreement, regarding the Covered Projects, so long as such comments are consistent with the understandings, commitments, and obligations of the Parties set forth in this Agreement. At the applicable Landowner Party's request, and if the Covered Project is in compliance with this Agreement and applicable provisions of the HCP/NCCP, the Conservancy shall, within thirty (30) days, write a letter confirming that the Covered Project is in compliance with the HCP/NCCP. In addition, at Faria's request, the Conservancy shall submit a letter to LAFCO for the administrative record and attend a LAFCO meeting to answer questions regarding the letter, compliance with this Agreement and compliance with the HCP/NCCP. At Pittsburg's request, Conservancy will attend City Council meetings to answer questions regarding compliance with this Agreement and compliance with the HCP/NCCP.

5.6 **Limited Initial Grading and Remedial Grading.** With respect to Limited Grading that occurs on any of the Covered Properties, the applicable Landowner Party shall pay a proportionate share of the fee to be paid at Grading Permit (as set forth in Sections 4.1(b)(i), 4.2(b)(i) and 4.3(b)(i)) based on the acreage impacted (regardless of whether the impact is temporary or permanent), with the balance of the fee to be paid in accordance with these referenced sections. The requirements of Section 3 of this Agreement (the grants of conservation easements) shall not apply to Limited Grading. This Agreement does not provide Take Authorization for Limited Grading or exempt Limited Grading from the requirements of CESA or the ESA.

5.7 **Use of Dedication Properties Before Transfer**. The retained interests in all lands conserved and granted hereunder will remain available to the Landowner Parties and the owners of the Dedication Properties, for use, enjoyment, and transfer, subject to the applicable conservation easements and the terms and conditions of this Agreement.

5.8 **Transfer of Real Property.** The transfer of a Covered Property to a third party shall not relieve any Party to this Agreement from its obligations under Sections 4.1(b), 4.2(b) and 4.3(b). Such Landowner Party shall remain jointly and severally liable for such obligations. The applicable Landowner Party shall deliver written notice of the transfer to Conservancy and the applicable city Permittee within ten (10) calendar days of such transfer.

5.9 **Antioch HCP.** The Landowner Parties agree not to oppose or comment on the initiation by the Conservancy or the City of Antioch of a proposed Habitat Conservation Plan for the City of Antioch. Notwithstanding the above, the Landowner Parties reserve the right to comment on and challenge any proposed draft or final Antioch HCP or similar plan or HCP implementation program and the environmental review associated with such plan or its implementation.

5.10 **No Opposition to HCP/NCCP Fees.** The Landowner Parties, or entities in which Albert D. Seeno III is the majority owner, trustee, partner, managing member or shareholder ("**Affiliated Entities"**), own properties that are, on the Effective Date, subject to the HCP/NCCP implementing ordinances of HCP/NCCP Permittees, including, but not limited to, Pittsburg and which are not Dedication Properties or Covered Properties as identified in ***Exhibit N*** ("**Other Development Properties**"). The Landowner Parties, on behalf of themselves and the Affiliated Entities, shall not protest payment of or otherwise challenge any HCP/NCCP fees described in Chapter 9.3 with regard to Covered Properties, Dedication Properties, or any such Other Development Properties or any projects proposed thereon. In addition, the Landowner Parties shall not oppose adoption or implementation of the year 3, year 6, or year 10 periodic fee audits by HCP/NCCP Permittees, including, but not limited to, Pittsburg, or any automatic fee updates based on indices and formulas established in the HCP/NCCP. The Parties agree that, if any Landowner Party, or any Affiliated Entity, protests payment of or challenges any such HCP/NCCP fees, periodic audits, or automatic fee updates, such protest or challenge shall constitute a default under this Agreement that can be addressed through the procedures in Section 6.2 of this Agreement.

This covenant not to protest or challenge HCP/NCCP fees, periodic audits, or automatic updates, does not apply to any of the following:

(a) an increase in HCP/NCCP development fees as the result of a periodic audit (i.e., not as the result of an automatic HCP/NCCP fee update) approved or adopted after the

year 10 fee audit, as described in Chapter 9.3.1 of the HCP/NCCP, which year 10 fee audit the Parties acknowledge and accept will likely be adopted after the Effective Date;

(b) an amendment of the HCP/NCCP fee zones under which an Other Development Property is placed in a higher fee zone;

(c) a modification or amendment of the HCP/NCCP that will increase the mitigation requirements, including but not limited to HCP/NCCP fee amounts, on any of the Other Development Properties;

(d) protests or challenges to HCP/NCCP fees as applied to, or HCP/NCCP participation regarding, a property acquired by a Landowner Party or Affiliated Entity after the Effective Date, provided the Landowner Party provides satisfactory evidence to the Conservancy that any such property was acquired after the Effective Date and was not previously owned by a Landowner Party or any Affiliated Entity.

6. MISCELLANEOUS PROVISIONS.

6.1 **Cooperation**. The Parties shall cooperate in implementing this Agreement. In the case of the Conservancy, "cooperate" shall mean that the Conservancy, subject to available resources as prioritized by the Conservancy Board, shall expend reasonable resources and efforts to fulfill its obligations created by this Agreement consistent with its responsibilities, authorities, and the goals of the HCP/NCCP.

6.2 **Default; Dispute Resolution Process; Remedies.**

(a) **Default.**

(i) **Events of Default**. Subject to any extensions of time by mutual consent, in writing, the failure or unreasonable delay by any Party to perform any material term or provision of this Agreement for a period of forty-five (45) days after the delivery of a written notice of default ("**Notice of Default**") from another Party shall constitute a default under this Agreement. The Parties expressly acknowledge and agree that an event of default with respect to one of the Covered Projects shall not affect the provisions, obligations or performance of the Parties with respect to any other Covered Project not a subject of such event of default.

(ii) **Notice of Default**. Any Notice of Default given hereunder shall specify, in detail, the nature of the alleged event of default and the manner in which such event of default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

(iii) **Cure Period**. During the forty-five (45) day time period after receipt of the Notice of Default, which is the period herein specified for cure of an event of default (the "**Cure Period**"), the Party charged therewith shall not be considered to be in default for purposes of institution of legal proceedings with respect thereto.

(iv) **Remedies after Expiration of Cure Period**. After Notice of Default and expiration of the Cure Period, if the alleged default has not been cured, the non-defaulting Party may, at its option, institute the dispute resolution procedures set forth in Section 6.2(b) below.

(b) **Dispute Resolution.**

(i) **General Framework.** The Parties recognize that this Agreement is a relatively complex document with many forward-looking obligations and it is possible that one or more disputes may arise regarding it. Any dispute or controversy between the Permittees and the Landowner Parties arising from or related to this Agreement, including the interpretation, enforcement, breach, default, termination or applicability of this Agreement (collectively, a "**Dispute**") shall be resolved pursuant to the procedures in this Section.

(ii) **Informal Negotiations.** Any Dispute shall in the first instance be the subject to direct negotiations between the appropriate Parties. Any Complaining Party may invoke dispute resolution by sending a written "**Notice of Dispute**" to any other Party. The date this Notice of Dispute is sent will be deemed the "**Commencement Date**" of informal negotiations. The Notice of Dispute shall describe in detail the Dispute at issue and shall propose a specific resolution. The Responding Party shall respond in writing within ten (10) days of its receipt of the Notice, by either accepting the proposed resolution or proposing an alternative resolution. During this negotiation period, the Parties shall work together in good faith to attempt to resolve the Dispute. The Parties may extend this negotiation period by mutual agreement in writing. Unless extended by mutual written agreement, the informal negotiation period shall expire twenty (20) days from the date the Responding Party receives the Notice of Dispute.

(iii) **Mediation**. If the Parties do not resolve a Dispute through informal negotiations, any Party (whether the Complaining Party or Responding Party) may, at its sole election and at its sole expense, initiate non-binding mediation with JAMS, Inc., ("**JAMS**") in order to attempt to resolve any such Dispute. If a Party makes this election, both the Complaining Party and Responding Party are required to comply with the provisions of this Section. A Party, if it chooses to commence mediation, shall provide to JAMS and the other Parties a written request for mediation, setting forth the subject of the Claim and the relief requested, no later than twenty (20) days after the completion of the informal negotiation period, unless such date has been extended by the Parties in writing. The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings to occur in a mutually convenient location in the San Francisco Bay Area. The Parties covenant that they will participate in the mediation in good faith and that, if they are the Party initiating the mediation, they shall be solely responsible for the payment of all costs billed by JAMS. Each Party shall otherwise bear its own costs and fees, including attorneys' fees and expert fees incurred during the mediation. Any Party may seek equitable relief or make protective court filings relating to a Dispute prior to the mediation. Except for such actions, no Party may commence a civil action with respect to the matters submitted to the mediation until after the completion of the initial mediation session, or sixty (60) days after the date of filing the written request for mediation, whichever occurs first ("**Mediation Completion Date**"). Mediation may continue after the commencement of a civil action, if all Parties so agree in writing. This provision requiring a Party to mediate at the other Party's election may be enforced by any Court of competent jurisdiction, and the Party seeking enforcement of this provision shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, expended to force compliance with this mediation provision, excluding, however, the costs of the mediation itself and attorneys' fees expended during mediation.

(iv) **Tolling of Claims.** The Parties agree that, beginning with the Commencement Date of informal negotiations and continuing through the Mediation Completion Date (if mediation is invoked), or through ten (10) days after the end of the informal negotiation period (if mediation is not invoked), and without any further writing among the Parties, any statute of limitations applicable to claims arising from or related to the Dispute shall be deemed to have been tolled from the Commencement Date until the Mediation Completion Date, or until ten (10) days after the end of the informal negotiation period (if no mediation), or for such longer period as the Parties may mutually agree in writing to extend the tolling period.

(v) **Judicial Action**. Notwithstanding the foregoing, no determination or conclusion reached through the dispute resolution process shall have a binding effect on any Party (unless so agreed to by the Party) and any Party may choose to pursue judicial action if the dispute resolution processes do not resolve the Dispute.

(c) **Remedies.** The Parties agree that the following remedies will be available in any judicial action at law or in equity based on or related to the Agreement:

(i) The remedies for breach of this Agreement shall be limited to declaratory relief, equitable relief, including specific performance, temporary, preliminary, and permanent injunctive relief, actions for return or restitution of fees or any other monetary payments made under this Agreement, reformation, reconveyance of properties and/or termination of this Agreement. In no event shall any Party be liable for special, consequential or punitive damages.

6.3 **Force Majeure.**

(a) In the event that a Party is wholly or partially prevented from performing obligations under this Agreement because of causes beyond the reasonable control of such Party ("**Force Majeure**"), including, but not limited to, acts of God, natural disasters such as fire or flood, terrorism, restraint by court order, building moratoriums, labor disputes, or sudden actions of the elements (and excluding adverse changes in the economic condition of the Landowner Parties specifically or the economy generally, or changes in market conditions or demand), the Party shall be excused temporarily from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that:

(i) The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

(ii) Within seven (7) business days after the occurrence of the Force Majeure, the Party invoking this Section shall give the other Parties written notice describing the particulars of the occurrence;

(iii) The Party shall use best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Party is contrary to its interest); and

(iv) When the Party is able to resume performance of their obligations, it shall give the other Parties written notice to that effect.

6.4 **Applicable Law**. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

6.5 **Legal Challenge and Cooperation**. In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement or any action taken by the Parties in furtherance of this Agreement, the Parties hereby agree to cooperate in defending said action or proceeding.

6.6 **Notices**. Any notice or communication required hereunder shall be in writing and may be given either by hand delivery or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the Party to whom notices are to be sent. Any Party hereto may at any time, upon written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

The Conservancy: _____
Attn: Abigail Fateman
30 Muir Road
Martinez, California 94553
Telephone: (925) 674-7820

With a copy to: J. Christopher Beale, Legal Counsel
Resources Law Group, LLP
555 Capitol Mall, Suite 1090
Sacramento, California 95814
(916) 930-7147

The City of Pittsburg:
Attn:

Telephone:

Discovery, Altec, Skyranch and Faria:
Attn: Louis Parsons, President
4061 Port Chicago Highway, Suite H
Concord, California 94520
Telephone: (925) 682-6419

with a copy to: David Young, General Counsel
Attn: Legal Department
4021 Port Chicago Highway
Concord, California 94520
Telephone: (925) 671-7711

6.7 **Venue**. In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state court in the County of Contra Costa, State of California or in a federal court with geographic jurisdiction of this County.

6.8 **Severability**. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

6.9 **Effective Date**. This Agreement will become effective on the date after all of the following have occurred (the "**Effective Date**"):

(a) execution by all Parties of this Agreement;

(b) full execution of that certain Compromise Settlement and Mutual Release and Settlement Agreement attached hereto as ***Exhibit O***;

(c) execution by the Service and CDFW of the letter attached hereto as Exhibit B; and

(d) dismissal with prejudice of Superior Court Action N13-1781 (Discovery Builders, Inc. v. City of Brentwood) filed in Contra Costa County Superior Court,.

6.10 **Entire Agreement**. This Agreement and the exhibits attached hereto contain all the representations and the entire agreement between the Parties with respect to:

(a) compliance with the HCP/NCCP requirement to pay a Development Fee for the Covered Projects;

(b) remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and

(c) assurances to the Landowner Parties that upon performance of the terms and conditions in the Agreement, including compliance with applicable HCP/NCCP terms and conditions as provided in Section 5.2(ii) of this Agreement, the Permittees will provide Take Authorization for the Covered Projects, and the Landowner Parties shall become Third Party Participants under the Implementing Agreement, the HCP/NCCP, and the Permits, with all the rights and benefits thereof.

Except as otherwise specified in this Agreement and the exhibits hereto, any prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Agreement and exhibits hereto.

6.11 **Attorneys' Fees.** In the event any Party to this Agreement breaches the terms of this Agreement, the prevailing Party in any lawsuit or court proceeding brought upon this Agreement shall be entitled to recover its reasonable attorneys' fees and costs incurred in the enforcement of this Agreement.

6.12 **Reserved Powers**. Nothing in this Agreement shall:

(a) expand or restrict the discretion of Pittsburg when determining what action(s) to take regarding applications or project proposals submitted by a Landowner Party;

(b) expand or restrict the discretion of Pittsburg when adopting or amending development policies, impact fees, taxes, regulations, standards and processing requirements;

(c) operate as a waiver or limitation to any condition of approval required or imposed by Pittsburg on a Covered Project provided that any such condition of approval does not expressly conflict with the provisions of this Agreement;

(d) expand or restrict the discretion of the Conservancy in its implementation of the HCP/NCCP, including any decision to enter into a land dedication in lieu of development fee agreement with any other applicant on terms and conditions that the Conservancy deems appropriate, except as explicitly required by this Agreement;

(e) operate as a waiver or limitation to any mitigation measure required or imposed by Pittsburg on a Covered Project under CEQA that is not inconsistent with this Agreement;

(f) require any of the Landowner Parties to undertake any of the Covered Projects if that Party determines, in its sole discretion, not to proceed with such development;

(g) except for the matters addressed in this Agreement, interfere with the Landowner Parties' exercise of discretion to pursue and manage other land use and environmental permits, approvals, authorizations and other entitlements from local, regional, state or federal government agencies having jurisdiction of any part of a Covered Project in whatever sequence, manner and approach that it deems necessary; or

(h) except for the waivers, agreements, requirements and obligations of the Landowner Parties regarding fees, land dedications, permits, approvals, authorizations or other entitlements set forth in this Agreement, waive or restrict the rights of the Landowner Parties to challenge in any forum or by any appropriate means any other permit, entitlement, approval, authorization or other entitlements for any of the Covered Projects.

6.13 **Counterparts**. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one (1) and the same instrument.

6.14 **Term, and Termination.** This Agreement shall continue in full force until terminated. The Agreement may be terminated only by written mutual agreement of all Parties or by judicial action in accordance with Section 6.2(c).

[SIGNATURES ON FOLLOWING PAGE]

CITY OF PITTSBURG

By:_____
Name:_____
Its:_____

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY,
a joint exercise of powers agency.

By:_____
Name:_____
Its:_____

FARIA LAND INVESTORS, LLC,
a California limited liability company

By:_____
Name:_____
Its:_____

SKYRANCH LAND INVESTORS, LLC,
a California limited liability company

By:_____
Name:_____
Its:_____

ALTEC HOMES, INC.,
a California corporation

By:_____
Name:_____
Its:_____

LIST OF EXHIBITS

Exhibit A – Map of Covered Properties and Dedication Properties

Exhibit B – Letter from the Service and CDFW

Exhibit C – Montreux Title Report

Exhibit D -- Montreux Conservation Easement

Exhibit E– Montreux 42 Baseline Report

Exhibit F—Montreux Perimeter Grading Map

Exhibit G - Faria Title Report

Exhibit H – Initial Faria Preserve Area

Exhibit I - Faria Conservation Easement

Exhibit J – Subsequent Faria Preserve Area

Exhibit K – Faria Preserve Area

Exhibit L - Faria Baseline Report

Exhibit M – Memorandum of Take Authorization

Exhibit N – Other Development Properties

Exhibit O - Compromise Settlement and Mutual Release and Settlement Agreement

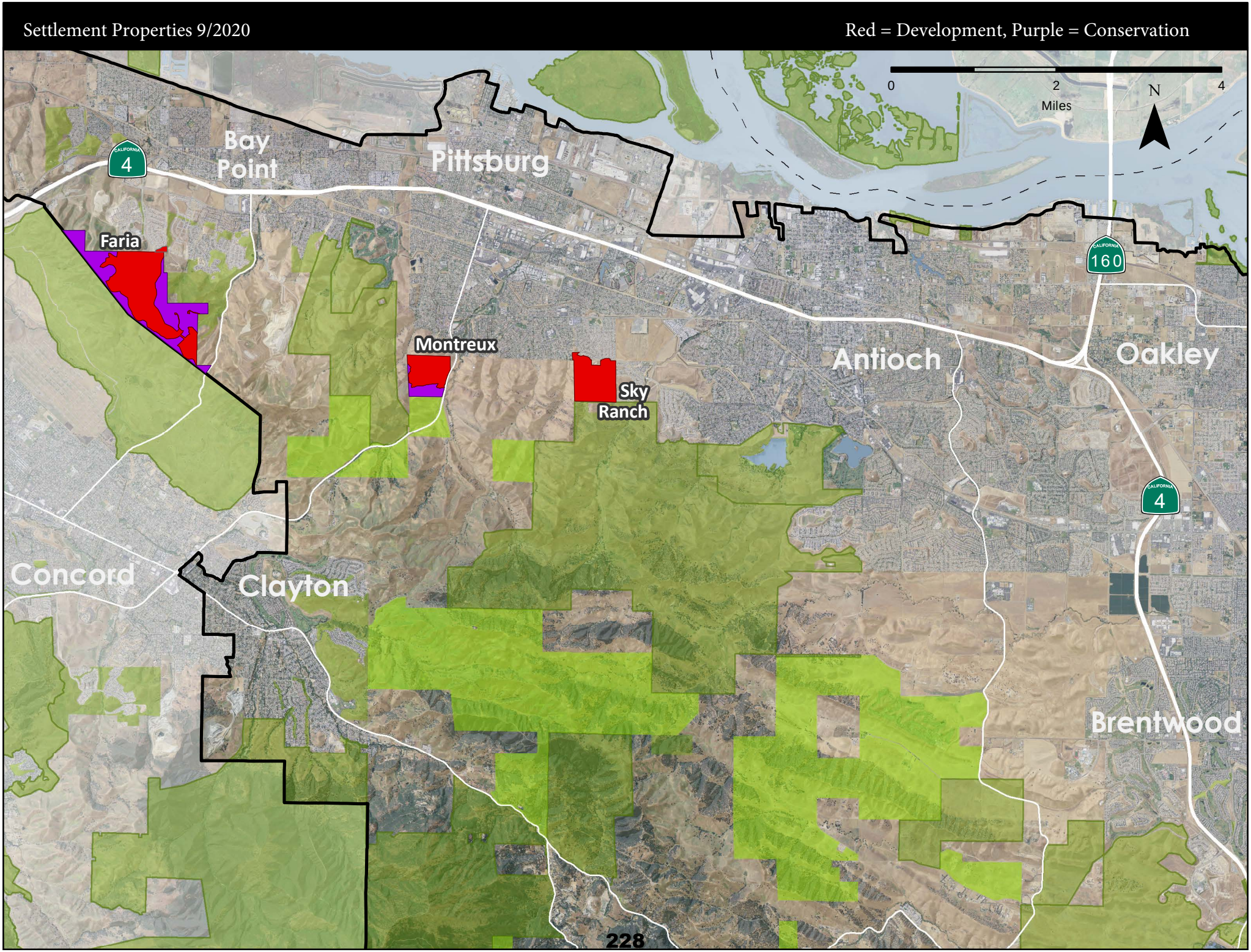

Settlement Properties 9/2020
Red = Development, Purple = Conservation
0
2
Miles
4
N
Bay Point
Pittsburg
Faria
Montreux
Sky Ranch
Antioch
Oakley
Concord
Clayton
Brentwood
4
160
4
228

Exhibit B

DRAFT

Dear Honorable Boardmembers and City Councilmembers:

The East Contra Costa County Habitat Conservancy (Conservancy) has asked the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) to approve a proposal (*include Internet link*) by Nortonville, LLC, Seecon Built Homes, Inc., and West Coast Home Builders, Inc., to dedicate land in lieu of development fees in compliance with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP) section 8.6.7.

The proposed dedication of land in lieu of fees would result in two dedications of land to the ECCC HCP/NCCP Preserve System through grants of conservation easements and in reductions of ECCC HCP/NCCP development fees for three projects seeking coverage under the ECCC HCP/NCCP (Covered Projects). The conservation easements proposed for dedication to the ECCC HCP/NCCP Preserve System with their approximate acreages and the two Covered Projects listed with their approximate adjusted development fees are listed below.

Properties proposed for dedication:

1. Faria Preserve Area Conservation Easement (~265 acres)

2. Montreux Conservation Easement (~42 acres)

Covered Projects:

1. Faria ($13,690,000)

2. Montreux ($2,968,000)

3. Sky Ranch II ($4,648,000)

The USFWS and CDFW have determined that this proposed dedication of land in lieu of development fees, if fully implemented, would be consistent with the Endangered Species Act section 10(a)(1)(B) incidental take permit issued by the USFWS and the National Community Conservation Plan Permit issued by CDFW under Section 2835 of the California Fish and Game Code for the ECCC HCP/NCCP (Permits), with the ECCC HCP/NCCP, and with the Implementing Agreement for the ECCC HCP/NCCP (Implementing Agreement). The USFWS and CDFW approve the proposed dedication of land in lieu of development fees in accordance with the ECCC HCP/NCCP section 8.6.7.

As stated in sections 16.1 and 16.2 of the Implementing Agreement, unless otherwise required by law or regulation, and provided the proposed dedication of land in lieu of development fees is implemented in full, USFWS and CDFW will not seek to impose measures related to incidental take under the Endangered Species Act and the Natural Community Conservation Planning Act in excess of the requirements of the Permits, the ECCC HCP/NCCP, or the Implementing Agreement on the Covered Projects regarding impacts of Covered Activities on Covered Species. Consultation under Section 7 of the Endangered Species Act with the U.S Bureau of Reclamation related to processing a letter of inclusion into the Central Valley Project for these projects shall be consistent with the biological opinion issued for the ECCC HCP/NCCP and will not seek to impose requirements

on Covered Activities related to Covered Species in excess of the requirements of the Permits, the ECCC HCP/NCCP, or the Implementing Agreement.

Should the development projects associated with the proposed land in lieu agreement require federal Endangered Species Act section 7 consultations, the USFWS will complete the consultations pursuant to the regulatory time frames described in 50 CFR 402.14. Section 7 consultations (biological opinions) for covered activities under the ECCCHCP/NCCP, such as the development projects associated with the proposed land in lieu agreement, have typically been completed in significantly less than 135 days.

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

_____

Attn: _____

_____

_____

DRAFT 9-17-20 (DBI)

(SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY)

CONSERVATION EASEMENT AGREEMENT (MONTREUX PROPERTY)

THIS CONSERVATION EASEMENT AGREEMENT (the "**Agreement**") is made this ____ day of _____, 20__, by and between Altec Homes, Inc., a California corporation ("**Landowner**"), and _____, a _____ ("**Easement Holder**"). Landowner and Easement Holder are also referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Landowner is the fee title owner of certain real property containing approximately 42.29 acres, located in the City of Pittsburg, County of Contra Costa, State of California, more particularly described in ***Exhibit A*** attached hereto and incorporated herein by this reference (the "**Easement Area**") and depicted on the map attached hereto as ***Exhibit B*** and incorporated herein by reference.

B. This Agreement is being executed and delivered to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the "**Habitat Plan Instruments**"):

(i) The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("Habitat Plan") dated December, 2006, prepared by the County of Contra Costa ("**County**"), City of Pittsburg ("**Pittsburg**"), City of Oakley ("**Oakley**"), City of Clayton ("**Clayton**"), City of Brentwood ("**Brentwood**"), Costa County Flood Control and Water Conservation District ("**CCWD**"), East Bay Regional Park District ("**EBRPD**") and approved by the United States Fish and Wildlife Service (**"USFWS"**) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (**"ESA"**), and by California Department of Fish and Wildlife (**"CDFW"**) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 *et seq.*, as it may be amended from time to time) (**"NCCPA"**); and

(ii) Implementing Agreement for East Contra Costa County Habitat Conservation Plan (the "**Implementing Agreement**"), dated January 22, 2007, by and among USFWS and CDFW (collectively, the "**Wildlife Agencies**"), East Contra Costa County Habitat

Conservancy ("**Implementing Entity**"), County, Pittsburg, Clayton, Oakley, Brentwood, CCWD, and EBRPD (collectively, referred to herein as "**Permittees**"); and

(iii) The federal incidental take permit issued by USFWS to Permittees for the Habitat Plan pursuant to Section 10 of ESA;

(iv) The state incidental take permit issued by CDFW to Permittees for the Habitat Plan pursuant to the NCCPA; and

(v) Multi-Party Mitigation and Land Dedication In-lieu of Development Fee Agreement between Landowner, Implementing Entity and the City of Pittsburgdated _____, 20__ ("**Mitigation Agreement**").

C. CDFW 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 CDFW is authorized by state law to be a third party beneficiary of the Conservation Easement. CDFW is also authorized by state law 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.

D. USFWS is an agency of the United States Department of the Interior and is authorized by federal law to be a third party beneficiary of the Conservation Easement and to administer the Federal Endangered Species Act, 16 U.S.C. §1531, et seq. ("**ESA**"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. §742(f), et seq.

E. The Easement Holder is a non-profit 501(c)(3) entity authorized to hold easements for these purposes pursuant to Civil Code Section 815.3 and other provisions of California law.

F. The Easement Area possesses wildlife, habitat values, and associated open space values that are of great importance to Easement Holder, the people of East Contra Costa County and the people of the State of California and of the United States (the "**Conservation Values**"). The "**Initial Conservation Values**," described in ***Exhibit C*** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Habitat Plan and present on the Easement Area at the time of the execution of the Agreement.

G. Following recordation of this Agreement, the Easement Area will be incorporated into the Reserve System (as such term is defined in the Habitat Plan) ("**Reserve System**") and will count toward the land acquisition requirements set forth in the Habitat Plan.

H. The Management Plan is incorporated herein by reference. Landowner and Easement Holder recognize that changes (e.g., in weather cycles, natural resource management technologies, conservation practices) may dictate an adaptation in the management of the Easement Area, consistent with the purposes of this Conservation Easement and the Habitat Plan Instruments. It may be revised from time to time with the written approval of the Landowner, Easement Holder and the Wildlife Agencies, so long as the revisions are consistent with the requirements of the Habitat Plan Instruments.

I. The State of California recognizes the public importance and validity of conservation easements by enactment of California Civil Code Section 815 et seq.

AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815 *et seq*., Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement in gross forever in, on, over and across the Easement Area described in ***Exhibit A*** and depicted on ***Exhibit B*** (the "**Conservation Easement**"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Easement Area, and the parties agree as follows:

1. **Purpose.** The purpose of this Conservation Easement is to ensure that existing and future natural values and associated wildlife and habitat values of the Easement Area will be forever protected by preventing any use of the Easement Area that would impair or interfere with the Conservation Values. Landowner intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation, restoration, and enhancement of the Easement Area's Covered Species and their habitats.

2. **Baseline Documentation Report.** The parties acknowledge that a Baseline Documentation Report (the "**Report**") has been prepared for the Easement Area and approved in writing by Landowner and Easement Holder. A copy of the Report is on file with Landowner and Easement Holder at their respective addresses for notices set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition (with the exception of perimeter grading and other activities allowed under the Mitigation Agreement) of the Easement Area at the time this Agreement is recorded in the Official Records of Contra Costa County ("**Official Records**").

3. **Rights of Easement Holder.** To accomplish the purposes of this Conservation Easement, Landowner hereby grants and conveys the following rights to Easement Holder:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the Easement Area described in ***Exhibit C*** or which develop on the Easement Area in accordance with the Management Plan and the terms and conditions of this Conservation Easement;

(b) To enter upon the Easement Area to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Conservation Easement, and for scientific research necessary to support monitoring and in order to support adaptive management of the Conservation Values; provided, that Easement Holder shall not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Easement Area;

(c) To enter upon the Easement Area to carry out, at Easement Holder's sole cost and expense, those management and monitoring requirements applicable to the Easement Area that , including, without limitation, installation and maintenance of fencing around the perimeter of the Easement Area to protect the Conservation Values; provided, that Easement Holder shall use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Easement Area and adjacent properties;

(d) To prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require Landowner to restore such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use by Landowner that is inconsistent with the purposes of this Conservation Easement;

(e) To require that all mineral, air and water rights associated with the Easement Area held by Landowner that Easement Holder deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement; and

(f) All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any other property. Landowner understands and agrees that nothing in this Conservation Easement relieves Landowner of any obligation or restriction in relation to the development or use of the Easement Area imposed by law, including, but not limited to, local land use restrictions.

Except where there is an imminent threat to the Easement Area or its Conservation Values, Easement Holder and its employees, contractors or agents will only enter the Easement Area at reasonable times and with at least forty-eight (48) hours advance notice to Landowner. The Landowner may waive these requirements in whole or in part by written notice to Easement Holder.

4. **Prohibited Uses.** Any activity on or use of the Easement Area that adversely affects the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Landowner, Landowner's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the Easement Area, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural, grazing, rangeland or recreational uses) set forth on ***Exhibit D*** attached hereto and incorporated herein by reference; (ii) a management practice required under the Habitat Plan, (iii) necessary in connection with the performance of any of the conservation actions described in the Habitat Plan; (iv) allowed under section 6 of this Agreement; or (v) otherwise necessary to maintain or enhance the Conservation Values:

(a) Unseasonal watering;

(b) Use of fertilizers, pesticides, biocides, herbicides or other chemicals;

(c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways (which can be reconstructed, repaired and maintained), excepting off-road vehicle use required to conduct any allowed management practice set forth in the Habitat Plan or set forth in ***Exhibit D*** (e.g., prescribed grazing);

(d) Any construction, reconstruction, relocation or placement of any building, billboard, fencing, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the Easement Area without written approval by the Easement Holder and Wildlife Agencies unless otherwise allowed in this Conservation Easement;

(e) Agricultural uses, including, without limitation, vineyards, nurseries, or intensive livestock use (e.g., dairy, feedlot) except as may be provided for in the Habitat Plan or in this Conservation Easement (e.g., prescribed grazing);

(f) Any legal or de facto division, subdivision or partitioning of the Easement Area or any fee transfer of less than the entire Easement Area;

(g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;

(h) Planting, introduction, or dispersal of nonnative plant or animal species;

(i) 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 Easement Area, and granting or authorizing any surface entry for any of these purposes;

(j) Removing, destroying, or cutting of trees, shrubs, or other vegetation, except for weed abatement for fire safety purposes or as otherwise expressly allowed in ***Exhibit D***;

(k) Manipulating, impounding, or altering any water course, body of water, or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters; and

(l) Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the Easement Area owned by Landowner; changing the place or purpose of use of the water rights owned by Landowner; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area that are owned by Landowner, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area. Nothing herein shall prohibit Landowner from replacing, repairing or providing necessary wells and appurtenances thereto in the course of its grazing operations allowed under ***Exhibit D***.

5. **Unlawful Entry.** Landowner shall undertake all reasonable actions to prevent the unlawful entry and trespass on the Easement Area by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement.

6. **Landowner's Reserved Rights; Allowed Uses.** Landowner reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including, without limitation, the following (collectively, the "**Allowed Uses**"): (i) those specific uses and activities identified in the Habitat Plan or detailed in ***Exhibit D*** attached hereto, and (ii)all other uses of the Easement Area that are not expressly prohibited or limited by this Agreement, and are consistent with the purposes of this Conservation Easement as set forth in Section 1. Landowner shall have the right to exercise any of the Allowed Uses directly or to allow or

invite others to engage in any of the Allowed Uses. While Landowner is not obligated under this Agreement to perform the management and monitoring actions set forth in the Habitat Plan, Landowner's exercise of the Allowed Uses shall be conducted in a manner that is consistent with the protection of the Conservation Values.

7. **Remedies.**

(a) If Easement Holder or any Third-Party Beneficiary (as defined in Section 7(d) below) determines there is a violation of the terms of this Agreement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Landowner, with a copy provided to Easement Holder and each other Third-Party Beneficiary. The notice of violation shall specify the measures the Landowner must take to cure the violation. If Landowner fails to cure the violation within thirty (30) days after receipt of written notice and demand from Easement Holder or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Landowner fails to begin the cure within such thirty (30) day period; or Landowner fails to continue diligently to complete the cure, Easement Holder or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any damages to which Easement Holder and the Third-Party Beneficiaries may be entitled for violation of the terms of this Agreement or for any injury to the Conservation Values, 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 Easement Area to the condition in which it existed prior to any such violation or injury. Without limiting Landowner's liability therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the Easement Area at the election of the party receiving such damages.

If Easement Holder or any Third-Party Beneficiary, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Easement Holder and/or any Third-Party Beneficiary may pursue its remedies under this section without prior notice to Landowner or without waiting for the period provided for cure to expire. The rights of Easement Holder and the Third-Party Beneficiaries under this section apply equally to actual or threatened violations of the terms of this Agreement. Landowner agrees that Easement Holder's and Third-Party Beneficiaries' remedies at law for any violation of the terms of this Agreement are inadequate and that Easement Holder and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Easement Holder and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. 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 California Civil Code Section 815, *et seq*. The failure of Easement Holder or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

(i) Costs of Enforcement. Any reasonable costs incurred by the Easement Holder or any Third Party Beneficiary, where it is the prevailing party, in enforcing the terms of this Conservation Easement against the Landowner, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Landowner's negligence or breach of this Agreement shall be borne by

Landowner. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

(ii) Enforcement Discretion. Enforcement of the terms of this Agreement against Landowner shall be at the respective discretion of Easement Holder and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by Easement Holder or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(iii) Acts Beyond Landowner's Control. Nothing contained in this Agreement shall be construed to, or shall entitle, Easement Holder or any Third-Party Beneficiary to bring any action against Landowner for any injury to or change in the Easement Area resulting from (i) any natural cause beyond Landowner's reasonable control, including, but not limited to, climate change, fire not caused by Landowner, flood, storm, and earth movement, or any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes; (ii) acts by Easement Holder or any Third-Party Beneficiary or any of their employees, contractors or agents; or (iii) acts by persons that entered the Easement Area unlawfully or by trespass whose activities degrade or harm the Conservation Values of the Easement Area or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to prevent such activities.

(iv) Third Party Beneficiary Rights. The Parties intend for each of Implementing Entity, USFWS and CDFW (collectively, "**Third-Party Beneficiaries**") to be a third-party beneficiary of this Agreement. All rights and remedies conveyed to Easement Holder under this Agreement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Landowner and Easement Holder acknowledge that, as third party beneficiaries of this Conservation Easement, the Third-Party Beneficiaries shall have the same rights of access to the Easement Area granted to Easement Holder in Section 3 above, and with rights to enforce all of the provisions of this Agreement. If at any time in the future Landowner uses, allows the use, or threatens to use or allow use of, the Easement Area for any purpose that is inconsistent with or in violation of this Agreement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement. These rights are in addition to, and do not limit, the rights of enforcement under the Habitat Plan Instruments. In addition, if CDFW reasonably determines that the Easement Area is not being held, monitored, or stewarded for conservation purposes in the manner specified in this Agreement, the Habitat Plan Instruments, the Conservation Easement shall revert to the State of California or another entity as described in California Government Code Section 65967, subdivisions (b) and (c), and subject to approval by CDFW.

(b) If Landowner reasonably concludes that Easement Holder has unreasonably interfered with Landowner's allowed uses and quiet enjoyment of the Easement Area in violation of the terms

of this Agreement, Landowner may bring an action at law or in equity in a court of competent jurisdiction to recover any damages to which Landowner may be entitled for violation of the terms of this Agreement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, or for other equitable relief.

8. **Public Access.** Nothing contained in this Agreement gives or grants to the public an independent right to enter upon or use the Easement Area or any portion thereof. Nor shall this Agreement extinguish any public right to enter upon or use the Easement Area.

9. **Costs and Liabilities.** Except for those specific obligations to be undertaken by Easement Holder under Section 3 above, Landowner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Landowner's ownership, operation, management, and maintenance activities on and relating to the Easement Area. Landowner agrees that neither the Easement Holder nor Third Party Beneficiaries shall have any duty or responsibility for the operation or maintenance of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Landowner, the public or any third parties from risks relating to conditions on the Easement Area. Each of Landowner and Easement Holder shall remain responsible for obtaining any applicable governmental permits and approvals for any of such Party's activity or use allowed on the Easement Area under this Agreement, and each of Landowner and Easement Holder shall undertake all allowed activities and uses of the Easement Area in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "**taxes**"), including any taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Easement Holder with satisfactory evidence of payment upon request. Landowner and Easement Holder shall keep the Easement Area free from any liens, including those arising out of any obligations incurred by such Party for any labor or materials furnished or alleged to have been furnished to or for such Party at or for use on the Easement Area.

10. **Indemnification.**

(a) Indemnification by Landowner. Landowner shall hold harmless, protect and indemnify Easement Holder and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Landowner Indemnified Party**" and, collectively, the "**Landowner Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (i) the activities of Landowner on the Easement Area; (ii) the inaccuracy of any representation or warranty made by Landowner in this Agreement; (iii) the breach by Landowner of any provision of this Agreement; (iv) any injury to or the death of any person, or physical damage to any Easement Area resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, unless such injury or death or physical damage to any Easement Area relates to an activity on, or use of, the Easement Area by Easement Holder, including without limitation, those activities performed under the Habitat Plan, or negligent or willful misconduct of the Landowner Indemnified Party or actions by persons that entered the Easement Area unlawfully or by trespass where Landowner has undertaken all reasonable actions to prevent the unlawful entry or trespass; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or

requirement, by Landowner, or by any entity, other than one of the Landowner Indemnified Parties, acting at the time upon permission from Landowner, in any way affecting, involving or relating to the Easement Area. If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice from Easement Holder and the Third-Party Beneficiaries, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

(b) Indemnification by Easement Holder. Easement Holder shall hold harmless, protect, and indemnify Landowner and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an "**Easement Holder Indemnified Party**," and collectively, the "**Easement Holder Indemnified Parties**") from and against any and all Claims arising from or in any way connected with: (i) the activities of Easement Holder on the Easement Area, including without limitation the Easement Holder's performance of management and monitoring activities under the Habitat Plan; (ii) breach by Easement Holder of any provision of this Agreement; (iii) any injury to or the death of any person, or physical damage to any Easement Area occurring on or about the Easement Area resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the Easement Area by Easement Holder, including without limitation, those performed under the Habitat Plan, unless due solely to the negligence or willful misconduct of the Easement Holder Indemnified Party; and (iv) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Easement Holder in any way affecting, involving or relating to the Easement Area. If any action or proceeding is brought against any of the Easement Holder Indemnified Parties by reason of any such Claim, Easement Holder shall, at the election of and upon written notice from Landowner, defend such action or proceeding by counsel reasonably acceptable to the Easement Holder Indemnified Party.

11. **Extinguishment.** The Conservation Easement created by this Agreement constitutes a property right. It is the Parties' intention that the terms and conditions of this Agreement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Easement Holder's interest in the Easement Area, and if the Easement Area, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Easement Holder shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the Easement Area, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

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

13. **Transfer of Conservation Easement.** This Agreement may be transferred by Easement Holder upon written approval of Landowner and the Third-Party Beneficiaries, which approval shall not be unreasonably withheld or delayed; provided, that Easement Holder shall give the Landowner and the Third-Party Beneficiaries at least sixty (60) calendar days prior written notice of the proposed assignment or transfer. Easement Holder may transfer its rights under this Agreement only to an entity or organization: (i) authorized to acquire and hold conservation

easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to Landowner and the Third-Party Beneficiaries. Easement Holder shall require the transferee to record the conveyance in the Official Records of the County where the Easement Area is located. The failure of Easement Holder to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of Section 17 below.

14. **Transfer of Easement Area.** Landowner agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest and specifically has the right to retain the grazing rights as described in ***Exhibit D***. Landowner further agrees to give written notice to Easement Holder and the Third-Party Beneficiaries of the intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Easement Holder and the Third-Party Beneficiaries 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 Agreement. The failure of Landowner to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the Easement Area, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agreement.

15. **Notices.** Any notice, demand, request, consent, approval, or communication that Landowner, Easement Holder, or any Third-Party Beneficiary desires or is required to give to the others 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 Landowner: Altec Homes, Inc.
4061 Port Chicago Hwy., Suite H
Concord, CA 94520
Attn: President

To Easement Holder: _____
_____
_____

To Implementing Entity: _____
_____
_____

To USFWS: United States Fish and Wildlife Service
Attn: _____
_____
_____

To CDFW: California Department of Fish and Wildlife
Attn: _____
_____
_____

With a copy to: California Department of Fish and Wildlife
Office of the General Counsel
Attn: _____
_____
_____

or to such other address as a party shall designate by written notice to the others. 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) calendar days after deposit into the United States mail.

16. **Amendment.** This Agreement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the parties hereto, or their successors in interest, it being understood that no easement holder or landowner will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Agreement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Agreement to any extent or in any manner. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries; any amendment made without such consent is void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Agreement by reference to its recordation data, and must be recorded in the Official Records of the County where the Easement Area is located.

17. **Merger.** The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Easement Holder identified by the Implementing Entity and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Agreement shall be recorded against the Easement Area.

18. **No Hazardous Materials Liability.** Landowner represents and warrants that, after reasonable review of Landowner's records as of the date of this Agreement, Landowner has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area. Landowner further represents and warrants that Landowner shall comply with all Environmental Laws (as defined below) in using the Easement Area and that Landowner shall keep the Easement Area free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Landowner under this Agreement, Landowner hereby releases and agrees to indemnify, protect and hold harmless the Landowner Indemnified Parties (as defined in Section 10(a)) from and against any and all Claims (as defined in Section 10(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by Landowner Indemnified Parties, or their employees or agents. This release and indemnification includes, without limitation, Claims for

(i) injury to or death of any person or physical damage to any Easement Area; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

Despite any contrary provision of this Agreement, the parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to Easement Holder or the Third Party Beneficiaries any of the following:

(a) The obligations or liability of a "Landowner" or "operator," as those terms 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. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

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

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

(d) The right to investigate and remediate any Hazardous Materials associated with the Easement Area; or

(e) Any control over Landowner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term "**Hazardous Materials**" includes, without limitation, (1) material that is flammable, explosive, or radioactive; (2) petroleum products, including by-products and fractions thereof; and (3) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.; hereinafter "**RCRA**"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 et seq.; hereinafter "**HTA**"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.; hereinafter "**HCL**"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.; hereinafter "**HAS**"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Agreement.

The term "**Environmental Laws**" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other 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.

19. **Representations and Warranties.** Landowner hereby makes the following representations and warranties for the benefit of Easement Holder and the Third-Party Beneficiaries:

(a) Authority. Landowner has good and sufficient title to the Easement Area (including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water and water rights, and Landowner has full right and authority to enter into this Agreement and convey the Conservation Easement to Easement Holder. There are no monetary liens

and encumbrances recorded against the Easement Area except as expressly identified in ***Exhibit E***. All deeds of trust and mortgages recorded against the Easement Area, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in ***Exhibit E***.

(b) Compliance with Laws. Landowner 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 Easement Area.

(c) No Litigation. There is no action, suit or proceeding which is pending or threatened against the Easement Area or any portion thereof relating to or arising out of the Landownership or use of the Easement Area, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. **General Provisions.**

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

(b) Liberal Construction. It is the intent of this Agreement to preserve the condition of the Easement Area and each of the Conservation Values protected herein, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Agreement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner's use and enjoyment of the Easement Area to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Agreement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Agreement is the intended best and most productive use of the Easement Area. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of any use and zoning restrictions of the State of California, the county in which the Easement Area is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Agreement 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 Agreement, such action shall not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement 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 this Agreement and supersedes all prior discussions, negotiations,

understandings, or agreements relating to this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 16.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this Agreement 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 Easement Area.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Agreement, 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) Additional Easements. Landowner 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 Agreement), or grant or otherwise abandon or relinquish any water right or agreement relating to the Property, without first obtaining the written consent of Easement Holder and the Third-Party Beneficiaries. Easement Holder and the Third-Party Beneficiaries 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. This Section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Agreement and complies with Section 14.

(j) Recording. Easement Holder shall record this Agreement in the Official Records of the county where the Easement Area is located, and may re-record it at any time as Easement Holder deems necessary to preserve its rights hereunder.

(k) Counterparts. The parties may execute this Agreement 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, Landowner and Easement Holder have executed this Agreement the day and year first above written.

LANDOWNER:	**EASEMENT HOLDER:**
ALTEC HOMES, INC., a California corporation	_____, a _____
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

EXHIBITS:

Exhibit A – Legal Description of the Easement Area
Exhibit B – Map of the Easement Area
Exhibit C – Initial Conservation Values
Exhibit D – Allowed Uses
Exhibit E – Title Encumbrances

EXHIBIT A

LEGAL DESCRIPTION OF THE EASEMENT AREA

[To follow.]

EXHIBIT B

MAP OF THE EASEMENT AREA

[To be attached.]

EXHIBIT C

INITIAL CONSERVATION VALUES

[In accordance with Habitat Plan Section ___, this Exhibit C will set forth those land- cover types and covered species habitat described in Habitat Plan Chapter __ that are present on the Easement Area. Section ___ also requires the Conservation Easement to either include or incorporate by reference the initial pre-acquisition assessment of covered species and natural communities present, so Exhibit C should also be prepared in a way that satisfies this requirement. by either listing covered species and natural communities consistent with those in the pre-acquisition assessment or by including an explicit cross-reference and incorporation by reference to the pre-acquisition assessment. If a complete biological inventory is available, it will be incorporated by reference in this Exhibit C.]

EXHIBIT D

ALLOWED USES

1. Landowner shall have the right, but not the obligation, to use the Easement Area for the purpose of livestock grazing and for operations normally associated with such grazing such as moving, relocation and repairing fencing, existing roads and other appurtenances, such as water troughs and feed disbursement associated with normal grazing operations. Landowner shall observe and comply with approved practices of good husbandry and farming to maintain soil conservation and erosion control and will not exceed the livestock carrying capacity of the Easement Area.

2. The grazing right set forth in Section 1 above shall be forfeited by Landowner if it fails to graze the Easement Area for three (3) consecutive years (not counting any year of a statewide drought or a regional drought, as declared by the Governor of California or the applicable regional agency). Easement Holder shall have the right to graze in any year in which Landowner does not.

3. As provided in the Mitigation Agreement, Landowner shall have the right to do the following:
   (a) Within the area depicted below, complete limited perimeter grading and final improvements if and as reasonably necessary for soil stabilization, slope stabilization, or slope repair on the Easement Area or adjacent properties,
   (b) Conduct weed abatement for fire control purposes as customary in the normal course of business.
   (c) Perform geotechnical and flood repairs, including slope stabilization, weed abatement, ditches, and slide repair where necessary to address flood related and/or geological hazards as required to be performed by a Geological Hazard Abatement District that may occur within the Easement Area, or on adjacent properties.

4. Landowner may maintain such surface water resources on the Easement Area as currently existing on the Easement Area provided that said maintenance is consistent with the terms and conditions of this Conservation Easement and the Habitat Plan. Landowner may only develop new or enhance existing surface water resources with the prior written approval of Easement Holder and Wildlife Agencies which approval shall not be unreasonably withheld, conditioned, or unreasonably delayed, and then only if said development is necessary for allowed grazing operations or to enhance, restore, create, preserve, or protect the Conservation Values of this Conservation Easement, and the development does not impair the Conservation Values of this Conservation Easement and that such development is consistent with State Water Law.

5. Landowner shall have the right to maintain, repair, reasonably enlarge, and reasonably replace the improvements not identified in the paragraphs above that exist on the Easement Area and which are acknowledged in this Conservation Easement, in the same or different

locations, provided that Landowner shall first obtain Easement Holder's and Wildlife Agencies prior written approval for any enlargement or relocation. Said approval shall not be unreasonably withheld, conditioned, or delayed but in no event shall that approval be granted if said enlargement or relocation would impair or diminish the Conservation Values of the Easement Area. Notwithstanding the foregoing, existing fences and roads may be repaired and replaced for purposes of reasonable and customary management of livestock and wildlife, without further permission of Easement Holder or Wildlife Agencies; provided, all repair, and replacements shall be, designed and installed to protect, and not impair, the Conservation Values of the Easement Area, including, but not limited to, wildlife corridors.

6. Landowner shall have the right to build, maintain, and repair an unpaved public trail in compliance with applicable HCP/NCCP requirements, including Conservation Measure 1.5 (HCP/NCCP, pp. 5-64 to 5-69.)

[INSERT MAP OF MONTREUX CONSERVATION EASEMENT AREA DEPICTING AREA WITHIN WHICH PERIMETER GRADING MAY OCCUR.]

BASELINE DOCUMENTATION REPORT

MONTREUX CONSERVATION EASEMENT
(APN# 089-020-015)
CONTRA COSTA COUNTY, CALIFORNIA

OCTOBER 31, 2018

Prepared for

East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553

Prepared by

Heath Bartosh

NOMAD ECOLOGY
(925) 228-1027
822 MAIN STREET
MARTINEZ, CA 94553

TABLE OF CONTENTS

Section 1. Introduction 1
1.1. Purpose of the Conservation Easement / Property Acquisition 1
1.2. Purpose of the Baseline Documentation Report 1
Section 2. Documentation Methods 3
2.1. Data Resources 3
2.2. Personnel and Field Investigation 3
2.3. Resource Documentation and Mapping 3
2.4. Limitations 4
Section 3. Property Description 6
3.1. Regional Setting 6
3.2. Local Setting 6
3.3. Hydrology Characteristics 7
3.4. Land Use 10
3.5. Anthropogenic Features 11
3.6. Land Cover and Environmental Conditions 14
3.7. Invasive Species and Noxious Weeds 20
Section 4. References 22

LIST OF TABLES

Table 1. Lengths of Creeks and Tributaries 8
Table 2. HCP Land Cover Types in the Study Area 15
Table 3. Vegetation Community Classifications Systems Comparisons 16
Table 4. Invasive Weeds Observed in the Study area 20

LIST OF FIGURES

Figure 1. Location of the Montreux Conservation Easement 2
Figure 2. Regional Map 25
Figure 3. Aerial Photograph 26
Figure 4. Hydrologic Features 27
Figure 5. Anthropogenic Features 28
Figure 6. Land Cover Types 29
Figure 7. Photo Point Locations 30

LIST OF APPENDICES

APPENDIX A Figures 24
APPENDIX B Property Conservation Easement 31
APPENDIX C Photographs 33

Section 1. INTRODUCTION

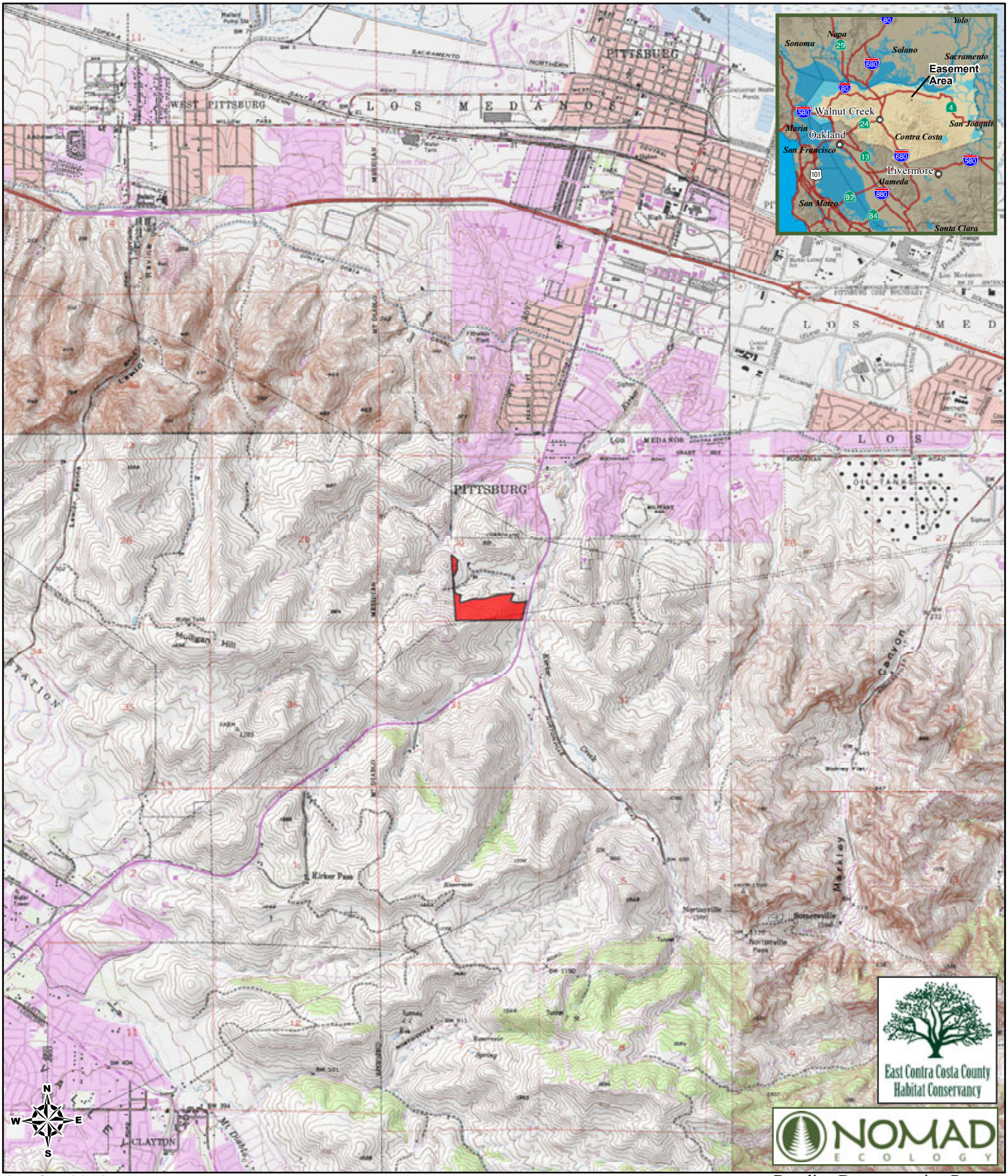
As requested by East Contra Costa County Habitat Conservancy (Conservancy), Nomad Ecology (Nomad) prepared this Baseline Documentation Report (BDR) for the Montreux Conservation Easement (MCE). The MCE is located within the limits of the City of Pittsburg in Contra Costa County, California (Figure 1). The MCE parcel (APN 089-020-015) totals 37.50-acres and is located in the Pittsburg Hills, near the northern terminus of the Diablo Range. This parcel is located near the western boundary of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP or Plan) Inventory Area (Jones and Stokes, 2006) and is contiguous with the northern boundary of the Austin-Thomas North Conservancy Property.

1.1. PURPOSE OF THE CONSERVATION EASEMENT / PROPERTY ACQUISITION

The purpose of the conservation easement is to ensure that existing and future natural values and associated wildlife and habitat values of the easement area will be forever protected by preventing any use of the easement area that would impair or interfere with the conservation values. The conservation easement will confine the use of the easement area to such activities that are consistent with this purpose, including, without limitation, those involving the preservation, restoration, and enhancement of the easement area's wildlife species and their habitats.

1.2. PURPOSE OF THE BASELINE DOCUMENTATION REPORT

The purpose of the BDR is to establish and document the condition of the property to provide a baseline against which to determine whether such condition has changed significantly and, if such condition has changed significantly, to determine the nature and extent of the change, including whether the change is the result of natural phenomena, such as fire, drought, landslide or climate change.



Legend
Montreux Conservation Easement

Figure 1
Montreux Conservation Easement
Settlement Agreement
East Contra Costa County Habitat Conservancy

1:48,000
0 0.25 0.5
Miles

Sources: USGS, Contra Costa County. Projection: NAD 83 UTM 10 North.

Section 2. DOCUMENTATION METHODS

2.1. DATA RESOURCES

Botanical taxonomy and nomenclature conforms to *The Jepson Manual* (Baldwin et al. 2012) with the exception of recent circumscriptions posted on the Jepson eFlora (Jepson Flora Project 2018) website. Common names of plant species are derived from *The Calflora Database* (Calflora 2018).

2.2. PERSONNEL AND FIELD INVESTIGATION

Nomad senior botanist Heath Bartosh visited the MCE on August 8, 2018 to conduct a reconnaissance-level survey of the parcel included in the MCE. Per the Conservancy's instructions, the primary focus of the survey was to document man-made features and infrastructure as well as scenic features. Mr. Bartosh inspected and photographed all agricultural or grazing infrastructure on the MCE, if present. All previously known structures and water sources were accessed via a 4x4 truck, except for some features that were accessed on foot. While completing that task, Mr. Bartosh made efforts to document the biological resources present on the MCE. Those efforts included documenting baseline environmental conditions, land cover types, and large infestations of invasive species.

Protocol-level surveys for special-status plants and animals were not conducted as part of this assessment.

2.3. RESOURCE DOCUMENTATION AND MAPPING

Field data including the locations of photo points, invasive species, and man-made features were collected using a handheld Global Positioning System (GPS) device. A data point was collected for each aforementioned feature. These data points were then transferred to a desktop computer Geographic Information System (GIS) platform operating ESRI ArcGIS for creating polygons, where necessary, and populating attribute tables.

2.3.1 PHOTOPOINTS

Photographs were taken during the course of the survey to document observations or locations where data was collected. GPS data points were recorded for all photo points and converted into a GIS shapefile. All photo points recorded are depicted in Figure 7 of Appendix A and these photos are shown in Appendix C.

2.3.2 VEGETATION COMMUNITY DATA

Vegetation communities in this report are described using HCP/NCCP Land Cover Types (Jones and Stokes 2006). Representative photographs were taken for each Land Cover Type observed within the easement.

2.3.3 INVASIVE SPECIES

Significant observations of invasive plant and/or animal species encountered within the easement were recorded as GPS data points. Invasive species were evaluated to determine their status within the easement, and their potential effect on native species, special-status species and other natural resources.

2.3.4 ANTHROPOGENIC FEATURES

Spatial and description data was collected for all man-made features within the easement including access roads, power lines, and gates, among others. All features recorded are depicted in Figure 7 of Appendix A.

2.4. LIMITATIONS

Nomad was directed by Conservancy staff to focus documentation efforts on man-made features. Therefore, survey coverage was generally limited to areas where these types of features were located. Due to these constraints, information on biological resources should be considered preliminary and incomplete.

Based on the timing of the assessment, and the sampling intensity, it was not possible to rule out the presence of any potentially occurring special-status plant, fish, or wildlife species. However, inferences on presence or absence were possible for specific special-status plant species with blooming periods corresponding to the August 2018 site visit. Negative findings during site assessments or focused surveys may not indicate absence unless field surveys conform to agency approved protocols. Moreover, for many species it is virtually impossible to prove absence even if surveys conform to approved protocols.

Plants

Because only one site visit was conducted in August, all plant species growing within the study area may not have been observed due to varying flowering phenologies and life forms, such as bulbs, biennials, and annuals. Other potentially dominant species within vegetation communities on site may be present during other times of the year. Therefore, the present study is not floristic in nature. A floristic study not only requires every plant observed to be identified to a level necessary to determine their regulatory status, it also necessitates a sufficient number of site visits spaced throughout the growing season within the blooming periods of all plant species, including common taxa, to ensure a complete inventory is obtained (CNPS 2001, CDFW 2018, USFWS 2000). Some of the plant species identified in this report are tentative due to the absence of morphological characters, resulting from immature reproductive structures or seasonal desiccation, which is required to make species-level determinations. In these cases, *cf* (compares to) is used to indicate provisional species identification based on gestalt, vegetative morphology and/or a species' known range.

Species dominance, particularly with regard to annuals, may change depending on the sampling season. In addition, certain plant species, especially annuals, may be absent in some years due to annual variations in temperature and rainfall, which influence germination and plant phenology. Finally, colonization of new populations within an area may occur from year to year. Our descriptions of the vegetation communities and species occurring on the MCE are based on the sampling we conducted during the late summer of 2018. Those descriptions may be subject to change in the event multiple seasons or years of data are collected. In certain cases, the term "provisional" is used when sufficient data exists to propose a vegetation type, but enough research and regional information has not been gathered to confirm the Land Cover Type (Jones and Stokes 2006). The phrase "in part" is used to signify that vegetation descriptions may include additional annual species if surveys are conducted during other seasons.

Animals

We did not survey for animals. Any species noted in the course of conducting the reconnaissance for this report were recorded. Several factors constrained our ability to identify wildlife species that occur on the MCE. First, late summer is generally a poor time of year to detect bird species in North America. Most species have completed reproductive activities, are less active, and vocalize infrequently (if at all). This

makes their detection considerably more difficult. It is extremely difficult to detect secretive species outside of the breeding season because detection is dependent on vocalizations that may cease once reproductive activities have been completed.

Second, songbirds are most easily detected in the early morning or late evening, rather than during other times of the day (Grue et al. 1981, Skirvin 1981). Due to the scope of work, we could not survey all habitat types during the optimal time for bird detection.

Third, many of the surveys were limited to what could be detected from the vehicle while driving between man-made features. This limited Nomad's ability to detect soaring birds, small birds, and small mammals.

Finally, the site visit was conducted on the cusp of the breeding season and fall migration. This limited Nomad's ability to make inferences on the breeding status of many of the species detected during the surveys and also precluded the detection of species that may occur on the MCE only during migration or the winter.

Section 3. PROPERTY DESCRIPTION

3.1. REGIONAL SETTING

The 37.50-acre MCE includes portions of Section 30 of Township 2 North and Range 1 East within the Mount Diablo Baseline and Meridian. It is situated near the boundary of the San Francisco Bay Area and San Joaquin Valley subregions of the California Floristic Province. It falls within the Kirker Creek watershed (CCWF 2003) and appears on the Clayton (37121h8) 7.5-minute USGS topographic quadrangle.

As described in the *Ecological Subregions of California* (USDA 1997), the MCE is located within the Suisun Hills and Valleys subsection of the Central California Coast Section. The *Ecological Subregions of California* form the basis for describing regional variation in California alliance descriptions in *A Manual of California Vegetation* (Sawyer et al. 2009).

3.1.1 SUISUN HILLS AND VALLEYS

The Suisun Hills and Valleys are characterized by low hills north and south of the Carquinez Strait, and include valleys between the hills, and plains at the west end of the Sacramento-San Joaquin River Delta. The climate is hot and sub-humid and is very windy on the hills adjacent to and north of the Strait (USDA 1997).

This is a subsection of steep to moderately steep northwesterly aligned hills, valleys between the hills, and the edge of a plain that is the floor of the Great Valley. Elevations range from sea-level to 1,428 feet (435 meters) in the Briones Hills. Mass wasting and fluvial erosion are the main geomorphic processes. The Suisun Hills and Valleys are mainly comprised of Cretaceous, Eocene, and Miocene marine sedimentary rocks and late Quaternary alluvium, and minor amounts of Pliocene nonmarine sediments and volcanic rocks (USDA 1997). Most of the soils are leached free of carbonates, but calcium carbonates have accumulated in some soils on alluvial plains and more soluble salts accumulated in somewhat poorly drained soil (USDA 1997).

For this region the mean annual precipitation ranges from 15 to 20 inches and nearly all of the precipitation is rainfall. The mean annual temperature is generally between 56° to 60°F and the mean freeze-free period is from 250 to 275 days. Hydrologically, runoff is rapid from the hills, but slow from the alluvial plains. All but the larger streams are dry throughout the summer (USDA 1997).

3.2. LOCAL SETTING

The MCE is located in the north-central portion of Contra Costa County within the southern portion of the City of Pittsburg, California (Figure 2 & 3, Appendix A). The central point of the MCE is approximately 3.5 air-miles south-southwest of downtown Pittsburg and 7.75 air-miles north of the summit of Mount Diablo (Figure 2). The MCE shares its southern boundary with the Austin-Thomas North Habitat Conservancy Acquisition and abuts Kirker Pass Road to the east. The majority of the parcel is oriented in an east-west manner with a thin north-south oriented leg jutting north from the western side. From north to south the MCE is approximately 0.4 miles long and from east to west 0.4 mile wide. The main access to the MCE is located approximately 0.1 miles north of the parcel boundary on Kirker Pass Road.

The MCE is surrounded by undeveloped northeast to southwest trending ridgetops. The easement itself is located on the eastern and northern facing slopes of one of these ridges, which slopes to a flat drainage area parallel to Kirker Pass Road. Few dirt access roads have been bladed throughout the easement and it

is mostly undisturbed rolling hills. These roads appear to be maintained annually. The diversity of vegetation types is low because the majority of the MCE is dominated by grasslands. No perennial hydrologic features are present. A 261-acre fire occurred on the parcel in 1906 (Cal Fire 2016). No fires greater than 10 acres have been recorded on the property since that year. No evidence of recent fire was observed within the MCE during the 2018 site visit.

3.2.1 Topography and Prominent Geographic Features

The topography of the MCE is largely the north- and east-facing slopes of a short northeast to southwest trending ridge of the Pittsburg Hills that fall toward the Kirker Pass divide (Figure 2, Appendix A). The north-south leg of the easement cuts north to south across a shallow valley. The highest point of MCE is approximately 750 feet (229 meters) in elevation located near the southeast corner of the parcel. The lowest point of the easement is approximately 315 feet (96 meters) in elevation and is where an unnamed tributary to Kirker Creek (K-1) enters a culvert and flows under Kirker Pass Road. Topography of the MCE is largely on moderate slopes on the short ridge to essentially level along K-1 on the eastern boundary. The majority of the parcel is on a north or east facing aspect.

3.2.2 Climate

Locally the climate of the study area is characterized as Mediterranean with cool wet, winters and warm to hot, dry summers. It is presumed that the MCE is near the edge of the coastal fog incursion zone and therefore occasionally receives moisture other than direct precipitation. Tule fog generated from the Central Valley can also influence the climate and sun exposure of the MCE from the fall to spring. Annual precipitation ranges from 19 to 21 inches annually (PRISM 2018).

3.2.3 Geology and Soils

The underlying geology mainly comprises sedimentary rock types such as sandstone and shale, and volcanic rock types such as tuff. Specific rock types within the study area include Neroly sandstone, Cierbo sandstone, Kirker tuff, Kirker tuff – sandstone beds, and Markley formation – upper member (Graymer et al. 2000).

A total of five soil types are mapped as occurring within the easement area: Altamont-Fontana complex; Diablo clay; Lodo-Rock outcrop complex; Rincon clay loam; and Pescadero clay loam. Altamont-Fontana complex soils comprise clay soils, which on MCE are found on 50 to 75 percent slopes (USDA 1977). Diablo clay are comprised of clay soils which are found on 30 to 50 percent slopes on MCE (USDA 1977). Lodo-Rock outcrop complex is comprised of approximately 60 percent clay loam and 25 percent sandstone outcrops (USDA 1977). Rincon clay loam soils are formed from sedimentary rocks and on the MCE are found at 2 to 9 percent slopes (USDA 1977). Pescadero clay loam are formed from sedimentary rocks and on the MCE are highly alkali (USDA 1977). These soil types are categorized only for grazing and are not considered prime, unique, or soils of statewide interest (FMMP 2016).

3.3. Hydrology Characteristics

Hydrology onsite is influenced by precipitation, surface water runoff, geologic stratigraphy, topography, soil permeability, and plant cover. Hydrologic features discussed in this section include intermittent and perennial features. Ephemeral drainages are not included in the discussion below. Only two smaller intermittent tributaries (K-1 and K-2) to a Kirker Creek were observed. These tributaries contribute to the Kirker Creek watershed which flow into the Sacramento-San Joaquin Delta. All hydrologic features appear in Figure 4 (Appendix A). The lengths of creeks and their tributaries occurring on the MCE are included in Table 1.

Table 1. Lengths of Creeks and Tributaries

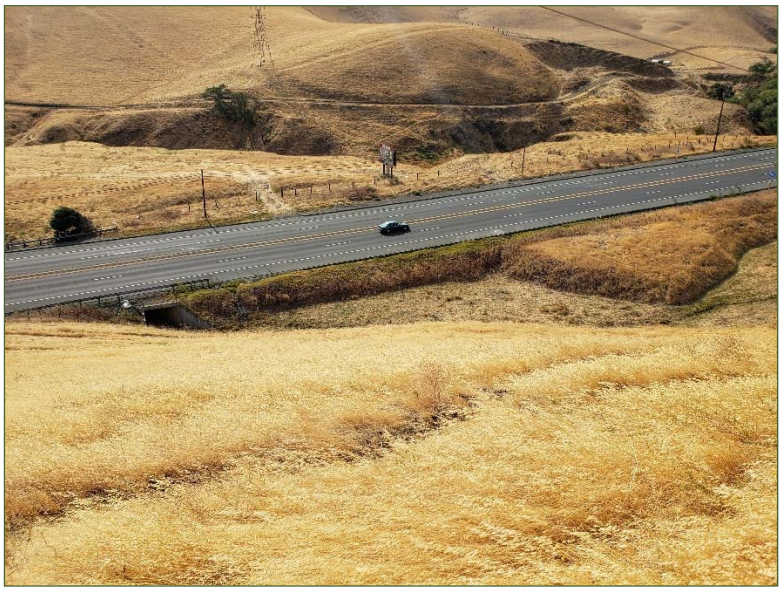
Creeks and Tributaries	Watershed	Linear Feet	Miles
Kirker Creek Tributary 1 (K-1)	Kirker	18.37	<0.01
Kirker Creek Tributary 2 (K-2)	Kirker	645.35	0.12
Totals		**664.23**	**0.13**

3.3.1 Kirker Creek Watershed

The Kirker Creek watershed is a sub-drainage of the northeastern slopes of the Black Diamond Mines area. Overland flow from north facing slopes and the north-south leg flow to an unnamed tributary (K-1) of Kirker Creek, which flows east-west for a very short distance within a narrow portion of the MCE (Figure 4). After leaving MCE it also connects with the main channel of Kirker Creek off site. Approximately 18 feet of K-1 passes through the MCE in the bottom of a shallow valley on the north-south leg of the MCE. Another unnamed tributary (K-2) was recorded within the MCE that flows north along the eastern boundary of the parcel before crossing under Kirker Pass Road through a concrete culvert at the northeastern corner of the parcel and continuing off site to Kirker Creek. K-2 is an intermittent creek that carries overland flow from the east-facing slopes of the MCE that was dry at the time of the August site visit. This drainage has a shallow channel that easily overflows its banks to create a broad wetland. Due to the underlying alkaline soils this wetland is considered alkaline. K-1 and K-2 are identified as intermittent "blue-line" streams on the USGS topographic quadrangle.

K-2 where it enters the MCE at its southern boundary.

K-2 meandering through AW-1 parallel to Kirker Pass Road.



K-2 meandering through AW-1 before entering a culvert and exiting the MCE at its northeastern boundary.

3.3.2 PONDS

No ponds were observed within the MCE boundaries.

3.3.3 SPRINGS

No springs were observed within the MCE boundaries.

3.4. LAND USE

Land use on site is primarily agricultural in the form of cattle grazing. No information was available on historical land use of the MCE. The surrounding land is either other habitat conservancy holdings, grazing land, or residential subdivisions.

3.4.1 GRAZING

As far as is known, the historical and current use of the MCE is livestock (cattle) grazing. The site has open and rolling grasslands but no water development. The only water source is intermittent K-1. Therefore, it is unknown what type of grazing operation the MCE can support. The average seasonal carrying capacity of the MCE is approximately 65 to 80 head of cattle nearly all year. The type of operation, e.g. cow-calf or stocker, is not documented by Discovery Builders.

3.4.2 SCENIC FEATURES

The rolling grassy foothills and ridge of the MCE are visible from Kirker Pass Road, Nortonville Road, parts of Black Diamond Mines Regional Preserve, the city of Pittsburg, and the Austin-Thomas North Conservancy Property.

The main ridge of the MCE is visible from Pittsburg.

The western ridges of the MCE visible from Kirker Pass Road.

3.4.3 RECREATIONAL USE

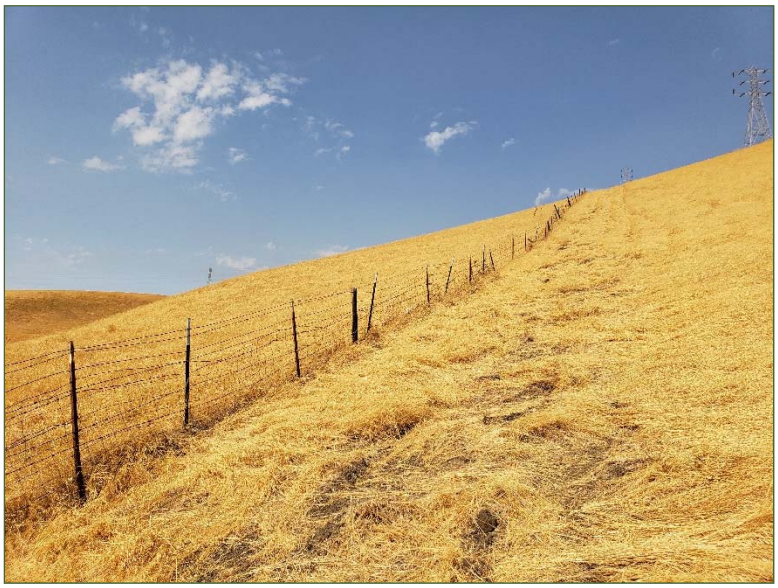
No public recreational use of the MCE is known to occur historically or currently.

3.5. ANTHROPOGENIC FEATURES

While a majority of the MCE has been left undeveloped there are several anthropogenic features mainly associated with access, cattle ranching, and power transmission. Man-made features include roads, fences, culverts, debris, power and gas rights-of-way. All anthropogenic features are depicted in Figure 5 (Appendix A).

3.5.1 FENCES

The fencing on the MCE fences serve as boundary fences along the south and eastern boundaries. All the fence onsite consists of 4 to 5 strand barbed wire fence attached to metal t-posts or wooden posts depending on age. The bottom of these fences are also reinforced with large gauge pig fencing. These fences separate the MCE from Kirker Pass Road on the parcel's eastern boundary and from Austin-Thomas North Conservancy Property on its southern boundary. Based on fence line mapping during the site visit a total of 0.51 miles of fencing exists on the MCE, all of which is barbed wire. There are no gates on the MCE.

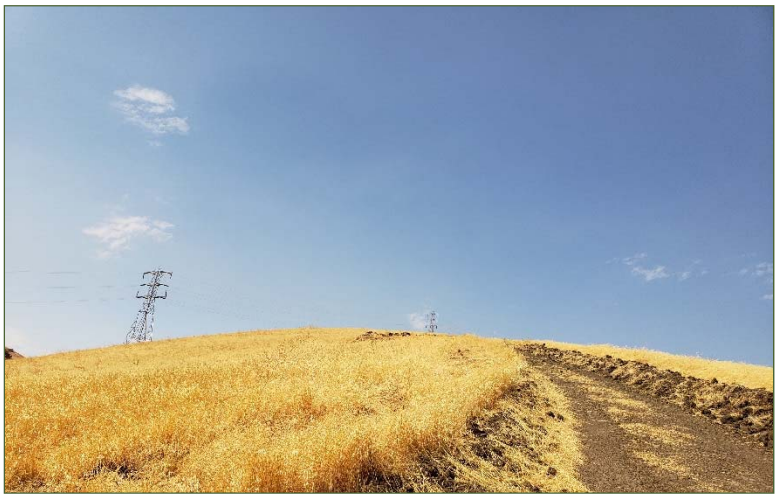


Barbed wire fencing along the southern boundary of the MCE.

Barbed wire fence on the bank above AW-1 and
on the eastern boundary of the MCE next to Kirker Pass Road.

3.5.2 ROADS

Access infrastructure within the MCE comprises only dirt roads that are approximately 12-feet wide. These roads are created by grading (blading) the road surface and receive infrequent use and maintenance and may require a four-wheel drive vehicle, especially during wet weather. However, these roads do appear to be maintained by annual blading. Developed and designated trails are not known to occur within the MCE. The total road length within the MCE is estimated to be 0.52 miles (Figure 5, Appendix A).



Bladed dirt access road on the MCE.

3.5.3 CULVERTS

Culvert infrastructure within the MCE includes one concrete box culvert along K-2, where it crosses under Kirker Pass Road, and two 24-inch half corrugated metal pipes that drain into K-2. The box culvert is 8 feet tall and is located at the northeastern corner of the MCE. Both half corrugated metal pipes collect roadside runoff from Kirker Pass Road and drain into K-2. One half corrugated metal pipe is located approximately 80 feet north of the southern boundary of the parcel, and the other is located approximately 10 feet south of the box culvert discussed above.

3.5.4 DEBRIS

During the site visit any debris or trash piles that have been deposited on the MCE were recorded. Debris observed during the August site visit consisted of two old lattice tower footings along the existing lattice tower transmission right-of-way, a cement post base on the western bank of K-2, and pieces of a cement curb and gutter on the edge of AW-1.

3.5.5 POWER AND GAS LINES

Within the MCE there are two power line right-of-ways with two types of power lines constructed – lattice tower (transmission) and wood pole (distribution). The lattice tower line runs in a largely east-west fashion along the southern boundary of the MCE, entering the parcel on its eastern boundary approximately 200 feet north of the southeast corner and exiting approximately 0.12 miles east of the western boundary. A total of two lattice towers are present on-site.

Wooden pole lines tend to be lower wattage and more discrete on the landscape. The wooden pole line enters the MCE on its eastern boundary approximately 170 feet north of the southeast corner, turns north-northeast approximately 215 feet into the parcel and parallels the eastern boundary for approximately 430 feet before exiting the parcel. A total of three wooden poles are present on the MCE. Both lines cross K-2 and AW-1 along the eastern edge of the MCE.

A gas transmission right-of-way also exists on the MCE. This runs parallel to the lattice tower transmission line and enters and exits the property in the same general areas. This right-of-way is delineated by three paddles located on the MCE.

Lattice type power transmission tower on the MCE.

Wooden type distribution poles on the MCE.

3.6. LAND COVER AND ENVIRONMENTAL CONDITIONS

This subsection describes vegetation communities following the Land Cover Types described in the HCP/NCCP (Jones & Stokes 2006). HCP/NCCP Land Cover Types observed within the MCE include Annual Grassland, Alkali Wetland, Rock Outcrops, and Ruderal (Table 2). The location of Land Cover Types in the MCE is shown in Figure 6 (Appendix A).

Table 2. HCP Land Cover Types in the Study Area

LAND COVER	ACREAGE
Annual Grassland	35.99
Alkali Wetland	0.49
Rock Outcrops	0.25
Ruderal	0.76
Total:	**37.50 acres**

*As specified in the HCP/NCCP, streams are mapped as linear features.

Land cover types are further cross referenced using three commonly used vegetation classification systems including *California Vegetation* (Holland and Keil 1995), *Preliminary Descriptions of the Terrestrial Natural Communities of California* (Holland 1986), and *Manual of California Vegetation, Second edition* (Sawyer et al. 2009)[1]. In addition, habitat types from the *CNPS Inventory of Rare and Endangered Plants of California* (CNPS 2018) are included to reference habitat types listed in the CNPS Inventory to HCP/NCCP Land Cover Types found on site.

Holland (1986) provides a generalized community-level description for natural vegetation communities present within the project area. Vegetation that interfaces with urban or developed landscapes, *i.e.* Ruderal, is treated using Holland and Keil (1995). Beneath the natural community-level more detail is accomplished using *Manual of California Vegetation, Second edition* which identifies vegetation communities as alliances[2]. Non-vegetated types, such as stream (open water), are not treated in these vegetation classification systems.

Table 3 relates HCP/NCCP Land Cover Types to the commonly used vegetation classification systems described above. The codes used in Table 3 reflect those associated with Holland (1986) types and the *California Natural Communities List* (CDFW 2018).

3.6.1 GRASSLANDS

A total of two Land Cover Types found on site are grasslands as described in the HCP/NCCP: Ruderal, and Annual Grassland. Characteristics taxa of each of these Land Cover Types are described below.

Ruderal

As described in the HCP/NCCP, ruderal vegetation is characterized by sparse nonnative, typically weedy vegetation, occupying vacant parcels surrounded by developed areas. Based on the description by Holland and Keil (1995), ruderal vegetation is an assemblage of plants, often a mixture of both native and non-native weed species that thrive in waste areas, heavily grazed pastures, cultivated and fallow fields, roadsides, parking lots, footpaths, around residences and similar disturbed sites in towns and cities and along rural roadways. Ruderal communities are difficult to characterize and are often temporary assemblages. In areas of frequent human disturbance, the majority of wild plants are often introduced weeds rather than natives. Some urban weeds are ornamentals that have escaped from cultivation. Ruderal species may at times be integrated into various other communities (Holland and Keil 1995).

[1] This is due to the fact that the HCP Land Cover Types, in many cases, do not refer to standard vegetation community treatments and is therefore an effort to relate HCP Land Cover Types to these commonly used classification systems for regional context and regulatory continuity.

[2] An allinace is a classification unit of vegetation, containing one or more associations and defined by one or more diagnostic species, often of high cover, in the uppermost layer or layer with the highest canopy cover. Alliances reflect regional to subregional climates, substrates, hydrology, and disturbance regimes.

Table 3. Vegetation Community Classifications Systems Comparisons

HCP/NCCP Land Cover Types[3]	Vegetation Community and Wetland Classification Systems			
	Terrestrial Communities[4]	California & National Vegetation[5]	CNPS Inventory[6]	Wetlands & Deepwater Habitats[7]
Ruderal	Ruderal (*Holland & Keil 1995*)	Not Described	Not Described	Upland
Annual Grassland	Non-Native Grassland (42200) (*Holland 1986*)	*Avena fatua* Semi-Natural Herbaceous Alliance (Wild Oats Grassland) (44.150.01) *Bromus hordeaceus* Semi-Natural Herbaceous Alliance (Annual Brome Grassland) (42.026.00)	Valley and Foothill Grassland	Upland
Alkali Wetland	Alkali Meadow (45310) (*Holland 1986*) Alkali Seep (45320) (*Holland 1986*)	*Distichlis spicata* Herbaceous Alliance (Salt Grass Flats) (41.200.00)	Meadows and Seeps (in part)	Palustrine persistent emergent saline wetland
Rock Outcrop	Not Described	Not Described	Not Described	Not Described
Stream	Not Described	Not Described	Not Described	Riverine streambed

[3] East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (Jones & Stokes 2006)
[4] Terrestrial Natural Communities of California (Holland 1986) or (Holland & Keil 1995)
[5] List of Vegetation Alliances and Associations (CDFW 2018)
[6] CNPS Inventory of Rare and Endangered Plants of California Habitat Types (CNPS 2018)
[7] Classification of Wetlands & Deepwater Habitats of the U.S. (Cowardin et al. 1979)

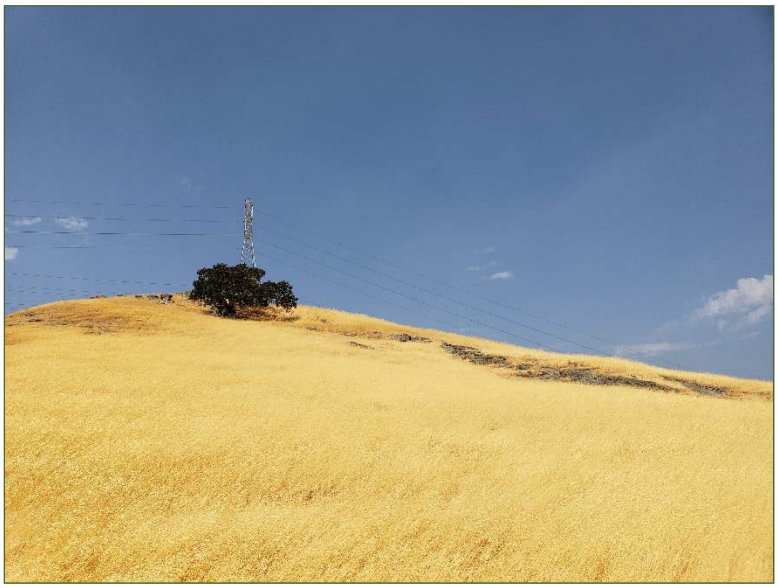
Within the MCE, ruderal vegetation is present along bladed roadways. Plant species typical of ruderal vegetation on site include hoary mustard (*Hirschfeldia incana**), yellow starthistle (*Centaurea solstitialis**), fennel (*Foeniculum vulgare**), milk thistle (*Silybum marianum**), black mustard (*Brassica nigra**), turkey mullein (*Croton setiger**) and field bindweed (*Convolvulus arvensis**). In addition, much of the roadways are unvegetated.

Annual Grassland

As described in the HCP/NCCP, annual grassland is characterized by grass and forb species dominating the land cover and where trees and shrubs comprise less than 5 percent canopy cover. The dominant grass species are non-native annuals. Based on the description by Holland (1986), non-native grassland is a dense to sparse cover of annual grasses with flowering culms up to 3 feet (one meter) tall. Associates often include "showy-flowered" native annual forbs. This community occurs on fine-textured, usually clay soils, moist or even waterlogged during the winter rainy season and very dry during the summer and fall. Germination occurs with the onset of the late fall rains while growth, flowering, and seed-set occur from winter through spring. With a few exceptions, the plants are dead through the summer and fall dry season, persisting as seeds. This community usually occurs below 3,000 feet but reaches 4,000 feet in the Tehachapi Mountains and interior San Diego County, and intergrades with coastal prairie along the Central Coast.

Within the study area, annual grassland occupied the majority of the site. This plant community is dominated by non-native annual grasses including oats (*Avena barbata**), soft chess (*Bromus hordeaceus**), Italian ryegrass (*Festuca perennis**), and ripgut brome (*Bromus diandrus**). Native creeping wildrye (*Elymus triticoides*) and purple needlegrass (*Stipa pulchra*) were also present but these were not of the size or composition to comprise their own vegetation communities. Native and non-native herbaceous species also present in this community included Great Valley gumweed (*Grindelia camporum*), San Joaquin tarweed (*Holocarpha obconica*), prickly lettuce (*Lactuca serriola**), field bindweed*, rose clover (*trifloium hirtum**), yarrow (*Achillea millefolium*), and common soaproot (*Chlorogalum pomeridianum* var. *pomeridianum*). Native woody species including valley oak (*Quercus lobata*), California buckeye (*Aesculus californica*), and poison oak (*Toxicodendron diversilobum*) are present in a scattered manner throughout this community as well. It should be noted that small infestations of weeds were also present within the annual grassland matrix and include hoary mustard*, fennel*, and milk thistle*.

* Denotes a non-native species that has an origin outside of California

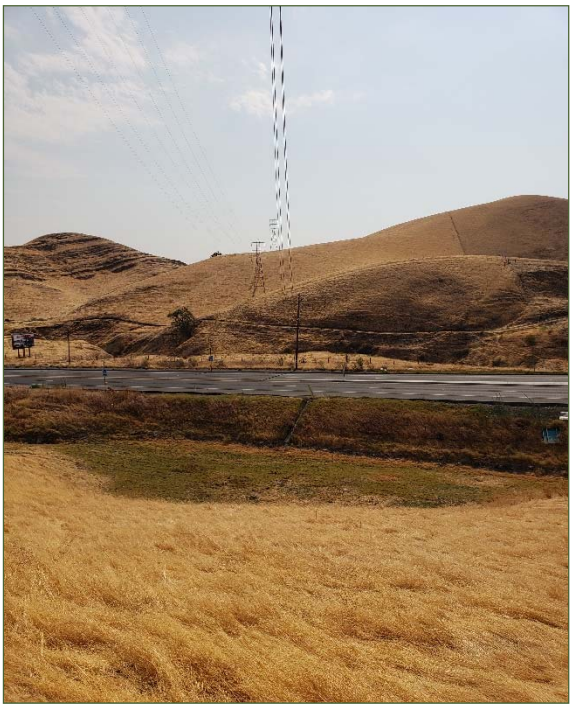


Typical Annual Grassland with a valley oak within the MCE.

3.6.2 ALKALI WETLAND

As described by the HCP, Alkali Wetland occurs as perennial or seasonally wet features on alkaline soils. Alkaline soils on site include Rincon clay loam, Fontana-Altamont Complex, and Pescadero Series (USDA 1977). The vegetation of alkali wetlands is composed of halophytic plant species adapted to both wetland conditions and high salinity levels. Of the vegetation communities described by Holland (1986) the most similar are Alkali Meadow and Alkali Seep. These communities are characterized by sparse to densely vegetated plant community consisting of relatively few low growing plant species with a strong component of perennial species. It is usually supported by fine-textured, seasonally or perennially moist alkaline soils. When wetland species are dominant, these areas can be characterized as alkali wetland. It is distributed in poorly drained valley bottoms and on the lower edges of alluvial slopes east of the Cascades and the Sierra Nevada as well as throughout the Sacramento and San Joaquin Valleys and into the Livermore Valley.

Within the study area, one alkali wetland feature is present (AW-1) which occurs in the valley bottomland along the eastern edge of the parcel that is dominated by alkaline wetland species. Species that comprise this community include saltgrass (*Distichlis spicata*), rabbitsfoot grass (*Polypogon monspeliensis**), strawberry clover (*Trifolium fragiferum**), Bermuda grass (*Cynodon dactylis**), chairmaker's bulrush (*Schoenoplectus americanus*), Mexican rush (*Juncus mexicanus*), bird's foot trefoil (*Lotus corniculatus**), and toad rush (*Juncus bufonius* var. *bufonius*), in part.



AW-1 adjacent to Kirker Pass Road with power transmission lines overhead.

3.6.3 ROCK OUTCROP

The HCP defines rock outcrops as exposures of bedrock that typically lack soil and have sparse vegetation. Within the study area, rock outcrops are located within the annual grassland vegetation community on the northern part of the north-south leg.

Rock outcrop along the north-south leg of the MCE with valley oak and lattice tower in the background (lattice tower pictured is offsite).

3.6.4 STREAM

The HCP/NCCP defines a stream as a long, narrow body of flowing water that occupies a channel with a defined bed and bank and moves to lower elevations under the force of gravity. The one drainage on site fits this category.

3.7. INVASIVE SPECIES AND NOXIOUS WEEDS

During the course of the surveys, no invasive wildlife species were observed; however, a few noxious weeds that have the potential to change the quality of grasslands or could be a management concern were encountered within the MCE.

3.7.1 NOXIOUS WEEDS

Some of the non-indigenous plant species encountered on-site are tracked by the California Department of Food and Agriculture (CDFA 2018) and the California Invasive Plant Council (Cal-IPC 2018) due to their noxious or invasive behavior. Species tracked by these organizations are given a certain rating based on criteria such as ecological impacts, treatment or eradication priority, and threats they pose to agricultural economics. Rating classifications given by Cal-IPC and CDFA are shown in Table 4.

The one noxious weed that could be of concern, milk thistle*, is currently on site although in diffuse patches that currently do not threaten the integrity of the annual grasslands on site but should be monitored to ensure they do not become a management concern. Due to the nature of this species' distribution it was not mapped as a part of baseline documentation. Summary information on milk thistle* is included below. Information appearing under the headings General Information and Relevant Life History Traits was primarily excerpted from DiTomaso, J.M. and E.A. Healy. 2007. *Weeds of California and Other Western States*. University of California Agriculture and Natural Resources Publication 3488.

Table 4. Invasive Weeds Observed in the Study area

SPECIES NAME	COMMON NAME	CAL-IPC	CDFA
Silybum marinum	milk thistle	Limited	---

Cal-IPC Weed Ranking Definitions:

High: These species have severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment. Most are widely distributed ecologically.

Moderate: These species have substantial and apparent - but generally not severe - ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment is generally dependent upon ecological disturbance. Ecological amplitude and distribution may range from limited to widespread.

Limited: These species are invasive but their ecological impacts are minor on a statewide level or there was not enough information to justify a higher score. Their reproductive biology and other attributes result in low to moderate rates of invasiveness. Ecological amplitude and distribution are generally limited, but these species may be locally persistent and problematic (Cal-IPC 2018).

CDFA Species Definition

Species considered a noxious weed by CDFA are listed on the California Noxious Weed List (CDFA 2018).

Milk Thistle (*Silybum marianum*)

General Information

Milk thistle is an erect winter or summer annual or biennial in the sunflower family (Asteraceae). Milk thistle often occurs in dense, competitive stands. Depending on the amount of soil moisture plants can range from very small to very tall. It inhabits disturbed sites, roadsides, pastures, fields, agronomic crops, waste places, orchards, and trail margins in chaparral and woodlands. Milk thistle grows best on fertile soils. It is native to the Mediterranean region. (DiTomaso and Healy 2007).

Relevant Life History Traits

Milk thistle flowers from April to July and reproduces by seed. Seeds probably disperse only short distances with wind but they can disperse to greater distances with human activities, water, soil movement, animals and as a crop seed or feed contaminant. Most seeds germinate after the first fall rain, but some can germinate throughout winter and early spring. Seeds can survive at least nine years under field conditions (DiTomaso and Healy 2007).

Threats to Sensitive Habitats or Rare Plants

No immediate threats to rare plants, wildlife, or sensitive natural communities are known at this time.

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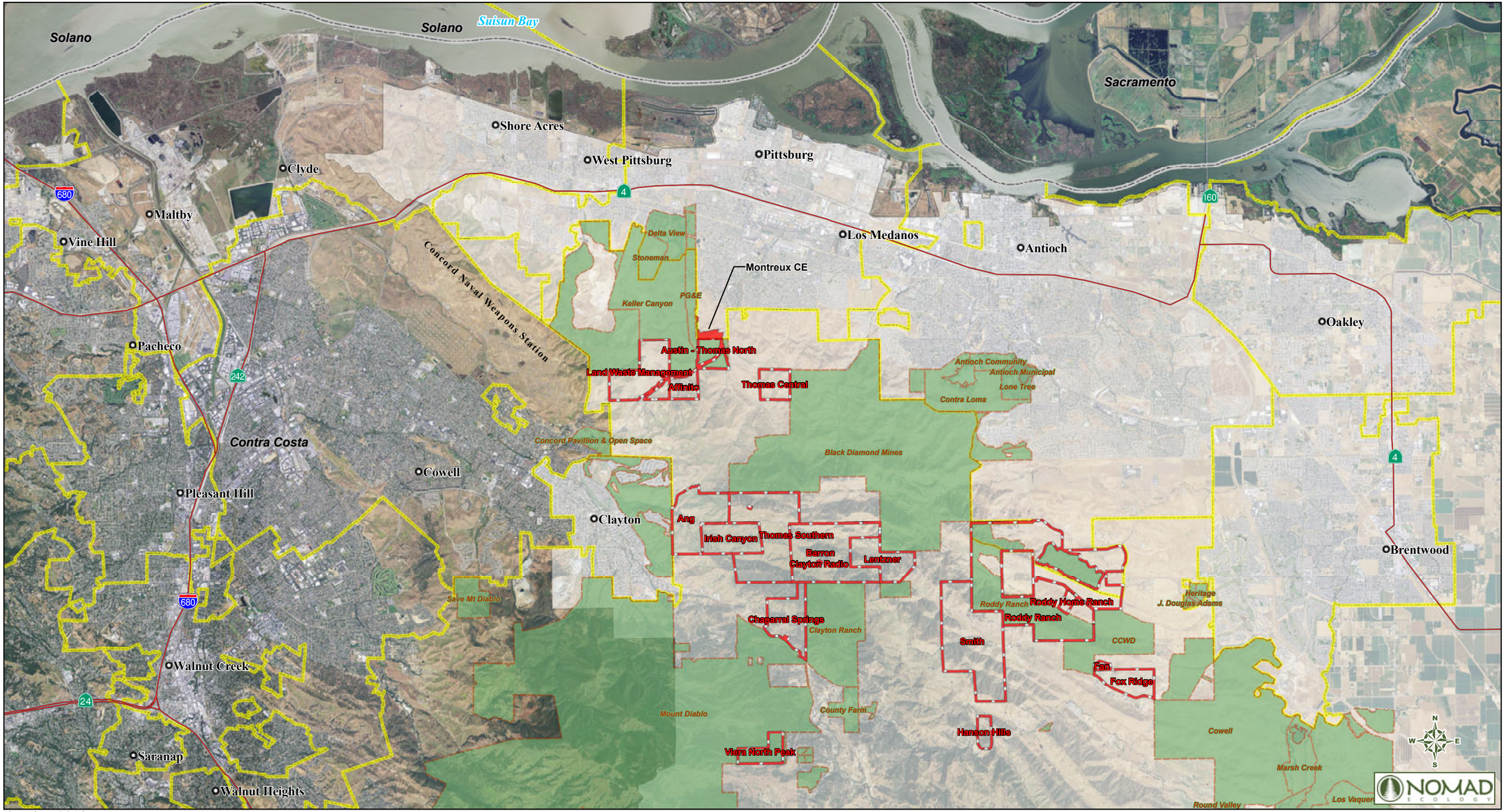
APPENDIX A FIGURES



Legend

- Montreux Conservation Easement
- HCP Acquisition Parcels
- Public Land and Easements
- City Limit Boundaries
- HCP Inventory Area
- County Boundaries

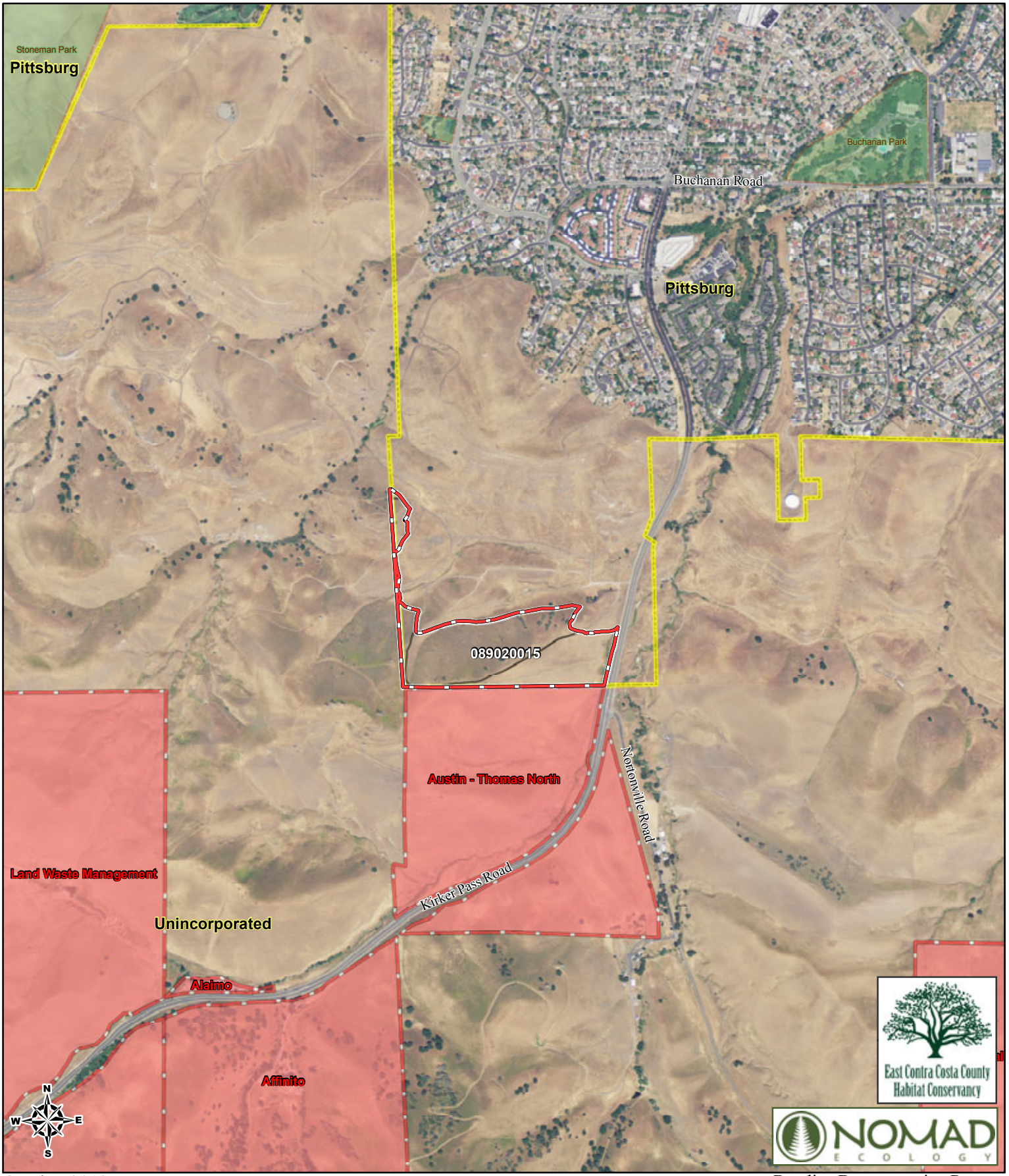
Figure 2

Regional Context of the
Montreux Conservation Easement
Settlement Agreement
East Contra Costa County Habitat Conservancy

East Contra Costa County Habitat Conservancy

1:95,040
0 0.75 1.5
Miles

Sources: NAIP 2012; Contra Costa County. Projection: NAD 83 UTM Zone 10 North.



Legend

- Montreux Conservation Easement
- HCP Acquisition Parcels
- Parcel Lines
- Roads
- City Limit Boundaries

1:15,840
0 0.125 0.25 Miles

Figure 3
Aerial Photo of the MCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

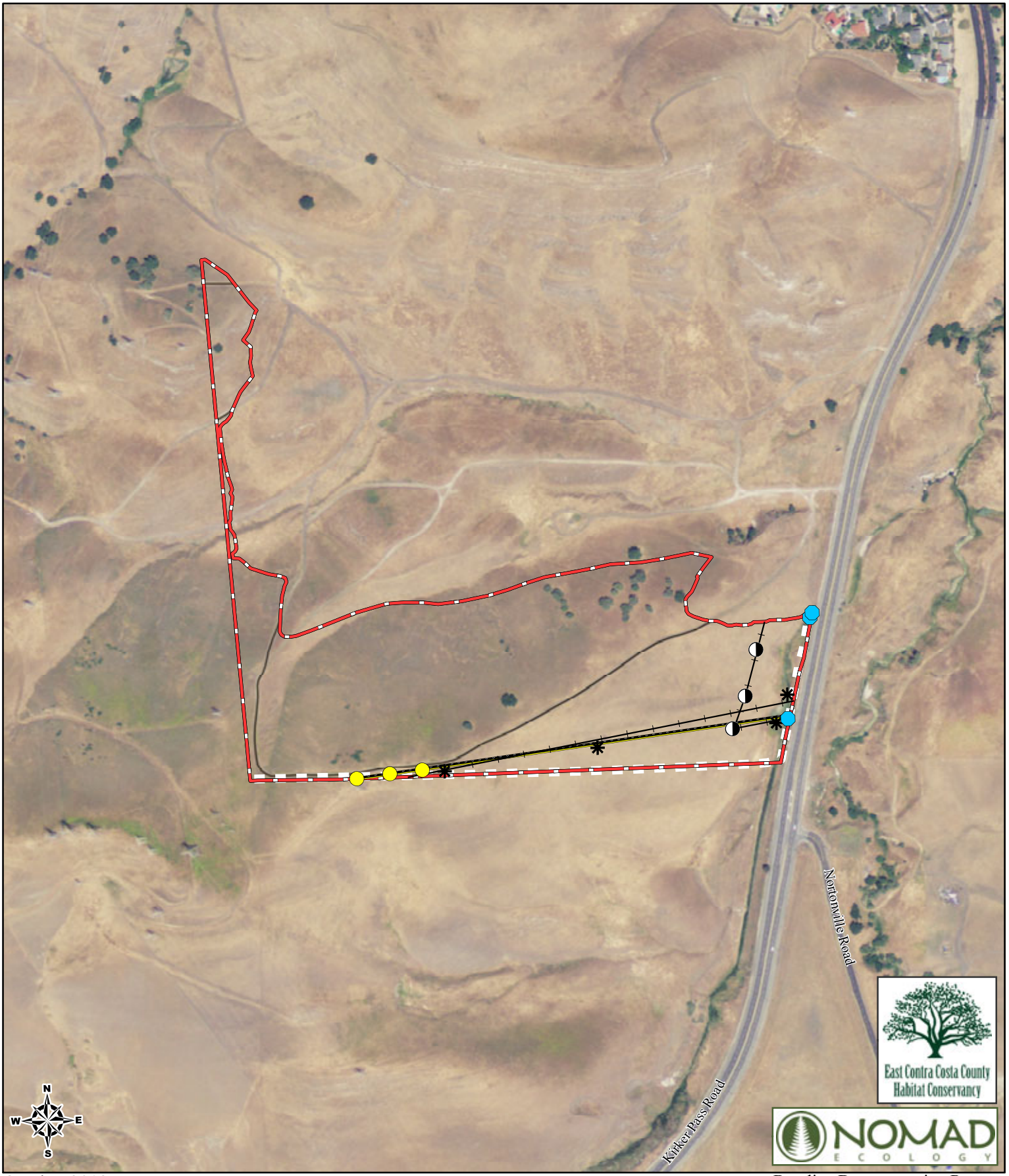
Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.

Legend
MCE Wetlands
Drainages Alkali Wetland

Figure 4
Hydrologic Features of the MCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

1:6,000
0 250 500
Feet

Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.



Legend

MCE
Roads
Barbed Wire Fence

Power Lines
Electric Line
Gas Line

Other Infrastructure
Culvert
Debris
Gas Line Paddle
Lattice Tower
Wood Distribution Pole

Figure 5
Anthropogenic Features
Settlement Agreement
East Contra Costa County
Habitat Conservancy

1:6,000
0 250 500
Feet

Sources: USGS, EBRPD. Projection: NAD 83 UTM 10 North.

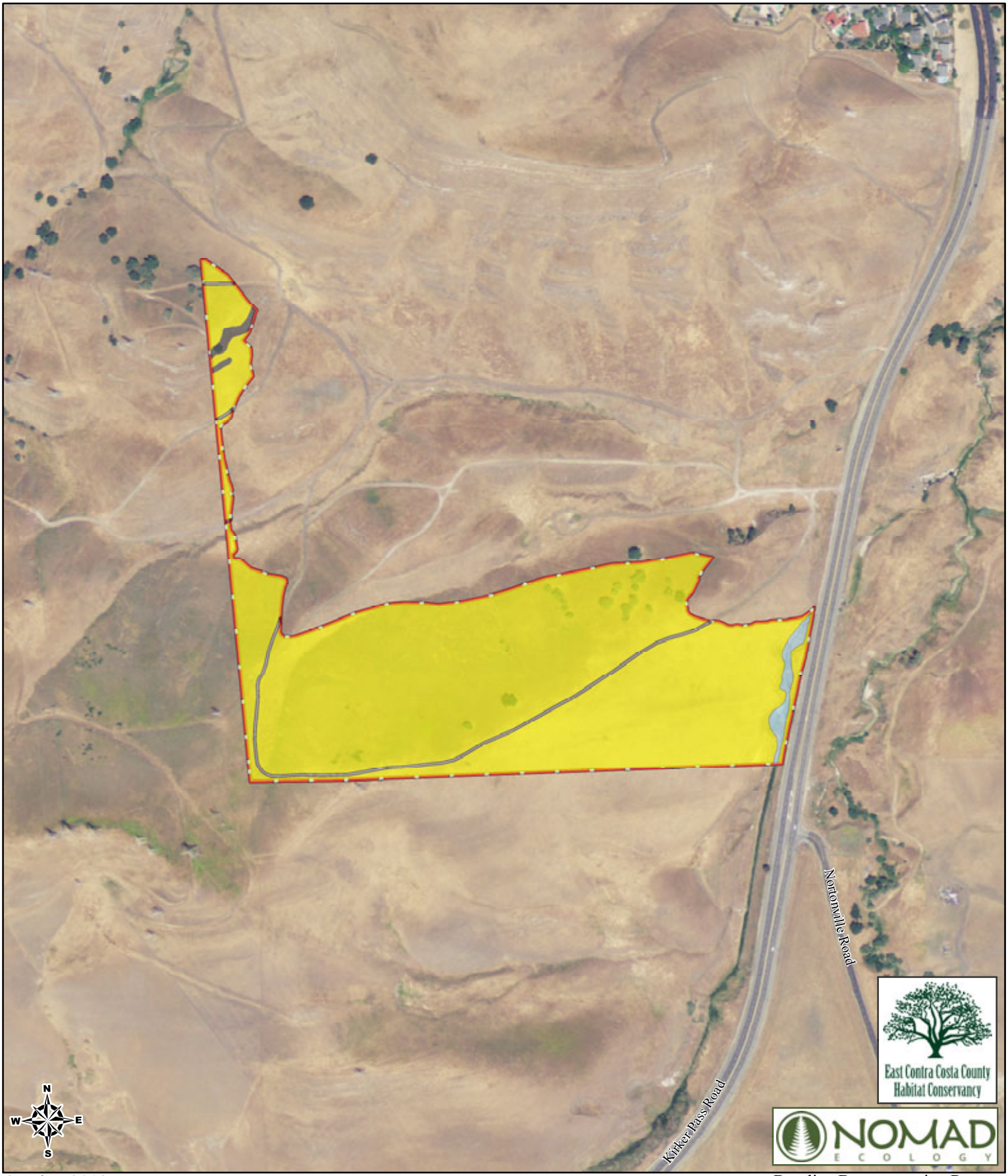


Figure 6
Land Cover Types of the MCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.

Legend
MCE
Photo Points

1:6,000
0 250 500
Feet

Figure 7
Photo Points of the MCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.

APPENDIX B PROPERTY CONSERVATION EASEMENT

APPENDIX C PHOTOGRAPHS

Photopoint: 1

File Number: 094349

Looking north along wood pole transmission line.

Northing (m): 4204770 **Easting (m):** 596674 **Date:** 08/14/18

Photopoint: 2

File Number: 094919

Barbed wire fencing running up slope along southern boundary.

Northing (m): 4204578 **Easting (m):** 596636 **Date:** 8/14/18

Photopoint: 3

File Number: 102639

Gas pipeline right-of-way paddle adjacent to bladed access road.

Northing (m): 4204575 **Easting (m):** 596260 **Date:** 8/14/18

Photopoint: 4

File Number: 103215

Gas pipeline paddle on the southern boundary of the MCE where the lattice transmission exits the parcel.

Northing (m): 4204564 **Easting (m):** 596176 **Date:** 8/14/18

Photopoint: 5

File Number: 095702

24” half corrugated metal pipe entering the MCE from Kirker Pass Road.

Northing (m): 4204628 **Easting (m):** 596698

Photopoint: 6

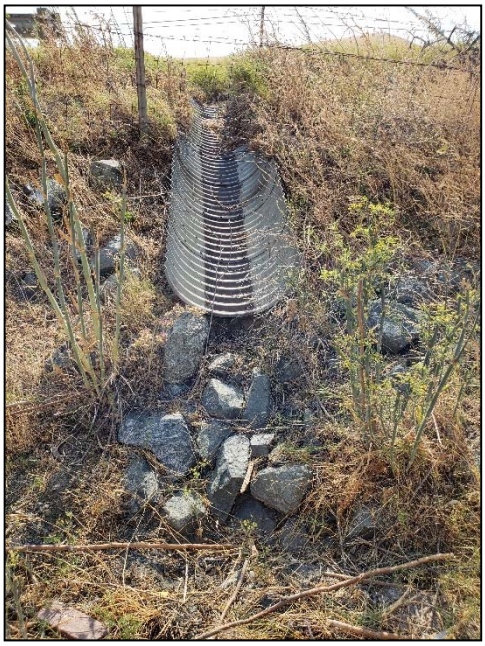
File Number: 095938

Cement curb and gutter debris on the CME.

Northing (m): 420462 **Easting (m):** 596687 **Date:** 8/14/18

Photopoint: 7

File Number: 100429



24” half corrugated metal pipe entering the MCE from Kirker Pass Road.

Northing (m): 4204650 **Easting (m):** 596700 **Date:** 8/14/18

Photopoint: 8

File Number: 100642

Cement box culvert at the northeastern corner of the CME going under Kirker Pass Road.

Northing (m): 4204753 **Easting (m):** 596724 **Date:** 8/14/18

Photopoint: 9

File Number: 102736

Old lattice tower footing on the MCE.

Northing (m): 42004575 **Easting (m):** 596260 **Date:** 8/14/18

Photopoint: 10

File Number: 095805

Cement post base on the MCE.

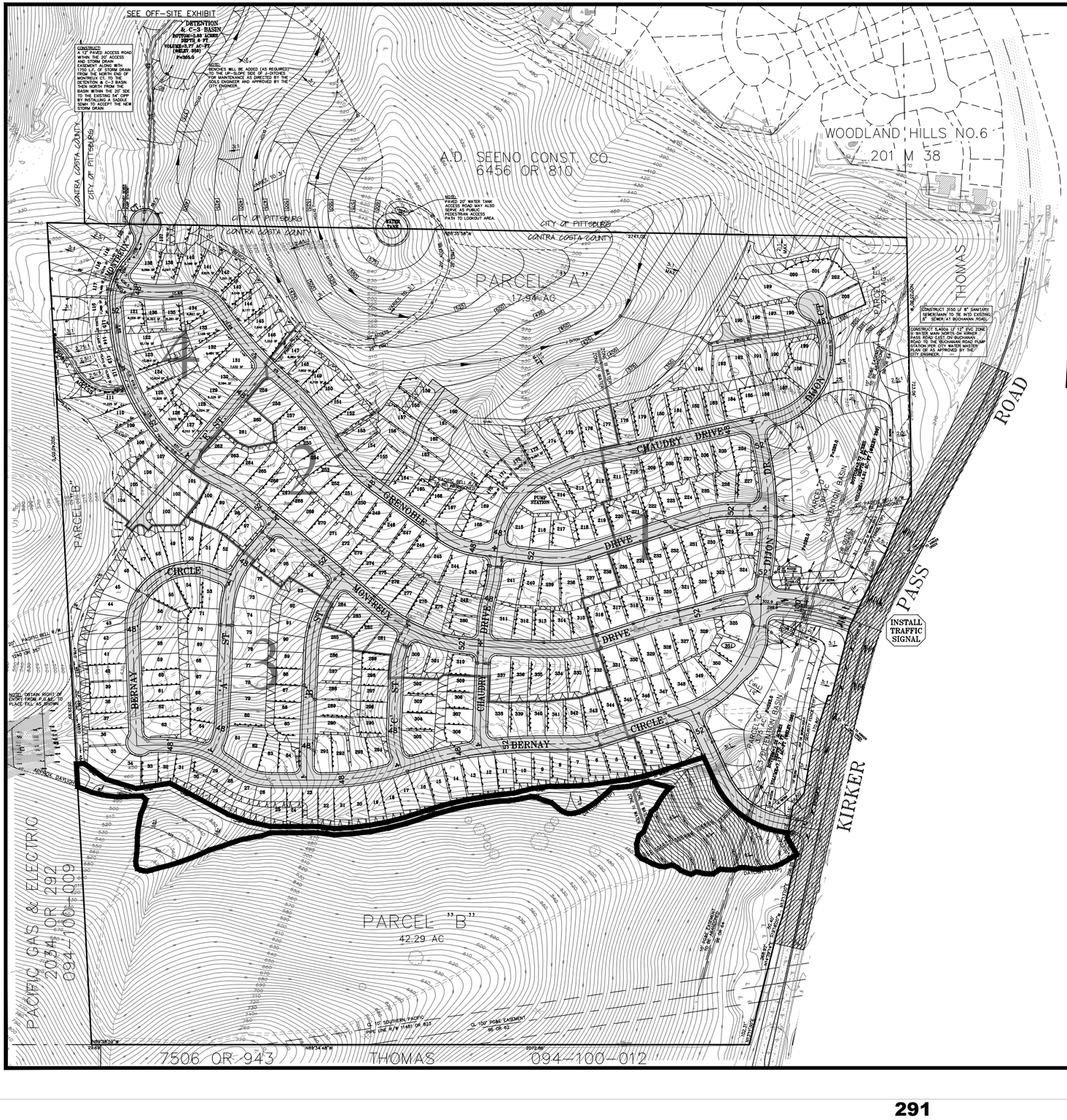
Northing (m): 4204628 **Easting (m):** 596698 **Date:** 8/14/18

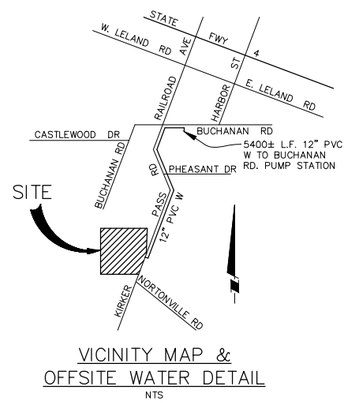
PERIMETER GRADING EXHIBIT

"MONTREUX"

SUBDIVISION 8279

CITY OF PITTSBURG





VICINITY MAP &
OFFSITE WATER DETAIL
NTS

APPROXIMATE GRADING AREA = 5.06 AC

09-23-2020

INITIAL
FARIA PRESERVE AREA

AUGUST 27, 2020

GENERAL NOTES:

1. OWNERS: FARIA LAND INVESTORS INC.
4061 PORT CHICAGO HIGHWAY, SUITE H
CONCORD, CA. 94524-4113
(925) 682-6419

2. CIVIL ENGINEER: ISAKSON & ASSOCIATES
2255 YGNACIO VALLEY ROAD SUITE C
WALNUT CREEK, CA 94598
(925) 937-9333

3. TOTAL AREA: 606.3 AC

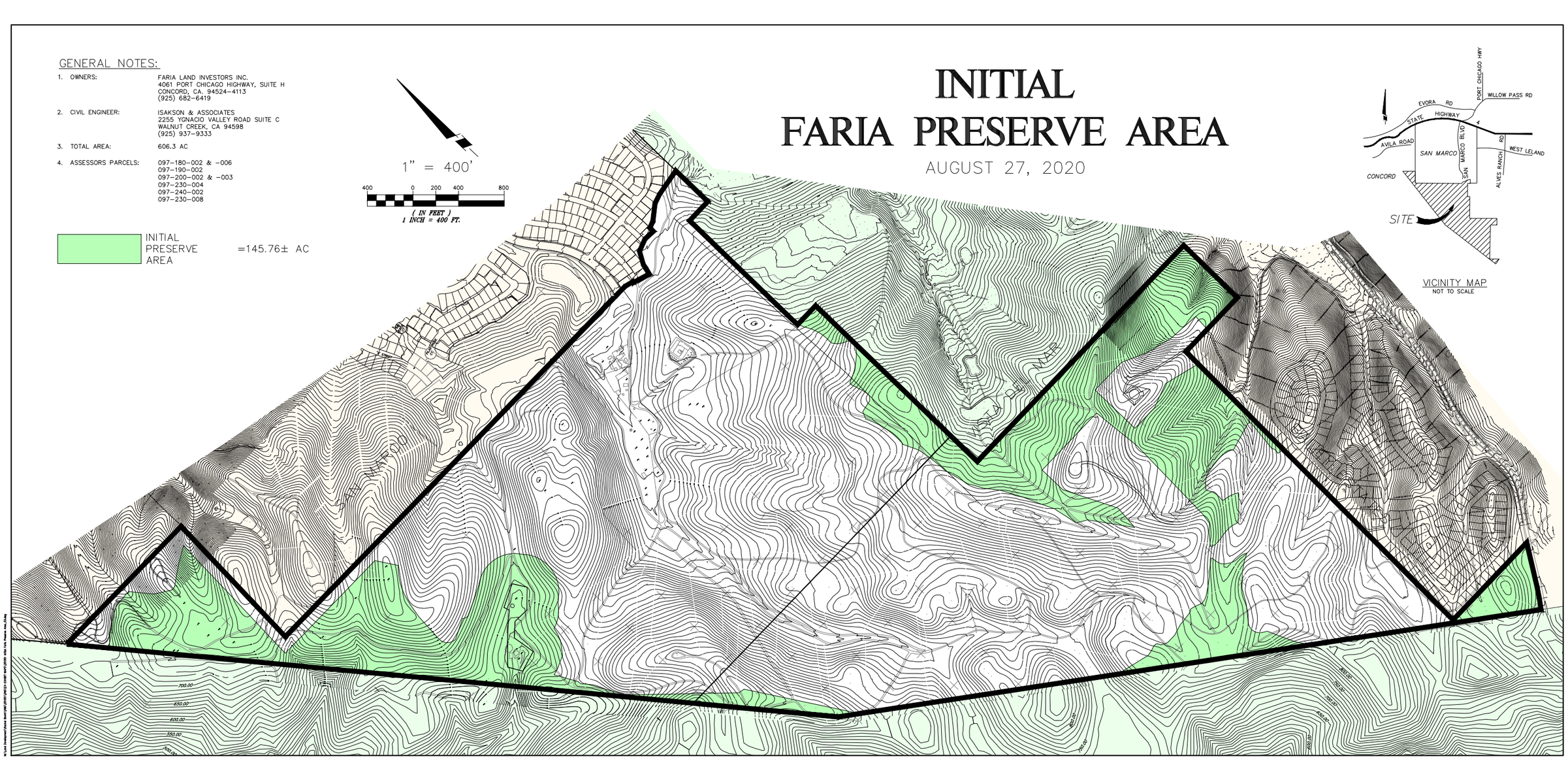
4. ASSESSORS PARCELS: 097-180-002 & -006
097-190-002
097-200-002 & -003
097-230-004
097-240-002
097-230-008

INITIAL PRESERVE AREA =145.76± AC

1" = 400'

400 0 200 400 800

(IN FEET)
1 INCH = 400 FT.



VICINITY MAP
NOT TO SCALE

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

_____

Attn: _____

_____

_____

(SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY)

CONSERVATION EASEMENT AGREEMENT (FARIA PRESERVE AREA)

THIS CONSERVATION EASEMENT AGREEMENT (this "**Agreement**") is made this ____ day of _____, 20__, by and between Faria Land Investors, LLC, a California limited liability company ("**Landowner**"), and _____, a _____ ("**Easement Holder**"). Landowner and Easement Holder are also referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Landowner is the fee title owner of certain real property containing approximately ___ acres, located in the City of Pittsburg, County of Contra Costa, State of California, more particularly described in ***Exhibit A*** attached hereto and incorporated herein by this reference (the "**Easement Area**") and depicted on the map attached hereto as ***Exhibit B*** and incorporated herein by reference.

B. This Agreement is being executed and delivered to satisfy certain habitat conservation requirements set forth in the following documents (collectively, the "**Habitat Plan Instruments**"):

(i) The East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan ("**Habitat Plan**") dated December 2006, prepared by the County of Contra Costa ("**County**"), City of Pittsburg ("**Pittsburg**"), City of Oakley ("**Oakley**"), City of Clayton ("**Clayton**"), City of Brentwood ("**Brentwood**"), Costa County Flood Control and Water Conservation District ("**CCWD**"), East Bay Regional Park District ("**EBRPD**") and approved by the United States Fish and Wildlife Service (**"USFWS"**) under Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 *et seq.*, as it may be amended from time to time) (**"ESA"**), and by California Department of Fish and Wildlife (**"CDFW"**) under the California Natural Community Conservation Planning Act (California Fish and Game Code Section 2800 *et seq.*, as it may be amended from time to time) (**"NCCPA"**); and

(ii) Implementing Agreement for East Contra Costa County Habitat Conservation Plan (the "**Implementing Agreement**"), dated January 22, 2007, by and among USFWS and CDFW (collectively, the "**Wildlife Agencies**"), East Contra Costa County Habitat

Conservancy ("**Implementing Entity**"), County, Pittsburg, Clayton, Oakley, Brentwood, CCWD, and EBRPD (collectively, referred to herein as "**Permittees**"); and

(iii) The federal incidental take permit issued by USFWS to Permittees for the Habitat Plan pursuant to Section 10 of ESA;

(iv) The state incidental take permit issued by CDFW to Permittees for the Habitat Plan pursuant to the NCCPA; and

(v) Multi-Party Mitigation and Land Dedication In-lieu of Development Fee Agreement between Landowner, Implementing Entity and the City of Pittsburg dated _____, 2020 ("**Mitigation Agreement**").

C. CDFW 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 CDFW is authorized by state law to be a third party beneficiary of the Conservation Easement. CDFW is also authorized by state law 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.

D. USFWS is an agency of the United States Department of the Interior and is authorized by federal law to be a third party beneficiary of the Conservation Easement and to administer the Federal Endangered Species Act, 16 U.S.C. §1531, *et seq.* ("**ESA**"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. §742(f), *et seq.*

E. The Easement Holder is a non-profit 501(c)(3) entity authorized to hold easements for these purposes pursuant to Civil Code Section 815.3 and other provisions of California law.

F. The Easement Area possesses wildlife, habitat values, and associated open space values that are of great importance to Easement Holder, the people of East Contra Costa County and the people of the State of California and of the United States (the "**Conservation Values**"). The "**Initial Conservation Values**," described in ***Exhibit C*** attached hereto and incorporated herein by reference, are those Conservation Values that are identified in the Habitat Plan and present on the Easement Area at the time of the execution of this Agreement.

G. Following recordation of this Agreement, the Easement Area will be incorporated into the Reserve System (as such term is defined in the Habitat Plan) ("**Reserve System**") and will count toward the land acquisition requirements set forth in the Habitat Plan.

H. Landowner and Easement Holder recognize that changes (e.g., in weather cycles, natural resource management technologies, conservation practices) may dictate an adaptation in the management of the Easement Area, consistent with the purposes of this Agreement and the Habitat Plan Instruments. It may be revised from time to time with the written approval of the Landowner, Easement Holder and the Wildlife Agencies, so long as the revisions are consistent with the requirements of the Habitat Plan Instruments.

I. The State of California recognizes the public importance and validity of conservation easements by enactment of California Civil Code Section 815 *et seq.*

AGREEMENTS

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, including California Civil Code Section 815 *et seq.*, Landowner hereby voluntarily grants and conveys to Easement Holder, its successors and assigns, a conservation easement in gross forever in, on, over and across the Easement Area described in ***Exhibit A*** and depicted on ***Exhibit B*** (the "**Conservation Easement**"), subject to the terms and conditions set forth herein, restricting forever the uses which may be made of the Easement Area, and the parties agree as follows:

1. **Purpose.** The purpose of this Conservation Easement is to ensure that existing and future natural values and associated wildlife and habitat values of the Easement Area will be forever protected by preventing any use of the Easement Area that would impair or interfere with the Conservation Values. Landowner intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with the purposes set forth herein, including, without limitation, those involving the preservation, restoration, and enhancement of the Easement Area's Covered Species and their habitats.

2. **Baseline Documentation Report.** The parties acknowledge that a Baseline Documentation Report (the "**Report**") has been prepared for the Easement Area and approved in writing by Landowner and Easement Holder. A copy of the Report is on file with Landowner and Easement Holder at their respective addresses for notices set forth below. The parties agree that the Report contains an accurate representation of the biological and physical condition (with the exception of perimeter grading and other activities as allowed under the Mitigation Agreement) of the Easement Area at the time this Agreement is recorded in the Official Records of Contra Costa County ("**Official Records**").

3. **Rights of Easement Holder.** To accomplish the purposes of this Conservation Easement, Landowner hereby grants and conveys the following rights to Easement Holder:

(a) To preserve, protect, sustain, restore, and enhance the Conservation Values for the Easement Area described in ***Exhibit C*** or which develop on the Easement Area in accordance with the Habitat Plan and the terms and conditions of this Conservation Easement;

(b) To enter upon the Easement Area to monitor Landowner's compliance with, and to otherwise enforce the terms of, this Conservation Easement, and for scientific research necessary to support monitoring and in order to support adaptive management of the Conservation Values; provided, that Easement Holder shall not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Easement Area;

(c) To enter upon the Easement Area to carry out, at Easement Holder's sole cost and expense, those management and monitoring requirements applicable to the Easement Area, including, without limitation, installation and maintenance of fencing around the perimeter of the Easement Area to protect the Conservation Values; provided, that Easement Holder shall use reasonable good faith efforts to conduct such management and monitoring activities in a manner that does not unreasonably interfere with Landowner's allowed uses and quiet enjoyment of the Easement Area and adjacent properties;

(d) To prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require Landowner to restore such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use by Landowner that is inconsistent with the purposes of this Conservation Easement;

(e) To require that all mineral, air and water rights associated with the Easement Area/Property held by Landowner that Easement Holder deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the purposes of this Conservation Easement; and

(f) All present and future development rights and wind power rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any other property. Landowner understands and agrees that nothing in this Conservation Easement relieves Landowner of any obligation or restriction in relation to the development or use of the Easement Area imposed by law, including, but not limited to, local land use restrictions.

Except where there is an imminent threat to the Easement Area or its Conservation Values, Easement Holder and its employees, contractors or agents will only enter the Easement Area at reasonable times and with at least forty-eight (48) hours advance notice to Landowner. The Landowner may waive these requirements in whole or in part by written notice to Easement Holder.

4. **Prohibited Uses.** Any activity on or use of the Easement Area that adversely affects the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, Landowner, Landowner's personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or allowing any of the following uses and activities on the Easement Area, unless, and then only to the extent that, a generally prohibited activity set forth below is: (i) an allowed use or practice (e.g., agricultural, grazing, rangeland or recreational uses) set forth on ***Exhibit D*** attached hereto and incorporated herein by reference; (ii) a management practice required under the Habitat Plan, (iii) necessary in connection with the performance of any of the conservation actions described in the Habitat Plan; (iv) allowed under Section 6 of this Agreement; or (v) otherwise necessary to maintain or enhance the Conservation Values:

(a) Unseasonal watering;

(b) Use of fertilizers, pesticides, biocides, herbicides or other chemicals;

(c) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways (which can be reconstructed, repaired and maintained), excepting off-road vehicle use required to conduct any allowed management practice under the Habitat Plan or set forth in ***Exhibit D*** (e.g., prescribed grazing);

(d) Any construction, reconstruction, relocation or placement of any building, billboard, fencing, or sign, or any other structure or improvement of any kind, or altering the surface or general topography of the Easement Area without written approval by the Easement Holder and Wildlife Agencies unless otherwise allowed i in this Conservation Easement;

(e) Agricultural uses, including, without limitation, vineyards, nurseries, or intensive livestock use (e.g., dairy, feedlot) except as may be provided for in the Habitat Plan or in this Conservation Easement (e.g., prescribed grazing);

(f) Any legal or de facto division, subdivision or partitioning of the Easement Area or any fee transfer of less than the Easement Area;

(g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;

(h) Planting, introduction, or dispersal of nonnative plant or animal species;

(i) 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 Easement Area, and granting or authorizing any surface entry for any of these purposes;

(j) Removing, destroying, or cutting of trees, shrubs, or other vegetation, except for weed abatement for fire safety purposes or as otherwise expressly allowed in ***Exhibit D***;

(k) Manipulating, impounding, or altering any water course, body of water, or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters; and

(l) Without the prior written consent of Easement Holder, which Easement Holder may reasonably withhold, transferring, encumbering, selling, leasing or otherwise separating the mineral, air or water rights for the Easement Area owned by Landowner; changing the place or purpose of use of the water rights owned by Landowner; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area that are owned by Landowner, including, but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area. Nothing herein shall prohibit Landowner from replacing, repairing or providing necessary wells and appurtenances thereto in the course of its grazing operations allowed under Exhibit D.

5. **Unlawful Entry.** Landowner shall undertake all reasonable actions to prevent the unlawful entry and trespass on the Easement Area by persons whose uses or activities may degrade or harm the Conservation Values or are otherwise inconsistent with the purposes of this Conservation Easement.

6. **Landowner's Reserved Rights; Allowed Uses.** Landowner reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including, without limitation, the following (collectively, the "**Allowed Uses**"): (i) those specific uses and activities identified in the Habitat Plan(s) or detailed in ***Exhibit D*** attached hereto, (ii) all other uses of the Easement Area that are not expressly prohibited or limited by this Agreement, and are consistent with the purposes of this Conservation Easement

as set forth in Section 1. Landowner shall have the right to exercise any of the Allowed Uses directly or to allow or invite others to engage in any of the Allowed Uses. While Landowner is not obligated under this Agreement to perform the management and monitoring actions set forth in the Habitat Plan(s), Landowner's exercise of the Allowed Uses shall be conducted in a manner that is consistent with the protection of the Conservation Values.

7. **Remedies.**

(a) If Easement Holder or any Third-Party Beneficiary (as defined in Section 7(d) below) determines there is a violation of the terms of this Agreement or that such violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Landowner, with a copy provided to Easement Holder and each other Third-Party Beneficiary. The notice of violation shall specify the measures the Landowner must take to cure the violation. If Landowner fails to cure the violation within thirty (30) days after receipt of written notice and demand from Easement Holder or any Third-Party Beneficiary, as applicable; or if the cure reasonably requires more than thirty (30) days to complete and Landowner fails to begin the cure within such thirty (30) day period; or Landowner fails to continue diligently to complete the cure, Easement Holder or any Third-Party Beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any damages to which Easement Holder and the Third-Party Beneficiaries may be entitled for violation of the terms of this Agreement or for any injury to the Conservation Values, 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 Easement Area to the condition in which it existed prior to any such violation or injury. Without limiting Landowner's liability therefor, any damages recovered may be applied to the cost of undertaking any corrective action on the Easement Area at the election of the party receiving such damages.

If Easement Holder or any Third-Party Beneficiary, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values, Easement Holder and/or any Third-Party Beneficiary may pursue its remedies under this Section without prior notice to Landowner or without waiting for the period provided for cure to expire. The rights of Easement Holder and the Third-Party Beneficiaries under this section apply equally to actual or threatened violations of the terms of this Agreement. Landowner agrees that Easement Holder's and Third-Party Beneficiaries' remedies at law for any violation of the terms of this Agreement are inadequate and that Easement Holder and/or any Third-Party Beneficiary shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Easement Holder and the Third-Party Beneficiaries may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. 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 California Civil Code Section 815, *et seq.* The failure of Easement Holder or any Third-Party Beneficiary to discover a violation or to take immediate legal action in response to such action shall not bar such party from taking legal action at a later time.

(i) Costs of Enforcement. Any reasonable costs incurred by the Easement Holder or any Third Party Beneficiary, where it is the prevailing party, in enforcing the

terms of this Conservation Easement against the Landowner, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Landowner's negligence or breach of this Agreement shall be borne by Landowner. In any action where an agency of the United States is a party, the right to recover fees and costs shall be governed by federal law.

(ii) Enforcement Discretion. Enforcement of the terms of this Agreement against Landowner shall be at the respective discretion of Easement Holder and each of the Third-Party Beneficiaries, and any forbearance by any such party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by Easement Holder or any Third-Party Beneficiary in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

(iii) Acts Beyond Landowner's Control. Nothing contained in this Agreement shall be construed to, or shall entitle, Easement Holder or any Third-Party Beneficiary to bring any action against Landowner for any injury to or change in the Easement Area resulting from (1) any natural cause beyond Landowner's reasonable control, including, but not limited to, climate change, fire not caused by Landowner, flood, storm, and earth movement, or any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes; (2) acts by Easement Holder or any Third-Party Beneficiary or any of their employees, contractors or agents; or (3) acts by persons that entered the Easement Area unlawfully or by trespass whose activities degrade or harm the Conservation Values of the Easement Area or whose activities are otherwise inconsistent with this Conservation Easement where Landowner has undertaken all reasonable actions to prevent such activities.

(iv) Third Party Beneficiary Rights. The Parties intend for each of Implementing Entity, USFWS and CDFW (collectively, "**Third-Party Beneficiaries**") to be a third-party beneficiary of this Agreement. All rights and remedies conveyed to Easement Holder under this Agreement shall extend to and are enforceable by each of the Third-Party Beneficiaries in accordance with the terms hereof. Landowner and Easement Holder acknowledge that, as third party beneficiaries of this Conservation Easement, the Third-Party Beneficiaries shall have the same rights of access to the Easement Area granted to Easement Holder in Section 3 above, and with rights to enforce all of the provisions of this Agreement. If at any time in the future Landowner uses, allows the use, or threatens to use or allow use of, the Easement Area for any purpose that is inconsistent with or in violation of this Agreement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and each Third-Party Beneficiary has standing as an interested party in any proceeding affecting the Conservation Easement. These rights are in addition to, and do not limit, the rights of enforcement under the Habitat Plan Instruments. In addition, if CDFW reasonably determines that the Easement Area is not being held, monitored, or stewarded for conservation purposes in the manner specified in this Agreement, or the Habitat Plan Instruments, the Conservation Easement shall revert to the State of California or another entity as described in California Government Code Section 65967, subdivisions (b) and (c), and subject to approval by CDFW.

(b) If Landowner reasonably concludes that Easement Holder has unreasonably interfered with Landowner's allowed uses and quiet enjoyment of the Easement Area in violation

of this Agreement, Landowner may bring an action at law or in equity in a court of competent jurisdiction to recover any damages to which Landowner may be entitled for violation of the terms of this Agreement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, or for other equitable relief.

8. **Public Access.** Nothing contained in this Agreement gives or grants to the public an independent right to enter upon or use the Easement Area or any portion thereof. Nor shall this Agreement extinguish any public right to enter upon or use the Easement Area.

9. **Costs and Liabilities.** Except for those specific obligations to be undertaken by Easement Holder under Section 3 above, Landowner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to Landowner's ownership, operation, management, and maintenance activities on and relating to the Easement Area. Landowner agrees that neither the Easement Holder nor Third Party Beneficiaries shall have any duty or responsibility for the operation or maintenance of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Landowner, the public or any third parties from risks relating to conditions on the Easement Area. Each of Landowner and Easement Holder shall remain responsible for obtaining any applicable governmental permits and approvals for any of such Party's activity or use allowed on the Easement Area under this Agreement, and each of Landowner and Easement Holder shall undertake all allowed activities and uses of the Easement Area in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively "**taxes**"), including any taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Easement Holder with satisfactory evidence of payment upon request. Landowner and Easement Holder shall keep the Easement Area free from any liens, including those arising out of any obligations incurred by such Party for any labor or materials furnished or alleged to have been furnished to or for such Party at or for use on the Easement Area.

10. **Indemnification.**

(a) Indemnification by Landowner. Landowner shall hold harmless, protect and indemnify Easement Holder and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Landowner Indemnified Party**" and, collectively, the "**Landowner Indemnified Parties**") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' and experts' fees and costs), causes of action, claims, demands, orders, liens or judgments (each a "**Claim**" and, collectively, "**Claims**"), arising from or in any way connected with: (i) the activities of Landowner on the Easement Area; (ii) the inaccuracy of any representation or warranty made by Landowner in this Agreement; (iii) the breach by Landowner of any provision of this Agreement; (iv) any injury to or the death of any person, or physical damage to any Easement Area resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, unless such injury or death or physical damage to any Easement Area relates to an activity on, or use of, the Easement Area by Easement Holder, including without limitation, those activities performed under the Habitat Plan, or negligent or willful misconduct of the Landowner Indemnified Party, or actions by persons that entered the Easement Area unlawfully or by trespass where Landowner has undertaken all reasonable actions to prevent the unlawful entry or trespass; or (v) any violation of, or failure to comply with, any state, federal or local law, regulation or

requirement, by Landowner, or by any entity, other than one of the Landowner Indemnified Parties, acting at the time upon permission from Landowner, in any way affecting, involving or relating to the Easement Area. If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice from Easement Holder and the Third-Party Beneficiaries, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

(b) Indemnification by Easement Holder. Easement Holder shall hold harmless, protect, and indemnify Landowner and the Third-Party Beneficiaries, and their respective members, directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each, an "**Easement Holder Indemnified Party**," and collectively, the "**Easement Holder Indemnified Parties**") from and against any and all Claims arising from or in any way connected with: (i) the activities of Easement Holder on the Easement Area, including, without limitation, the Easement Holder's performance of management and monitoring activities under the Habitat Plan; (ii) breach by Easement Holder of any provision of this Agreement; (iii) any injury to or the death of any person, or physical damage to any Easement Area occurring on or about the Easement Area resulting from any act, omission, condition, or other matter related to, an activity on, or use of, the Easement Area by Easement Holder, including without limitation, those performed under the Habitat Plan, unless due solely to the negligence or willful misconduct of the Easement Holder Indemnified Party; and (iv) any violation of, or failure to comply with, any state, federal or local law, regulation or requirement, by Easement Holder in any way affecting, involving or relating to the Easement Area. If any action or proceeding is brought against any of the Easement Holder Indemnified Parties by reason of any such Claim, Easement Holder shall, at the election of and upon written notice from Landowner, defend such action or proceeding by counsel reasonably acceptable to the Easement Holder Indemnified Party.

11. **Extinguishment.** The Conservation Easement created by this Agreement constitutes a property right. It is the Parties' intention that the terms and conditions of this Agreement shall be carried out in perpetuity. Liberal construction is expressly required for purposes of effectuating the Conservation Easement in perpetuity, notwithstanding economic hardship or changed conditions of any kind. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. In addition, no such extinguishment shall affect the value of Easement Holder's interest in the Easement Area, and if the Easement Area, or any interest therein, is sold, exchanged or taken by power of eminent domain after such extinguishment, Easement Holder shall be entitled to receive the fair market value of the Conservation Easement at the time of such extinguishment. If such extinguishment occurs with respect to fewer than all acres of the Easement Area, the amounts described above shall be calculated based on the actual number of acres subject to extinguishment.

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

13. **Transfer of Conservation Easement.** This Agreement may be transferred by Easement Holder upon written approval of Landowner and the Third-Party Beneficiaries, which approval shall not be unreasonably withheld or delayed; provided, that Easement Holder shall give the Landowner and the Third-Party Beneficiaries at least sixty (60) calendar days prior written

notice of the proposed assignment or transfer. Easement Holder may transfer its rights under this Agreement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and California Government Code Section 65967(c) (and any successor or other provisions then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to Landowner and the Third-Party Beneficiaries. Easement Holder shall require the transferee to record the conveyance in the Official Records of the County where the Easement Area is located. The failure of Easement Holder to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforcement in any way. Any transfer under this section shall be subject to the requirements of Section 17 below.

14. **Transfer of Easement Area.** Landowner agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Landowner divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest and specifically has the right to retain the grazing rights as described in Exhibit D. Landowner further agrees to give written notice to Easement Holder and the Third-Party Beneficiaries of the intent to transfer any interest at least thirty (30) calendar days prior to the date of such transfer. Easement Holder and the Third-Party Beneficiaries 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 Agreement. The failure of Landowner to perform any act provided in this section shall not impair the validity of this Agreement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed, lease, or other document purporting to convey an interest in the Easement Area, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions, and conditions of this Agreement.

15. **Notices.** Any notice, demand, request, consent, approval, or communication that Landowner, Easement Holder, or any Third-Party Beneficiary desires or is required to give to the others 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 Landowner:
Faria Land Investors, LLC
4061 Port Chicago Hwy., Suite H
Concord, CA 94520
Attn: Manager

To Easement Holder:
_____
_____
_____
Attn: _____

To Implementing Entity:
_____
_____
_____
Attn: _____

To USFWS:	United States Fish and Wildlife Service _____ _____ Attn: _____
To CDFW:	California Department of Fish and Wildlife _____ _____ Attn: _____
With a copy to:	California Department of Fish and Wildlife Office of the General Counsel _____ _____ Attn: _____

or to such other address as a party shall designate by written notice to the others. 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) calendar days after deposit into the United States mail.

16. **Amendment.** This Agreement may not be amended, modified or otherwise changed in any manner, except by a written amendment executed by the parties hereto, or their successors in interest, it being understood that no easement holder or landowner will ever be obligated to negotiate or enter into any such amendment; and no discretionary approval that this Agreement may allow to be made from time to time by a party will operate to amend or modify any of the terms of this Agreement to any extent or in any manner. Any such amendment shall be subject to the prior written consent of the Third-Party Beneficiaries; any amendment made without such consent is void and without effect. Any such amendment shall be consistent with the purposes of the Conservation Easement and shall not affect the perpetual duration of the Conservation Easement. Any such amendment must refer to this Agreement by reference to its recordation data, and must be recorded in the Official Records of the County where the Easement Area is located.

17. **Merger.** The doctrine of merger shall not operate to extinguish the Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, a replacement conservation easement, with a new Easement Holder identified by the Implementing Entity and approved by the Third-Party Beneficiaries, containing the same protections embodied in this Agreement shall be recorded against the Easement Area.

18. **No Hazardous Materials Liability.** Landowner represents and warrants that, after reasonable review of Landowner's records as of the date of this Agreement, Landowner has no knowledge or notice of any Hazardous Materials (as defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area. Landowner further represents and warrants that Landowner shall comply with all Environmental Laws (as defined below) in using the Easement Area and that Landowner shall keep the Easement Area free of any material environmental defect, including, without limitation, contamination from Hazardous Materials (as defined below). Without limiting the obligations of Landowner under

this Agreement, Landowner hereby releases and agrees to indemnify, protect and hold harmless the Landowner Indemnified Parties (as defined in Section 10(a)) from and against any and all Claims (as defined in Section 10(a)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by Landowner Indemnified Parties, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any Easement Area; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (as defined below). If any action or proceeding is brought against any of the Landowner Indemnified Parties by reason of any such Claim, Landowner shall, at the election of and upon written notice, defend such action or proceeding by counsel reasonably acceptable to the Landowner Indemnified Party.

Despite any contrary provision of this Agreement, the parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to Easement Holder or the Third Party Beneficiaries any of the following:

(a) The obligations or liability of a "Landowner" or "operator," as those terms 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. Section 9601 *et seq.*; hereinafter, "**CERCLA**"); or

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

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

(d) The right to investigate and remediate any Hazardous Materials associated with the Easement Area; or

(e) Any control over Landowner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term "**Hazardous Materials**" includes, without limitation, (1) material that is flammable, explosive, or radioactive; (2) petroleum products, including by-products and fractions thereof; and (3) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "**RCRA**"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "**HTA**"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "**HCL**"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "**HAS**"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Agreement.

The term "**Environmental Laws**" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other 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.

19. **Representations and Warranties.** Landowner hereby makes the following representations and warranties for the benefit of Easement Holder and the Third-Party Beneficiaries:

(a) Authority. Landowner has good and sufficient title to the Easement Area (including all appurtenances thereto, including, without limitation, all minerals and mineral rights and all water and water rights, and Landowner has full right and authority to enter into this Agreement and convey the Conservation Easement to Easement Holder. There are no monetary liens and encumbrances recorded against the Easement Area except as expressly identified in ***Exhibit E***. All deeds of trust and mortgages recorded against the Easement Area, or any portion thereof, are and shall continue to be subordinated to this Conservation Easement; documentation of such subordinations are contained in ***Exhibit E***.

(b) Compliance with Laws. Landowner 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 Easement Area.

(c) No Litigation. There is no action, suit or proceeding which is pending or threatened against the Easement Area or any portion thereof relating to or arising out of the Landownership or use of the Easement Area, or any portion thereof, in any court or in any federal, state, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.

20. **General Provisions.**

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

(b) Liberal Construction. It is the intent of this Agreement to preserve the condition of the Easement Area and each of the Conservation Values protected herein, notwithstanding economic or other hardship or changes in circumstances or conditions. The provisions of this Agreement shall be liberally construed to effectuate the purposes of the Conservation Easement and to allow Landowner's use and enjoyment of the Easement Area to the extent consistent with such purposes. Liberal construction is expressly required for purposes of effectuating this Agreement in perpetuity, notwithstanding changed conditions of any kind. The Conservation Easement created by this Agreement is the intended best and most productive use of the Easement Area. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of any use and zoning restrictions of the State of California, the county in which the Easement Area is located, or any other governmental entity with jurisdiction, the more restrictive

provisions shall apply. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Agreement 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 Agreement, such action shall not affect the remainder of this Agreement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Agreement 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 this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Agreement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 16.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this Agreement 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 Easement Area.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in this Agreement, 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) Additional Easements. Landowner 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 Agreement), or grant or otherwise abandon or relinquish any water right or agreement relating to the Property, without first obtaining the written consent of Easement Holder and the Third-Party Beneficiaries. Easement Holder and the Third-Party Beneficiaries 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. This Section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Agreement and complies with Section 14.

(j) Recording. Easement Holder shall record this Agreement in the Official Records of the county where the Easement Area is located, and may re-record it at any time as Easement Holder deems necessary to preserve its rights hereunder.

(k) Counterparts. The parties may execute this Agreement in two (2) 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, Landowner and Easement Holder have executed this Agreement the day and year first above written.

LANDOWNER:	**EASEMENT HOLDER:**
FARIA LAND INVESTORS, LLC, a California limited liability company	_____, a _____
By:_____	By:_____
Name:_____	Name:_____
Its:_____	Its:_____

EXHIBITS:

Exhibit A – Legal Description of the Easement Area
Exhibit B – Map of the Easement Area
Exhibit C – Initial Conservation Values
Exhibit D – Allowed Uses
Exhibit E – Title Encumbrances

EXHIBIT A

LEGAL DESCRIPTION OF THE EASEMENT AREA

[To be attached.]

EXHIBIT B

MAP OF THE EASEMENT AREA

[To be attached.]

EXHIBIT C

INITIAL CONSERVATION VALUES

[In accordance with Habitat Plan Section ___, this Exhibit C will set forth those land- cover types and covered species habitat described in Habitat Plan Chapter __ that are present on the Easement Area. Section ___ also requires the Conservation Easement to either include or incorporate by reference the initial pre-acquisition assessment of covered species and natural communities present, so Exhibit C should also be prepared in a way that satisfies this requirement. by either listing covered species and natural communities consistent with those in the pre-acquisition assessment or by including an explicit cross-reference and incorporation by reference to the pre-acquisition assessment. If a complete biological inventory is available, it will be incorporated by reference in this Exhibit C.]

EXHIBIT D

ALLOWED USES

1. Landowner shall have the right, but not the obligation, to use the Easement Area for the purpose of livestock grazing and for operations normally associated with such grazing such as moving, relocation and repairing fencing, existing roads and other appurtenances, such as water troughs and feed disbursement associated with normal grazing operations. Landowner shall observe and comply with approved practices of good husbandry and farming to maintain soil conservation and erosion control and will not maintain an excessive quantity of livestock which may result in overgrazing the natural vegetation of the Easement Area.

2. The grazing right set forth in Section 1 above shall be forfeited by Landowner if it fails to graze the Easement Area for three (3) consecutive years (not counting any year of a statewide drought or a regional drought, as declared by the Governor of California or the applicable regional agency). Easement Holder shall have the right to graze in any year in which Landowner does not.

3. Landowner may maintain such surface water resources on the Easement Area as are noted in the Report as currently existing on the Easement Area provided that said maintenance is consistent with the terms and conditions of this Conservation Easement and the Habitat Plan. Landowner may only develop new or enhance existing surface water resources with the prior written approval of Easement Holder and Wildlife Agencies which approval shall not be unreasonably withheld, conditioned, or unreasonably delayed, and then only if said development is necessary for allowed grazing operations or to enhance, restore, create, preserve, or protect the Conservation Values of this Conservation Easement, and the development does not impair the Conservation Values of this Conservation Easement and that such development is consistent with State Water Law.

4. Landowner shall have the right to maintain, repair, reasonably enlarge, and reasonably replace the improvements not identified in the paragraphs above that exist on the Easement Area and which are acknowledged in this Conservation Easement, in the same or different locations, provided that Landowner shall first obtain Easement Holder's and Wildlife Agencies prior written approval for any enlargement or relocation. Said approval shall not be unreasonably withheld, conditioned, or delayed but in no event shall that approval be granted if said enlargement or relocation would impair or diminish the Conservation Values of the Easement Area. Notwithstanding the foregoing, existing fences and roads may be repaired and replaced for purposes of reasonable and customary management of livestock and wildlife, without further permission of Easement Holder or Wildlife Agencies; provided, all repair, and replacements shall be, designed and installed to protect, and not impair, the Conservation Values of the Easement Area, including, but not limited to, wildlife corridors.

5. Landowner shall have the right to build, maintain, and repair an unpaved public trail in compliance with applicable HCP/NCCP requirements, including Conservation Measure 1.5 (HCP/NCCP, pp. 5-64 to 5-69.)

6. Landowner shall have the right to perform geotechnical and flood repairs, including slope stabilization, weed abatement, ditches, and slide repair where necessary to address flood related and/or geological hazards as required to be performed by a Geological Hazard Abatement District that may occur within the Easement Area, or on adjacent properties.

FARIA PRESERVE AREA

SEPTEMBER 23, 2020

GENERAL NOTES:

1. OWNERS: FARIA LAND INVESTORS INC.
4061 PORT CHICAGO HIGHWAY, SUITE H
CONCORD, CA. 94524-4113
(925) 682-6419

2. CIVIL ENGINEER: ISAKSON & ASSOCIATES
2255 YGNACIO VALLEY ROAD SUITE C
WALNUT CREEK, CA 94598
(925) 937-9333

3. TOTAL AREA: 606.3 AC

4. ASSESSORS PARCELS: 097-180-002 & -006
097-190-002
097-200-002 & -003
097-230-004
097-240-002
097-230-008

DEVELOPMENT AREA =341.04± AC

INITIAL PRESERVE AREA =145.76± AC

SUBSEQUENT PRESERVE AREA =119.55± AC

FINAL PRESERVE AREA =265.31± AC

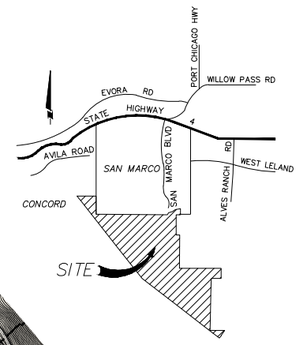
SUBSEQUENT PRESERVE CORE AREA

Core Area is shown as yellow polygon

1" = 400'

400 0 200 400 800

(IN FEET)
1 INCH = 400 FT.



VICINITY MAP
NOT TO SCALE

FARIA PRESERVE AREA

AUGUST 27, 2020

GENERAL NOTES:

1. OWNERS: FARIA LAND INVESTORS INC.
4061 PORT CHICAGO HIGHWAY, SUITE H
CONCORD, CA. 94524-4113
(925) 682-6419

2. CIVIL ENGINEER: ISAKSON & ASSOCIATES
2255 YGNACIO VALLEY ROAD SUITE C
WALNUT CREEK, CA 94598
(925) 937-9333

3. TOTAL AREA: 606.3 AC

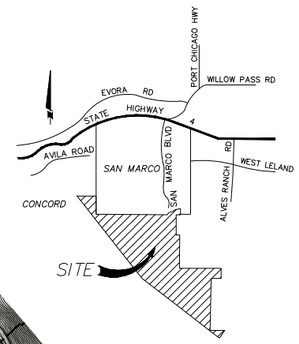
4. ASSESSORS PARCELS: 097-180-002 & -006
097-190-002
097-200-002 & -003
097-230-004
097-240-002
097-230-008

PRESERVE AREA =265.31± AC

1" = 400'

400 0 200 400 800

(IN FEET)
1 INCH = 400 FT.



VICINITY MAP
NOT TO SCALE

BASELINE DOCUMENTATION REPORT

FARIA CONSERVATION EASEMENT
(APN#S 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-240-002, AND 097-230-008)
CONTRA COSTA COUNTY, CALIFORNIA

OCTOBER 31, 2018

Prepared for

East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553

Prepared by

Heath Bartosh

NOMAD ECOLOGY
(925) 228-1027
832 ESCOBAR STREET
MARTINEZ, CA 94553

TABLE OF CONTENTS

Section 1. Introduction 1
1.1. Purpose of the Conservation Easement / Property Acquisition 1
1.2. Purpose of the Baseline Documentation Report 1
Section 2. Documentation Methods 3
2.1. Data Resources 3
2.2. Personnel and Field Investigation 3
2.3. Resource Documentation and Mapping 3
2.4. Limitations 4
Section 3. Property Description 6
3.1. Regional Setting 6
3.2. Local Setting 6
3.3. Hydrology Characteristics 7
3.4. Land Use 11
3.5. Anthropogenic Features 13
3.6. Land Cover and Environmental Conditions 18
3.1. Invasive Species and Noxious Weeds 23
Section 4. References 26

LIST OF TABLES

Table 1. APNs of the Faria Conservation Easement 1
Table 2. Lengths of Creeks and Tributaries 8
Table 3. HCP Land Cover Types in the FCE 19
Table 4. Vegetation Community Classifications Systems Comparisons 21
Table 5. Invasive Weeds Observed in the Study area 24

LIST OF FIGURES

Figure 1. Location of the Faria Conservation Easement 2
Figure 2. Regional Map 29
Figure 3. Aerial Photograph 30
Figure 4. Hydrologic Features 31
Figure 5. Anthropogenic Features 32
Figure 6. Land Cover Types 33
Figure 7. Photo Point Locations 34

LIST OF APPENDICES

APPENDIX A Figures 28
APPENDIX B Property Conservation Easement 35
APPENDIX C Photographs 37

Section 1. INTRODUCTION

As requested by East Contra Costa County Habitat Conservancy (Conservancy), Nomad Ecology LLC (Nomad) prepared this Baseline Documentation Report (BDR) for the Faria Conservation Easement (FCE). The FCE is located within rural unincorporated Contra Costa County, California (Figures 1, 2, and 3 in Appendix A). The FCE includes portions of six parcels totaling 267.60 acres, located in the Pittsburg Hills, at the northern terminus of the Diablo Range. These parcels are located near the western boundary of the East Contra Costa County Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP or Plan) Inventory Area (Jones and Stokes, 2006) and the eastern boundary of the inland portion of the Concord Naval Weapons Station. Accessors Parcel Numbers (APNs) for the parcel portions included in this document are depicted in Table 1.

Table 1. APNs of the Faria Conservation Easement

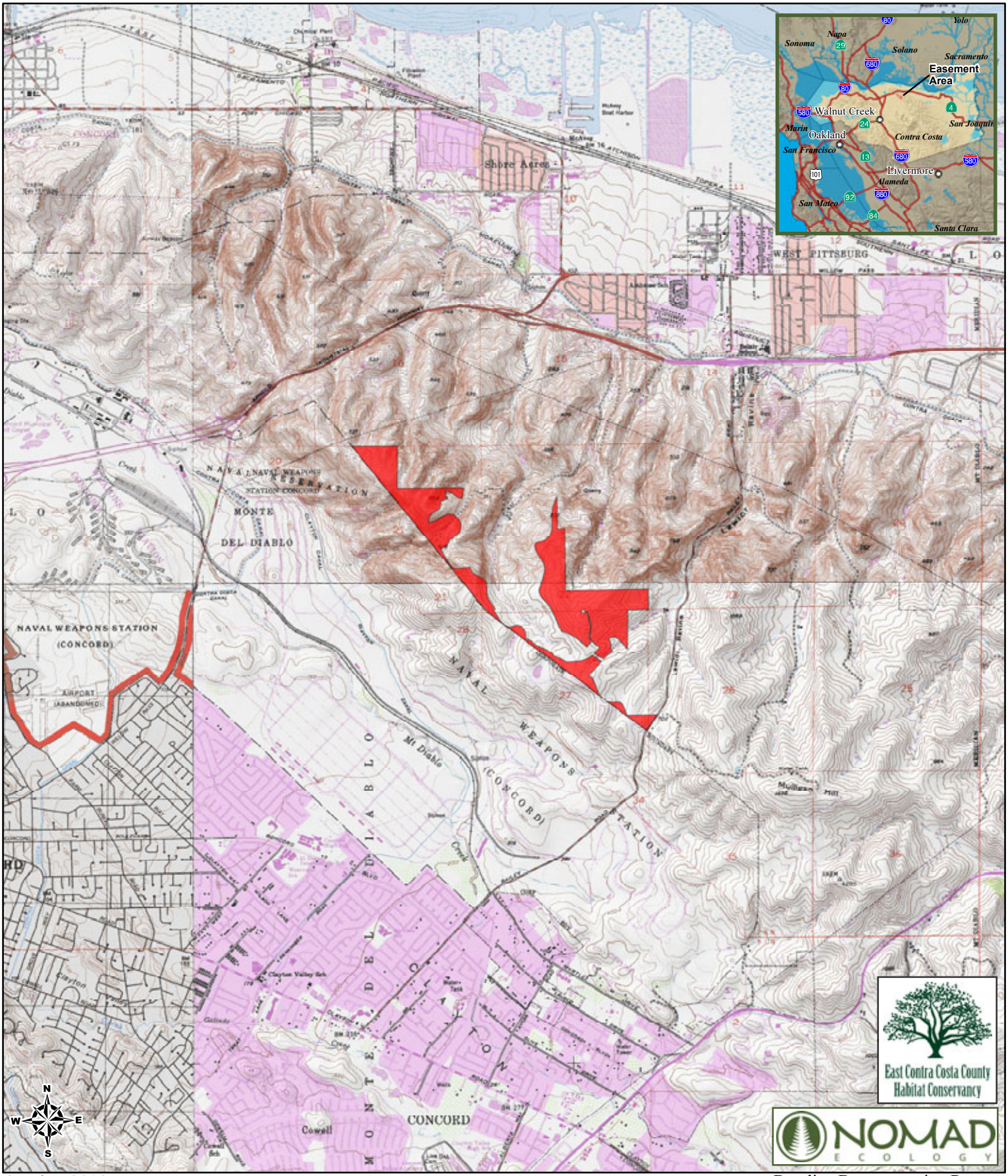
APN	ACRES
097-180-006	3.22
097-190-002	72.83
097-200-002	22.37
097-200-003	47.32
097-240-002	13.50
097-230-008	108.36
Total	**267.60**

1.1. PURPOSE OF THE CONSERVATION EASEMENT / PROPERTY ACQUISITION

The purpose of the conservation easement is to ensure that existing and future natural values and associated wildlife and habitat values of the easement area will be forever protected by preventing any use of the easement area that would impair or interfere with the conservation values. The conservation easement will confine the use of the easement area to such activities that are consistent with this purpose, including, without limitation, those involving the preservation, restoration, and enhancement of the easement area's wildlife species and their habitats.

1.2. PURPOSE OF THE BASELINE DOCUMENTATION REPORT

The purpose of the BDR is to establish and document the condition of the property to provide a baseline against which to determine whether such condition has changed significantly and, if such condition has changed significantly, to determine the nature and extent of the change, including whether the change is the result of natural phenomena, such as fire, drought, landslide or climate change.



Legend
Faria Conservation Easement

1:48,000
0 0.25 0.5
Miles

Figure 1
Faria Conservation Easement
Settlement Agreement
East Contra Costa County Habitat Conservancy

Sources: USGS, Contra Costa County. Projection: NAD 83 UTM 10 North.

Section 2. DOCUMENTATION METHODS

2.1. DATA RESOURCES

Botanical taxonomy and nomenclature conforms to *The Jepson Manual* (Baldwin et al. 2012) with the exception of recent circumscriptions posted on the Jepson eFlora (Jepson Flora Project 2018) website. Common names of plant species are derived from *The Calflora Database* (Calflora 2018).

2.2. PERSONNEL AND FIELD INVESTIGATION

Nomad senior botanist Heath Bartosh visited the FCE on August 16, 2018 to conduct a reconnaissance-level survey of the FCE. Per the Conservancy's instructions, the primary focus of the survey was to document man-made features and infrastructure as well as scenic features. Mr. Bartosh inspected and photographed all agricultural or grazing infrastructure on the FCE. This included all known structures and water sources (e.g., windmills, tanks, troughs, springs, and ponds). All previously known structures and water sources were accessed via a 4x4 truck, except for some features that were accessed on foot. While completing that task, Mr. Bartosh made efforts to document the environmental conditions present on the FCE. Those efforts included documenting baseline environmental conditions, land cover types, and large infestations of invasive species or noxious weeds.

Protocol-level surveys for special-status plants and animals were not conducted as part of this assessment.

2.3. RESOURCE DOCUMENTATION AND MAPPING

Field data including the locations of photo points, invasive species, and man-made features were collected using a handheld Global Positioning System (GPS) device. A data point was collected for each aforementioned feature. These data points were then transferred to a desktop computer Geographic Information System (GIS) platform operating ESRI ArcGIS for creating polygons, where necessary, and populating attribute tables.

2.3.1 PHOTOPOINTS

Photographs were taken during the course of the survey to document observations or locations where data was collected. GPS data points were recorded for all photo points and converted into GIS shapefiles. All photo points recorded are depicted in Figure 7 of Appendix A and these photos are shown in Appendix C.

2.3.2 VEGETATION COMMUNITY DATA

Vegetation communities in this report are described using HCP/NCCP Land Cover Types (Jones and Stokes 2006). Representative photographs were taken for each Land Cover Type observed within the FCE.

2.3.3 INVASIVE SPECIES

Significant observations of invasive plant and/or animal species encountered within the FCE were recorded as GPS data points. Invasive species were evaluated to determine their status within the FCE, and their potential effect on native species, special-status species and other natural resources.

2.3.4 ANTHROPOGENIC FEATURES

Spatial and description data were collected for all man-made features within the FCE including access roads, power lines, ponds, gates, and livestock structures, among others. All features recorded are depicted in Figure 5 of Appendix A.

2.4. LIMITATIONS

Nomad was directed by Conservancy staff to focus documentation efforts on man-made features. Therefore, survey coverage was generally limited to areas where these types of features were located. Due to these constraints, information on biological resources should be considered preliminary and incomplete.

Based on the timing of the assessment, and the sampling intensity, it was not possible, nor in the scope of this report, to rule out the presence of any potentially occurring special-status plant or wildlife species. However, inferences on presence or absence were possible for specific special-status plant species with blooming periods corresponding to the August 2018 site visit. Negative findings during site assessments or focused surveys may not indicate absence unless field surveys conform to agency approved protocols. Moreover, for many species it is virtually impossible to prove absence even if surveys conform to approved protocols.

Plants

Because only one site visit was conducted in August, all plant species growing within the study area may not have been observed due to varying flowering phenologies and life forms, such as bulbs, biennials, and annuals. Other potentially dominant species within vegetation communities on site may be present during other times of the year. Therefore, the present study is not floristic in nature. A floristic study not only requires every plant observed to be identified to a level necessary to determine their regulatory status, it also necessitates a sufficient number of site visits spaced throughout the growing season within the blooming periods of all plant species, including common taxa, to ensure a complete inventory is obtained (CNPS 2001, CDFW 2018, USFWS 2000). Some of the plant species identified in this report are tentative due to the absence of morphological characters, resulting from immature reproductive structures or seasonal desiccation, which is required to make species-level determinations. In these cases, *cf* (compares to) is used to indicate provisional species identification based on gestalt, vegetative morphology and/or a species' known range.

Species dominance, particularly with regard to annuals, may change depending on the sampling season. In addition, certain plant species, especially annuals, may be absent in some years due to annual variations in temperature and rainfall, which influence germination and plant phenology. Finally, colonization of new populations within an area may occur from year to year. Our descriptions of the vegetation communities and species occurring on the FCE are based on the sampling we conducted during the late summer of 2018. Those descriptions may be subject to change in the event multiple seasons or years of data are collected. In certain cases, the term "provisional" is used when sufficient data exists to propose a vegetation type, but enough research and regional information has not been gathered to confirm the Land Cover Type (Jones and Stokes 2006). The phrase "in part" is used to signify that vegetation descriptions may include additional annual species if surveys are conducted during other seasons.

Animals

We did not survey for animals. Any species noted in the course of conducting the reconnaissance for this report were recorded. Several factors constrained our ability to identify wildlife species that occur on the FCE. First, late summer is generally a poor time of year to detect bird species in North America. Most

species have completed reproductive activities, are less active, and vocalize infrequently (if at all). This makes their detection considerably more difficult. It is extremely difficult to detect secretive species outside of the breeding season because detection is dependent on vocalizations that may cease once reproductive activities have been completed.

Second, songbirds are most easily detected in the early morning or late evening, rather than during other times of the day (Grue et al. 1981, Skirvin 1981). Due to the scope of work, we could not survey all habitat types during the optimal time for bird detection.

Third, many of the surveys were limited to what could be detected from the vehicle while driving between man-made features. This limited Nomad's ability to detect soaring birds, small birds, and small mammals.

Finally, the site visits were conducted on the cusp of the breeding season and fall migration. This limited Nomad's ability to make inferences on the breeding status of many of the species detected during the surveys and also precluded the detection of species that may occur on the FCE only during migration or the winter.

Section 3. PROPERTY DESCRIPTION

3.1. REGIONAL SETTING

The 267.60-acre Faria Conservation Easement includes portions of Sections 21, 22, 26, and 27 of Township 2 North and Range 1 West within the Mount Diablo Baseline and Meridian. It is situated near the boundary of the San Francisco Bay Area and San Joaquin Valley subregions of the California Floristic Province. It includes portions of Mount Diablo and Willow Creek watersheds (CCWF 2003) and it appears on the Clayton and Honker Bay 7.5-minute USGS topographic quadrangles.

As described in the *Ecological Subregions of California* (USDA 1997), the FCE is located within the Suisun Hills and Valleys subsection of the Central California Coast Section. The *Ecological Subregions of California* form the basis for describing regional variation in California alliance descriptions in *A Manual of California Vegetation* (Sawyer et al. 2009).

3.1.1 SUISUN HILLS AND VALLEYS

The Suisun Hills and Valleys are characterized by low hills north and south of the Carquinez Strait, and include valleys between the hills, and plains at the west end of the Sacramento-San Joaquin River Delta. The climate is hot and sub-humid and is very windy on the hills adjacent to and north of the Strait (USDA 1997).

This is a subsection of steep to moderately steep northwesterly aligned hills, valleys between the hills, and the edge of a plain that is the floor of the Great Valley. Elevations range from sea-level to 1,428 feet in the Briones Hills. Mass wasting and fluvial erosion are the main geomorphic processes. The Suisun Hills and Valleys are mainly comprised of Cretaceous, Eocene, and Miocene marine sedimentary rocks and late Quaternary alluvium, and minor amounts of Pliocene nonmarine sediments and volcanic rocks (USDA 1997). Most of the soils are leached free of carbonates, but calcium carbonates have accumulated in some soils on alluvial plains and more soluble salts accumulated in somewhat poorly drained soil (USDA 1997).

For this region the mean annual precipitation ranges from 15 to 20 inches and nearly all of the precipitation is rainfall. The mean annual temperature is generally between 56° to 60°F and the mean freeze-free period is from 250 to 275 days. Hydrologically, runoff is rapid from the hills, but slow from the alluvial plains. All but the larger streams are dry throughout the summer (USDA 1997).

3.2. LOCAL SETTING

The FCE is located in the north-central portion of Contra Costa County just south of the City of Pittsburg, California (Figure 1). The central point of the FCE is approximately 5 air-miles southwest of downtown Pittsburg and 8.75 air-miles northwest of the summit of Mount Diablo (Appendix A, Figure 2). The main entrance to the FCE is from the north at the end of Rosa Blanca Drive via San Marco Boulevard from State Highway 4. The FCE shares its western boundary with the Concord Naval Weapons Station, is just beyond the City of Pittsburg, which lies to the north, and abuts Bailey Road (Lawlor Ravine) to the southeast. State Highway 4 is only 0.5-mile to the north.

The FCE consists of portions of six contiguous parcels that have been left as remainders from an adjacent development proposal, which has given the FCE an unusual shape. From north to south the FCE is approximately 2.5 miles long and from east to west 1.75 miles wide. The FCE includes three discontinuous portions of these six parcels. The first aggregate of parcels runs along the eastern boundary

of Concord Naval Weapons Station. The second group of parcels is located to the north and is on the edge of the City of Pittsburg. The third discontinuous area is at the southern end and is along edge of the right-of-way of Bailey Road (Appendix A, Figure 3).

The FCE is characterized by undeveloped ridgetops trending northeast to southwest that surround a valley bottom, which is outside of the easement and runs through the FCE's center. Many dirt access roads have been bladed throughout the easement and appeared to be maintained annually. The diversity of vegetation types is low as the majority of FCE is dominated by grasslands. No large or perennial hydrologic features are present. No fires greater than 10 acres have been recorded on the property since 1878 (beginning of record keeping), based on Cal Fire (2016) fire perimeter data. No evidence of a recent fire was observed within the FCE during the 2018 site visit.

Additionally, in the northern half of the FCE, there is a previously established deed restricted area that includes two overlapping areas (totaling 17.49 acres) which have been protected as mitigation for wetland and wildlife habitat conservation values (Appendix A, Figure 3).

3.2.1 Topography and Prominent Geographic Features

The topography of the FCE is characterized primarily by several short to long ridgetops of the Pittsburg Hills, which make up the divide between Pittsburg and Concord. Along the western boundary of the FCE there are two low passes along the ridgeline; one at the location of the deed restricted area and the other just north of a covered corral in the south, immediately east of an off site stock pond. The high point of the FCE is approximately 1,015 feet (309 meters) in elevation and is near the location of a proposed water tank in the southeastern portion of the easement. The lowest point of the easement is approximately 685 feet (208 meters) in elevation and is where the easement meets Bailey Road. The two low passes are 590 feet (180 meters) at the northern pass and 740 feet (225 meters) at the southern pass. Topography of the FCE ranges from essentially level ground on ridgetops, to swales and low passes, to moderate and steep slopes flanking the ridgelines. All aspects are represented.

3.2.2 Climate

Locally the climate of the study area is characterized as Mediterranean with cool, wet winters and warm to hot, dry summers. It is presumed that the FCE is near the edge of the coastal fog incursion zone and therefore occasionally receives moisture other than direct precipitation. Tule fog generated from the Central Valley can also influence the climate and sun exposure of the FCE from the fall to spring. On site, annual precipitation ranges from 19 to 21 inches annually (PRISM 2018).

3.2.3 Geology and Soils

The underlying geology mainly comprises sedimentary rock types such as sandstone, shale, and alluvial deposits. Specific rock types within the study area include Pleistocene and Holocene landslide deposits and thinly bedded to massive sandstone with minor siltstone and mudstone (Graymer et al. 2000).

A single soil type is mapped as occurring within the FCE: Altamont-Fontana Complex. This soil complex comprises clay soils and in the FCE it is found on 30 to 50 percent and 50 to 75 percent slopes. (USDA 1977). This soil type is categorized only for grazing and is not considered prime, unique, or a soil of statewide interest (FMMP 2016).

3.3. Hydrology Characteristics

Hydrology onsite is influenced by precipitation, surface water runoff, geologic stratigraphy, topography, soil permeability, and plant cover. Hydrologic features discussed in this section are defined as either intermittent or perennial features. Ephemeral drainages are not included in the discussion below. No large

or perennial hydrologic features are present within the FCE, only smaller tributaries to intermittent creeks and two ponds were observed. These tributaries contribute to the Mount Diablo Creek and Willow Creek watersheds which eventually flow into Suisun Bay. Two constructed ponds associated with the land in the deed restricted area are also present. The lengths of creeks and their tributaries occurring on the FCE are included in Table 2. All hydrologic features are shown on Figure 4 in Appendix A.

Table 2. Lengths of Creeks and Tributaries

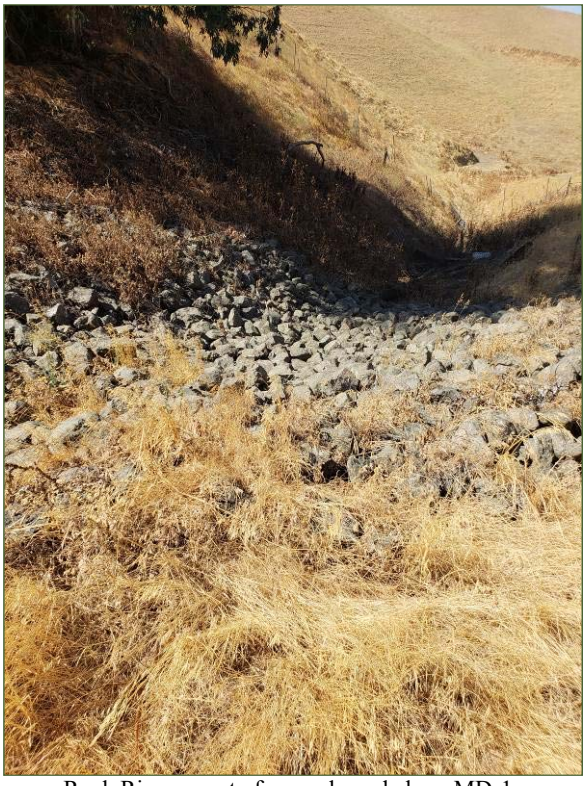
Creeks and Tributaries	Watershed	Linear Feet	Miles
Lawlor Creek Tributaries	Willow	761	0.14
Mount Diablo Creek Tributaries	Mount Diablo	1,649	0.31
Total		**2,410**	**0.45**

3.3.1 Mount Diablo Creek Watershed

The Mount Diablo Creek watershed includes any drainages or water sources that flow into Ignacio Valley to the west of the FCE. A single unnamed tributary (MD-1) was recorded within this watershed which drains the two ponds in the deed restricted area. This drainage is an intermittent creek that flows through two areas of rock riprap before flowing off site. It was dry at the time of the site visit. Between the two ponds MD-1 has an undefined channel and flows though low swales; however, after flowing out of the western pond it starts down a steep incline where it develops a defined 1 to 2-foot wide channel before flowing off site. MD-1 is not identified as a “blue line” stream on the USGS topographic quadrangle.

Rock Riprap between the two ponds in the deed restricted area along MD-1.

MD-1 as a low swale between the two ponds.



Rock Riprap west of second pond along MD-1.

3.3.2 WILLOW CREEK WATERSHED

The Willow Creek watershed includes any drainages or water sources that flow northeast into the Willow Creek watershed. There are multiple named drainages in this watershed but the drainages on the FCE flow into a stream system referred to as Lawlor Ravine. Two unnamed tributaries (W-1 and W-2) of Lawlor Ravine were identified on the FCE. Both of these drainages are characterized as intermittent creeks that drain the surrounding hillsides and flow off site. They were dry at the time of the site visit.

These drainages have defined 1 to 2-foot wide channels. W-2 is located along the edge of a dirt access road for nearly its entire length within the easement. Neither of these drainages appear as “blue line” streams on the USGS topographic map. There is one drainage shown as a “blue line” stream on the USGS topographic map; however, this drainage was not located where it was mapped, likely due to the fact that a dirt access road was bladed over it.

W-2 near the start of its defined channel flowing northeast, Lawlor Ravine in background.

3.3.3 PONDS

As mentioned above, two ponds are located in the deed restricted area of the FCE. These ponds appear to be created, likely as mitigation for off site impacts associated with another project. The eastern pond (P-1) is approximately 0.41 acre while the western pond (P-2) is approximately 0.22 acre. At the time of the August site visit these ponds were dry. P-1 did support vegetation typical of prolonged inundation and could hold water for a significant amount of time during the year. However, there was very little vegetative evidence at P-2 to indicate periods of prolonged inundation or perennial water during previous years. These two ponds are hydrologically connected by MD-1.

P-2 with evidence of previously saturated soils.

3.3.4 SPRINGS

No springs were observed within the easement boundaries.

3.4. LAND USE

Land use on site is primarily agricultural used for livestock (cattle) grazing. No information was available on historical land use of the FCE. The surrounding land is either future park land, grazing land or residential subdivisions. To the immediate west, the portion of Concord Naval Weapons Station that shares a boundary with the FCE will become an East Bay Regional Park District open space in the future.

3.4.1 GRAZING

As far as is known, the historical and current use of the FCE is livestock grazing. The site, with its open and rolling grasslands and some water system development, can support either a year-round or seasonal cattle operation. The average seasonal carrying capacity of the FCE is approximately 150 to 200 head of cattle. The type of operation, e.g. cow-calf or stocker, is not documented based on information provided by Discovery Builders.

3.4.2 SCENIC FEATURES

The rolling grassy foothills and higher ridges and peaks of the FCE are easily visible from Mount Diablo State Park, the Ignacio Valley (Concord, Clayton, and Walnut Creek), the future site of the East Bay Regional Park District open space at Concord Naval Weapons Station, and residential subdivisions of Pittsburg from the north. The visibility of the FCE and its value in protecting a ridgeline buffer between Concord Naval Weapons Station and residential subdivisions is also significant.

The FCE is visible from Mount Diablo.

The western ridges of the FCE visible from Walnut Creek.

The western ridges of the FCE visible from North concord and Concord Naval Weapons Station.

The northern slopes and ridges of the FCE visible from Pittsburg residential subdivisions.

3.4.3 Recreational Use

No public recreational use of the FCE is known to occur historically or currently.

3.5. Anthropogenic Features

While a majority of the FCE has been left undeveloped there are several anthropogenic features present, mainly associated with access and cattle ranching. Man-made features include fences, roads, ranch structures, water infrastructure, and debris piles. All anthropogenic features are depicted in Figure 5 (Appendix A).

3.5.1 FENCES

Within the FCE, fences serve as either boundary fences or pasture boundaries. Along the western boundary, a six-foot-high chain link fence topped with barbed wire is present. This high security fence separates Concord Naval Weapons Station and the FCE. The other fence lines are typical 4 or 5-strand barbed wire fence and, depending on the age, are supported by wood posts or metal t-posts. These barbed wire fences separate the FCE from adjacent properties or divide grazing pastures. Based on fence line mapping during the site visit, a total of 6.33 miles of fencing exists on the FCE, 2.46 miles is chain-link and 3.87 miles is 4 or 5 strand barbed wire. Each boundary ingress or pasture is entered either through one or moregates. Gates are either green Powder River brand steel, custom steel, or Portuguese style. A total of 17 gates were recorded on the easement (Figure 5, Appendix A).

Chain link fence on the FCE and Concord Naval Weapons Station Boundary.

Metal t-post supported barbed wire fence.

Powder River gate.

Portuguese style gate.

3.5.2 ROADS

Access infrastructure within the FCE comprises dirt roads that are approximately 12-feet wide. These roads are created by grading (blading) the road surface, receive infrequent use, and may require a four-wheel drive vehicle, especially during wet weather. However, these roads do appear to be maintained by annual blading. Developed and designated trails are not known to occur within the easement. The total road length within the FCE is estimated to be 8.79 miles (Figure 5, Appendix A).

3.5.3 POWER OR GAS LINES

No power or gas line rights-of-way or infrastructure are known to be present on the FCE currently.

3.5.4 STRUCTURES AND WATER INFRASTRUCTURE

Structures and water infrastructure within the FCE include a variety of improvements. Structures are represented by corrals and other man-made items associated with cattle grazing. Water infrastructure associated with cattle grazing operations include tanks, windmills, and troughs.

Structures

A single structure is present on the FCE, which is either a covered corral or hay storage structure. It is located in the southern portion of the easement near one of the low passes. This structure is constructed of wood and has a Powder River Gate at the opening on the east side.

Covered Corral or hay storage structure.

Water Infrastructure

Within the FCE water infrastructure is present as troughs, windmills, and tanks. Overall there are four troughs, two windmills, and three water tanks (Appendix C).

Within the FCE there was only one type of trough observed, rectangular concrete troughs of various sizes. All of these troughs were located near the deed restricted area. These troughs were in good repair having been recently repaired or upgraded.

Rectangular concrete trough.

There were three windmills encountered on the FCE. Two were in good working order and the other appeared historic and required maintenance. The two windmills were also located near the deed restricted area. Windmills are historically associated with a storage tank and water trough.

Functioning windmill

There were three water tanks recorded in the easement area, all near the deed restricted area. Of these, two were in working order and the third appeared historical and was associated with the historic windmill. The two operating tanks were either made of steel or plastic, while the historic tank was made of steel.

The two operating water tanks.

3.5.5 DEBRIS PILES

During the site visit any debris or trash piles that have been deposited on the FCE were recorded. Only one debris pile was observed during the site visit. It was deposited within the channel of drainage MD-1, located near the deed restricted area. This debris pile was comprised of old fencing material.

Old fencing material debris pile near the deed restricted area.

3.6. LAND COVER AND ENVIRONMENTAL CONDITIONS

This subsection describes vegetation communities following the Land Cover Types described in the HCP/NCCP (Jones & Stokes 2006). HCP/NCCP Land Cover Types observed within the FCE include Ruderal Grassland, Annual Grassland, Permanent Wetland, and Stream (Table 3). The location of Land Cover Types in the FCE is shown in Figure 6 (Appendix A).

Table 3. HCP Land Cover Types in the FCE

LAND COVER	ACREAGE
Ruderal Grassland	13.08
Annual Grassland	253.77
Permanent Wetland	0.12
Pond	0.51
Stream	2,410 linear feet*
Total:	**267.48 acres**

*As specified in the HCP/NCCP, streams are mapped as linear features.

Land cover types are further cross referenced using three commonly used vegetation classification systems including *California Vegetation* (Holland and Keil 1995), *Preliminary Descriptions of the Terrestrial Natural Communities of California* (Holland 1986), and *Manual of California Vegetation, Second edition* (Sawyer et al. 2009)[1]. In addition, habitat types from the *CNPS Inventory of Rare and Endangered Plants of California* (CNPS 2018) are included to reference habitat types listed in the CNPS Inventory to HCP/NCCP Land Cover Types found on site.

Holland (1986) provides a generalized community-level description for natural vegetation communities present within the project area. Vegetation that interfaces with urban or developed landscapes, *i.e.* Ruderal, is treated using Holland and Keil (1995). Beneath the natural community-level more detail is accomplished using *Manual of California Vegetation, Second edition* which identifies vegetation communities as alliances[2]. Non-vegetated types, such as stream (open water), are not treated in these vegetation classification systems.

Table 4 relates HCP/NCCP Land Cover Types to the commonly used vegetation classification systems described above. The codes used in Table 4 reflect those associated with Holland (1986) types and the *California Natural Communities List* (CDFW 2018).

3.6.1 GRASSLANDS

A total of two Land Cover Types found on site are grasslands as described in the HCP/NCCP: Ruderal and Annual Grassland. Characteristic taxa of each of these Land Cover Types are described below.

Ruderal

As described in the HCP/NCCP, ruderal vegetation is characterized by sparse nonnative, typically weedy vegetation, occupying vacant parcels surrounded by developed areas. Based on the description by Holland and Keil (1995) ruderal vegetation is an assemblage of plants, often a mixture of both native and non-native weed species that thrive in waste areas, heavily grazed pastures, cultivated and fallow fields, roadsides, parking lots, footpaths, around residences and similar disturbed sites in towns and cities and along rural roadways. Ruderal communities are difficult to characterize and are often temporary assemblages. In areas of frequent human disturbance the majority of wild plants are often introduced weeds rather than natives. Some urban weeds are ornamentals that have escaped from cultivation. Ruderal species may at times be integrated into various other communities (Holland and Keil 1995).

[1] This is due to the fact that the HCP Land Cover Types, in many cases, do not refer to standard vegetation community treatments and is therefore an effort to relate HCP Land Cover Types to these commonly used classification systems for regional context and regulatory continuity.

[2] An allinace is a classification unit of vegetation, containing one or more associations and defined by one or more diagnostic species, often of high cover, in the uppermost layer or layer with the highest canopy cover. Alliances reflect regional to subregional climates, substrates, hydrology, and disturbance regimes.

Within the FCE, ruderal vegetation is present along bladed roadways and at the southern end of the easement area near the border of Bailey Road. Plant species typical of ruderal vegetation on site include milk thistle (*Silybum marianum**), Italian thistle (*Carduus pycnocephalus* subsp. *pycnocephalus**), slender-flowered thistle (*Carduus tenuiflorus**), yellow starthistle (*Centaurea solstitalis**), bull thistle (*Cirsium vulgare**), cardoon (*Cynara cardunculus**), and fennel (*Foeniculum vulgare**).

Annual Grassland

As described in the HCP/NCCP, annual grassland is characterized by grass and forb species dominating the land cover and where trees and shrubs comprise less than 5 percent canopy cover. The dominant grass species are non-native annuals. Based on the description by Holland (1986) non-native grassland is a dense to sparse cover of annual grasses with flowering culms up to 3 feet (one meter) tall. Associates often include "showy-flowered" native annual forbs. This community occurs on fine-textured, usually clay soils, moist or even waterlogged during the winter rainy season and very dry during the summer and fall. Germination occurs with the onset of the late fall rains while growth, flowering, and seed-set occur from winter through spring. With a few exceptions, the plants are dead through the summer and fall dry season, persisting as seeds. This community usually occurs below 3,000 feet but reaches 4,000 feet in the Tehachapi Mountains and interior San Diego County, and intergrades with coastal prairie along the Central Coast.

Within the study area, annual grassland occupies the majority of the site. This plant community is dominated by non-native annual grasses including oats (*Avena barbata, A. fatua**), soft chess (*Bromus hordeaceus**), Italian ryegrass (*Festuca perennis**), hare barley (*Hordeum murinum* subsp. *leporium**), ripgut brome (*Bromus diandrus**), Spanish brome (*Bromus madritensis* subsp. *madritensis**), and brome fescue (*Festuca bromoides**). Small unmappable colonies of the native grass creeping wildrye (*Elymus triticoides*) were also present but these were not of the size or composition to comprise their own vegetation communities. Native and non-native herbaceous species also present in this community included Great Valley gumweed (*Grindelia camporum*), summer lupine (*Lupinus formosus* var. *formosus*), fiddle dock (*Rumex pulcher**), prickly lettuce (*Lactuca serriola**), field bindwedd (*Convolvulus arvensis**), San Joaquin milk vetch (*Astragalus asymmetricus*), and narrow leaf milk weed (*Asclepias facicularis*). It should be noted that scattered infestations of weeds were also present within the annual grassland matrix and include hoary mustard (*Hirschfelida incana**), fennel*, and milk thistle*.

* Denotes a non-native species that has an origin outside of California

Table 4. Vegetation Community Classifications Systems Comparisons

HCP/NCCP Land Cover Types[3]	Vegetation Community and Wetland Classification Systems			
	Terrestrial Communities[4]	California & National Vegetation[5]	CNPS Inventory[6]	Wetlands & Deepwater Habitats[7]
Ruderal	Ruderal (*Holland & Keil 1995*)	Not Described	Not Described	Upland
Annual Grassland	Non-Native Grassland (42200) (*Holland 1986*)	*Avena fatua* Semi-Natural Herbaceous Alliance (Wild Oats Grassland) (44.150.01) *Bromus hordeaceus* Semi-Natural Herbaceous Alliance (Annual Brome Grassland) (42.026.00)	Valley and Foothill Grassland	Upland
Permanent Wetland	Coastal and Valley Freshwater Marsh (52410) *(Holland 1986)*	*Schoenoplectus actutus* Alliance (52.128.00) Hardstem and California Bulrush marshes	Marshes and Swamps	Palustrine persistent emergent freshwater wetland
Pond	Not Described	Not Described	Meadows and seeps (*in part*)	Palustrine persistent emergent wetlands
Stream	Not Described	Not Described	Not Described	Riverine streambed

[3] East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (Jones & Stokes 2006)
[4] Terrestrial Natural Communities of California (Holland 1986) or (Holland & Keil 1995)
[5] California Natural Communities List (CDFW 2018)
[6] CNPS Inventory of Rare and Endangered Plants of California Habitat Types (CNPS 2018)
[7] Classification of Wetlands & Deepwater Habitats of the U.S. (Cowardin et al. 1979)

Within the annual grassland of the deed restricted area, restoration related plantings were observed around the western pond (P-2) and along the riparian zone of MD-1. These plantings did not constitute vegetation communities of their own, but species planted in these areas are worth noting as they are the only native woody species within the FCE. These plantings include buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), Fremont cottonwood (*Populus fremontii* subsp. *fremontii*), and sandbar willow (*Salix exigua* var. *exigua*). A few individual blue gum (*Eucalyptus globulus**) were scattered around the deed restricted area as well.

Typical Annual Grasslands within the FCE.

3.6.2 PERMANENT WETLAND

As described by the HCP/NCCP, permanent wetland is characterized by a year-round water source. They are typically dominated by erect, rooted, herbaceous hydrophytic plant species adapted to growing in conditions of prolonged inundation. Of the vegetation types described by Holland (1986) the most similar is freshwater marsh and freshwater seep. This vegetation type is dominated by perennial, emergent monocots 1-15 feet (0.40-4.5 meters) in height. It typically occurs on sites that lack a significant current that are permanently flooded by freshwater along the edges of water bodies, dune swales, slough terrace edges, banks, channels and mouth margins of rivers, bottomlands, ditch margins, lagoons, ponds, reservoir margins and along geologic faults. This community is most extensive in the upper portion of the Sacramento-San Joaquin River Delta.

Within the FCE a single area of permanent wetland was mapped at P-1 within the deed restricted area. The vegetation at this location is dominated by common tule (*Schoenoplectus acutus* var. *occidentalis*).

P-1 with emergent monocots present.

3.6.3 POND

The HCP defines ponds as small perennial or seasonal water bodies dominated by little or no vegetation. If vegetation is present, it is typically submerged or floating. There are two ponds (P-1 and P-2) present within the FCE located within the deed restricted area. These ponds appear to have been constructed as a part of a mitigation effort. P-1 did not support wetland vegetation while a small portion of P-2 supported permanent wetland vegetation as described above. Neither of these ponds were holding water at the time of the August 2018 site visit.

3.6.4 STREAM

The HCP/NCCP defines a stream as a long, narrow body of flowing water that occupies a channel with a defined bed and bank and moves to lower elevations under the force of gravity. The three drainages on site (MD-1, W-1, W-2) fit this category.

3.7. INVASIVE SPECIES AND NOXIOUS WEEDS

During the course of the surveys, no invasive wildlife species were observed. However, a few noxious weeds that have the potential to change the quality of grasslands or could be a management concern were encountered within the FCE.

3.7.1 NOXIOUS WEEDS

Some of the non-indigenous plant species encountered on-site are tracked by the California Department of Food and Agriculture (CDFA 2018) and the California Invasive Plant Council (Cal-IPC 2018) due to their noxious or invasive behavior. Species tracked by these organizations are given a certain rating based on criteria such as ecological impacts, treatment or eradication priority, and threats they pose to agricultural economics. Rating classifications given by Cal-IPC and CDFA are shown in Table 5.

The noxious weeds that could be of concern include milk thistle* and hoary mustard*. Both are on site but in diffuse patches that currently do not threaten the integrity of the annual grasslands on site. These species should be monitored to ensure they do not become a management concern. Outside of the FCE there are small diffuse populations of fennel* that could be of management concern in the future if these

populations move onto the FCE. Due to the diffuse nature of these species distributions they were not mapped as a part of baseline documentation. Summary information on these three species is included below. Information appearing under the headings General Information and Relevant Life History Traits was primarily excerpted from DiTomaso, J.M. and E.A. Healy. 2007. *Weeds of California and Other Western States*. University of California Agriculture and Natural Resources Publication 3488.

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Table 5. Invasive Weeds Observed in the Study area

SPECIES NAME	COMMON NAME	CAL-IPC	CDFA
Foeniculum vulgare	fennel	Moderate	---
Hirschfeldia incana	hoary mustard	Moderate	---
Silybum marinum	milk thistle	Limited	---

Cal-IPC Weed Ranking Definitions:

High: These species have severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment. Most are widely distributed ecologically.

Moderate: These species have substantial and apparent - but generally not severe - ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal, though establishment is generally dependent upon ecological disturbance. Ecological amplitude and distribution may range from limited to widespread.

Limited: These species are invasive but their ecological impacts are minor on a statewide level or there was not enough information to justify a higher score. Their reproductive biology and other attributes result in low to moderate rates of invasiveness. Ecological amplitude and distribution are generally limited, but these species may be locally persistent and problematic (Cal-IPC 2018).

CDFA Species Definition

Species considered a noxious weed by CDFA are listed on the California Noxious Weed List (CDFA 2018).

Fennel (*Foeniculum vulgare*)

General Information

Fennel is a perennial in the carrot family (Apiaceae). Fennel invades open disturbed sites, roadsides, slopes, fields, grasslands, coastal scrub, riparian and wetland areas, and agronomic crops, particularly in coastal regions of central and southern California. Established plants are competitive and soil disturbance facilitates the development of dense stands that can exclude native vegetation in some areas. It is native to southern Europe. It tolerates drought and frost and grows in many soil types (DiTomaso and Healy 2007).

Relevant Life History Traits

Fennel reproduces by seed and sometimes vegetatively from root or crown fragments. Seed production is usually prolific. Seeds disperse with human activities, water, soil movement, animals, and as a seed contaminant. Most seeds germinate in the fall during the wet season but germination can occur year-round when conditions are favorable. Seeds appear to survive several years under field conditions. Fragmentation of roots and crowns may occur during flood events, mudslides, or agricultural operations. New shoots grow from the crown or lower portion of overwintering stems in mid-winter to early spring (DiTomaso and Healy 2007).

Threats to Sensitive Habitats or Rare Plants

No immediate threats to rare plants, wildlife, or sensitive natural communities are known at this time.

Hoary mustard (*Hirschfeldia incana*)

General Information

Hoary mustard is a biennial or short-lived perennial, sometimes winter annual in the mustard family (Brassicaceae). It is native to the Mediterranean region and inhabits disturbed places, roadsides, fields, pastures, agronomic crops, orchards, vineyards, ditch banks, and dry washes (DiTomaso and Healy 2007).

Relevant Life History Traits

Hoary mustard makes small yellow flowers in May-October, but sometimes all year round. Hoary mustard reproduces by seed. Seeds fall near the parent plant or disperse to greater distances with water, mud, agricultural activities, as seed and feed contaminants, and animals. Seed production can be high. Fruiting stems die at the end of summer or early fall when soil moisture is low. New foliage grows from the rootstock after the first fall rain (DiTomaso and Healy 2007).

Threats to Sensitive Habitats or Rare Plants

No immediate threats to rare plants, wildlife, or sensitive natural communities are known at this time.

Milk Thistle (*Silybum marianum*)

General Information

Milk thistle is an erect winter or summer annual or biennial in the sunflower family (Asteraceae). Milk thistle often occurs in dense, competitive stands. Depending on the amount of soil moisture plants can range from very small to very tall. It inhabits disturbed sites, roadsides, pastures, fields, agronomic crops, waste places, orchards, and trail margins in chaparral and woodlands. Milk thistle grows best on fertile soils. It is native to the Mediterranean region. (DiTomaso and Healy 2007).

Relevant Life History Traits

Milk thistle flowers from April to July. Milk thistle reproduces by seed. Seeds probably disperse only short distances with wind but they can disperse to greater distances with human activities, water, soil movement, animals and as a crop seed or feed contaminant. Most seeds germinate after the first fall rain, but some can germinate throughout winter and early spring. Seeds can survive at least nine years under field conditions (DiTomaso and Healy 2007).

Threats to Sensitive Habitats or Rare Plants

No immediate threats to rare plants, wildlife, or sensitive natural communities are known at this time.

Section 4. REFERENCES

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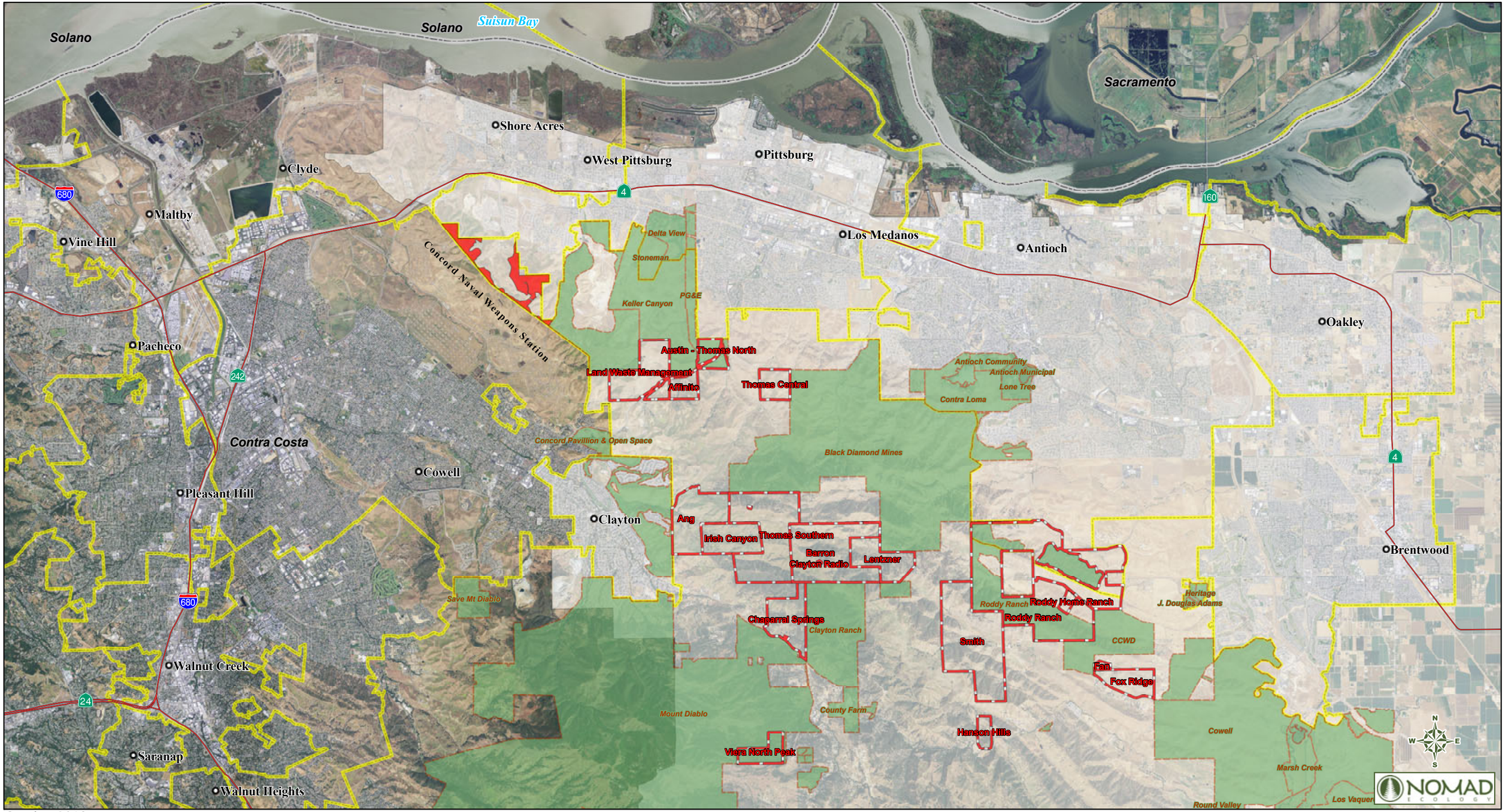
APPENDIX A FIGURES



Legend

- Faria Conservation Easement
- HCP Acquisition Parcels
- Public Land and Easements
- City Limit Boundaries
- HCP Inventory Area
- County Boundaries

Figure 2

Regional Context of the
Faria Conservation Easement
Settlement Agreement
East Contra Costa County Habitat Conservancy

East Contra Costa County Habitat Conservancy

1:95,040
0 0.75 1.5 Miles

Sources: NAIP 2012; Contra Costa County. Projection: NAD 83 UTM Zone 10 North.

Legend

- Faria Conservation Easement
- Parcel Lines
- Deed Restricted Area
- Roads
- City Limit Boundaries

Figure 3
Aerial Photo of the FCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

1:15,840
0 0.125 0.25
Miles

Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.

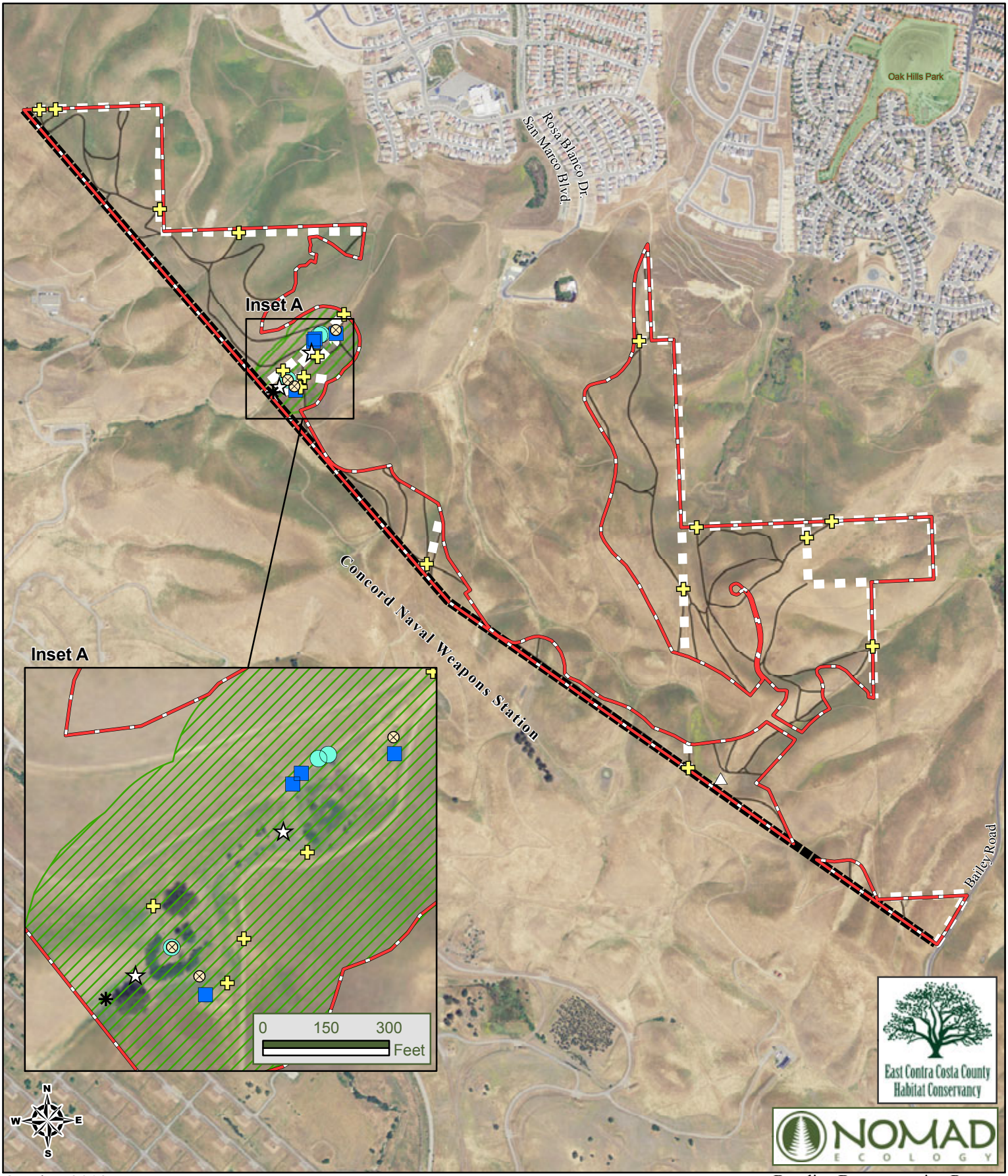
Legend

- FCE
- Drainages
- Watershed Boundaries
- Ponds and Wetlands
- Permanent Wetland
- Pond

1:15,840
0 0.125 0.25 Miles

Figure 4
Hydrologic Features of the FCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

Sources: NAIP, Contra Costa County. Projection: NAD 83 UTM 10 North.



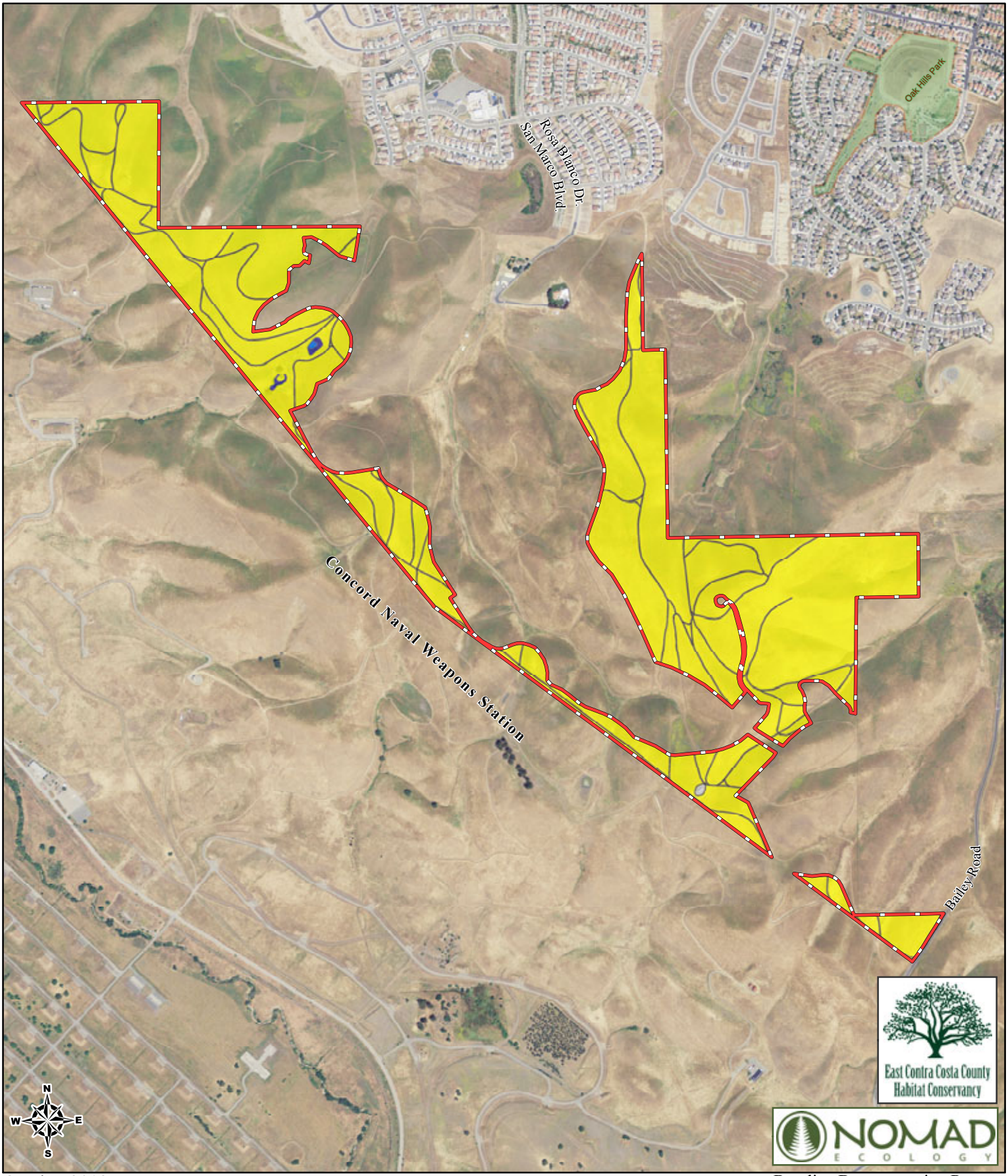
Legend

- Faria Conservation Easement
- Deed Restricted Area
- Fencelines
  - Barbed Wire
  - Chainlink
- Roads
- Other Infrastructure
  - Covered Corral
  - Debris
- Gate
- Riprap
- Trough
- Water Tank
- Windmill

Figure 5
Anthropogenic Features
Settlement Agreement
East Contra Costa
County Habitat Conservancy

1:15,840
0 0.125 0.25
Miles

Sources: USGS, EBRPD. Projection: NAD 83 UTM 10 North.



Legend

Faria Conservation Easement

Land Cover Types
- Annual Grassland
- Permanent Wetland
- Pond
- Ruderal

Figure 6

Land Cover Types of the FCE

Settlement Agreement

East Contra Costa County Habitat Conservancy

1:15,840

0 0.125 0.25 Miles

Sources: Contra Costa County. Projection: NAD 83 UTM 10 North.

Legend
- Faria Conservation Easement
- Deed Restricted Area
- Photo Points

Figure 7
Photo Points of the FCE
Settlement Agreement
East Contra Costa County Habitat Conservancy

1:15,840
0 0.125 0.25
Miles

Sources: USGS, EBRPD. Projection: NAD 83 UTM 10 North.

APPENDIX B PROPERTY CONSERVATION EASEMENT

APPENDIX C PHOTOGRAPHS

Photopoint: 1

File Number: 113921

Looking west at covered corral.

Northing (m): 4206591 **Easting (m):** 590099 **Date:** 08/17/18

Photopoint: 2

File Number: 101756

A small concrete trough near the deed restricted area.

Northing (m): 4206709 **Easting (m):** 590079 **Date:** 8/17/18

Photopoint: 3

File Number: 103837

View, looking northwest, at a trough within the deed restricted area.

Northing (m): 4206887 **Easting (m):** 590214 **Date:** 8/17/18

Photopoint: 4

File Number: 104438

Looking southwest at a long concrete trough near the deed restricted area.

Northing (m): 4206877 **Easting (m):** 590155 **Date:** 8/17/18

Photopoint: 5

File Number: 104505

Looking south at a trough near the deed restricted area.

Northing (m): 4206863 **Easting (m):** 590130 **Date:** 8/17/18

Photopoint: 6

File Number: 101658

Looking northwest at a windmill in the deed restricted area.

Northing (m): 4206591 **Easting (m):** 590099 **Date:** 8/17/18

Photopoint: 7

File Number: 102111

Looking north at a historic tank and windmill within the deed restricted area near P-2.

Northing (m): 4206709 **Easting (m):** 590079 **Date:** 8/17/18

Photopoint: 8

File Number: 103831

View of functioning windmill, looking north, within the deed restricted area.

Northing (m): 4206743 **Easting (m):** 590100 **Date:** 8/17/18

Photopoint: 9

File Number: 104136

View of two functioning tanks near the deed restricted area, looking west.

Northing (m): 4206936 **Easting (m):** 590237 **Date:** 8/17/18

Photopoint: 10

File Number: 104350

Looking northwest at a repurposed tank that is now used for water storage near the deed restricted area.

Northing (m): 4206877 **Easting (m):** 590155 **Date:** 8/17/18

Photopoint: 11

File Number: 102512

Old fencing debris pile in MD-1.

Northing (m): 4206722 **Easting (m):** 590024 **Date:** 8/17/18

Photopoint: 12

File Number: 102358

Riprap downstream of P-2 along MD-1.

Northing (m): 4206726 **Easting (m):** 590041 **Date:** 8/17/18

Photopoint: 13

File Number: 103002

Looking east at riprap west of P-1 along MD-1.

Northing (m): 4206819 **Easting (m):** 590113 **Date:** 8/17/18

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

_____

Attn: _____

_____

_____

(SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY)

MEMORANDUM OF UNRECORDED TAKE AUTHORIZATION PERMITS

This Memorandum of Unrecorded Take Authorization Permits (Memorandum), dated as of _____, 20__, is recorded to provide notice of take authorization permits that have been issued by the California Department of Fish and Wildlife (CDFW) pursuant to the California Natural Community Conservation Planning Act, and by the United States Fish & Wildlife Service (USFWS) pursuant to the federal Endangered Species Act.

RECITALS

I. In December, 2006, the East Contra Costa County Habitat Conservation Plan Association completed preparation of the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). The HCP/NCCP, among other things, provides a framework to protect natural resources in eastern Contra Costa County, provides the USFWS with a basis to issue an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act, and provides the CDFW with a basis to issue a Natural Community Conservation Plan permit under Section 2835 of the California Fish and Game Code.

II. Based on the HCP/NCCP, on July 25, 2007, the USFWS issued an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act, and on August 6, 2007, CDFW issued a Natural Community Conservation Plan Permit under Section 2835 of the California Fish and Game Code, for the Plan Area to the County of Contra Costa, the Cities of Pittsburg, Brentwood, Oakley, and Clayton, the Contra Costa County Flood Control and Water Conservation District, and the East Bay Regional Park District (the Permits).

III. Under certain terms and conditions, the Permits allow the City of Pittsburg to extend authorization to take certain species protected pursuant to the California Endangered Species Act or the federal Endangered Species Act resulting from certain development activities within the City of Pittsburg. Such Permit terms and conditions include restrictions on the nature and extent of the development activities covered by the take authorization and on the use of the properties on which the development activities are located.

IV. The City of Pittsburg has extended a take authorization pursuant to the Permits, [*reference to agreement or formal action by City extending take authorization*] (Take Authorization), to cover certain development activities located on certain real property, more particularly described in attached **Exhibit A** and incorporated by reference herein, and bearing the following Assessor Parcel Numbers: _____, _____, _____ (the Covered Property). The Covered Property is owned by _____ (Property Owner). Under the terms of the Take Authorization, Property Owner has accepted certain restrictions on the uses and activities that may occur on the Covered Property.

V. The Property Owner desires to execute this Memorandum to provide notice to all third parties of the Take Authorization's restrictions that apply to the Covered Property and to ensure that the terms and conditions of the Take Authorization run with the land.

NOTICE

1. Use of the Covered Property is restricted by the terms and conditions of the Take Authorization.

2. Property Owner shall not use or allow the use of the Covered Property in a manner inconsistent with the terms and conditions of the Take Authorization.

3. The terms and conditions of the Take Authorization shall apply to any and all third parties that acquire an interest or estate in the Covered Property.

4. For the terms and conditions of the Take Authorization, reference should be made to the Take Authorization, which is on file with the City of Pittsburg, [*location and address*].

5. This Memorandum does not apply to any single family home site contained within the Covered Property once it has been transferred to a third party single family home buyer.

PROPERTY OWNER: [name]

By: _____

Name:

Title:

Exhibit A
Property Description

EXHIBIT N

OTHER DEVELOPMENT PROJECTS

Project	City	Subdivision No.
Villa Grove	Oakley, CA	8807
Pheasant Meadows	Oakley, CA	8736
Cedarwood	Oakley, CA	9088
Rosewood	Oakley, CA	8787
Bancroft II	Pittsburg, CA	8805
Simoni	Oakley, CA	9285
Crantz	Oakley, CA	9284
Pheasant Meadows	Oakley, CA	8736
Vintner View	Oakley, CA	8836

COMPROMISE SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS COMPROMISE SETTLEMENT AND MUTUAL RELEASE AGREEMENT ("**Agreement**") is made by and among **DISCOVERY BUILDERS, INC.**, a California corporation ("**Discovery**"), on the one hand, and the **CITY OF BRENTWOOD**, a California municipal corporation and the City Council of the City of Brentwood (collectively, the "**City**"), and the East Contra Costa County Habitat Conservancy and the **GOVERNING BOARD OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY** (collectively, the "**Conservancy**") on the other hand. Discovery, the City, and the Conservancy are sometimes hereinafter each individually referred to as "Party" and collectively referred to as the "**Parties**." This Agreement is based upon the following facts and representations:

R E C I T A L S

A. WHEREAS, Discovery is the owner and developer of certain real property located in the City of Brentwood, commonly known as "Mission Grove," which has been, or is in the process of being, approved and developed for a sixty-nine (69) unit single family residential subdivision;

B. WHEREAS, in June 2005, the Conservancy, consisting of the Cities of Brentwood, Clayton, Oakley, and Pittsburg , and Contra Costa County (the "**County**"), adopted a Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (the "**HCP**"). The HCP is intended to, among other things, provide an effective framework to protect natural resources in Eastern Contra Costa County, provide the United States Fish & Wildlife Service with a basis to issue an incidental take permit under Section 10(a)(1)(B) of the Endangered Species Act, and provide the California Department of Fish & Wildlife with a basis to issue a permit under Section 2835 of the California Fish and Game Code. The conservation strategy included in the HCP proposes a system of new preserves linked to existing protected land to form a network of protected areas (the "**Preserve System**"). The Preserve System is proposed, in part, to offset the impacts to species and habitats of future urban development. The HCP is intended to streamline certain permitting processes for future development and to rely on fees and land dedications provided by future development to assemble a portion of the Preserve System;

C. WHEREAS, on or about May 23, 2013, the City imposed an HCP Development Fee on the Mission Grove subdivision based on the City's adoption of the HCP. Discovery protested the establishment of the Brentwood HCP Development Fee generally and the imposition of the fee on the Mission Grove project;

D. WHEREAS, disputes have arisen between Discovery, the City, and the Conservancy as to applicability and validity of the HCP requirements as applied to the Mission Grove project and as enacted and implemented by the City of Brentwood;

E. WHEREAS, on August 20, 2013, Discovery filed a written protest with the City relating to the Brentwood HCP Development Fee, both generally and as applied to the Mission Grove project, and it tendered payment of the Phase I fee in full of $66,257.84;

F. WHEREAS, on November 18, 2013, Discovery filed a civil action in the Superior Court of Contra Costa County, Case No. N13-1781, seeking judicial review of, and relief from, the HCP program as applied to the Mission Grove project (the "**Litigation**");

G. WHEREAS, on May 11, 2015, in response to a demand from the City, Discovery paid in full under protest the assessed HCP Development Fee of $120,735.85 for Phase II of the Mission Grove project;

H. WHEREAS, upon payment of the assessed HCP Development Fees for Phase I and Phase II, respectively, City extended coverage under state and federal permits to the Mission Grove project in accordance with the HCP; and

I. WHEREAS, the Parties to this Agreement now wish to resolve certain ISSUES, CLAIMS, AND DEMANDS, against each other, in the above-described Litigation and related claims regarding the applicability or validity of the City of Brentwood's HCP program as applied to the Mission Grove project (the "**Released Claims**"), and to enter into this Agreement, without admission of fault by either Party, and without admission or denial as to validity, legality, or applicability of any of the matters in dispute, and without further trial or adjudication of any question of law or fact herein, and the Parties enter into this settlement to avoid further litigation expenses and costs.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party hereto, without admitting or implying any fault or liability, the Parties agree as follows:

1. **Commitments of the Parties.** The Parties mutually agree to the following commitments by the Parties:

   (a) The City and Conservancy hereby accept the total sum of $186,993.69, already paid by Discovery under protest as full and final payment for any HCP Development Fees owed by Discovery for development of the Mission Grove project, and will not seek any further such fees for the project at any time.

   (b) Discovery hereby withdraws its written protests to the imposition of these HCP Development Fees on the Mission Grove project.

   (c) The Parties agree to enter into, comply with and implement in good faith the Multi-Party Mitigation and Land Dedication In-Lieu of Development Fee Agreement attached hereto as ***Exhibit A***.

(d) The Parties agree that the Litigation will be dismissed without prejudice through a stipulation for dismissal that all Parties will execute and which Discovery will submit to the Court within fifteen (15) days of the Effective Date of this Agreement.

2. **Effective Date.** This Agreement shall become binding and effective on the first day on which (a) all signatories have executed the Multi-Party Mitigation and Land Dedication In-Lieu of Fee Agreement by the Parties and all entities identified therein as signatories, a copy of which is attached hereto as ***Exhibit A***, and (b) all Parties have executed this Agreement ("**Effective Date**").

3. **Release of Claims by Discovery As to All Pending Litigation.** Discovery hereby fully releases the City and Conservancy from all claims asserted in the Parties' pending Litigation relating to the City's imposition of HCP Development Fees on the Mission Grove project. This release includes all claims for refunds/reimbursement of Discovery's previous payments of HCP fees on the Mission Grove project or for any other relief or recovery against the City relating to the facts and claims relating to the Mission Grove HCP fees described above. ("**Released Claims**").

4. **Release and Waiver of the City's Rights or Claims.** The City, for itself and all related or successor entities, hereby waives and releases any rights or claims it may otherwise have or be able to assert relating to the facts and claims described above, including any claim for payment of attorneys' fees, costs of suit, or litigation expenses arising in connection with the Litigation, relating to the Mission Grove project, or for any other relief or recovery against Discovery or its predecessors or affiliates relating to the facts and claims described above.

5. **Release and Waiver of the Conservancy's Rights or Claims.** The Conservancy, for itself and all related or successor entities, hereby waives and releases any rights or claims it may otherwise have or be able to assert relating to the facts and claims described above, including any claim for payment of attorneys' fees, costs of suit, or litigation expenses arising in connection with the Litigation, relating to the Mission Grove project, or for any other relief or recovery against Discovery or its predecessors or affiliates relating to the facts and claims described above.

6. **Waiver of Rights to Appeal or Further Litigation.** All Parties to this Agreement hereby agree to waive and release any rights to further appeal from any of the orders, judgments, actions, or proceedings in connection with the Litigation, or to pursue any further actions or proceedings in connection therewith.

7. **Parties to Bear Own Costs and Fees.** No Party to this Agreement shall make any claim or demand for any costs, attorneys' fees, or litigation expenses incurred in connection with the Litigation, and each Party shall bear its own costs of suit, including attorneys' fees, expert witness fees, or other litigation expenses.

8. **Full and Final Mutual Release.** The undersigned Parties, from the beginning of time to and including the date herein, agree as further consideration and inducement for this

Agreement, that it is a full and final release of and from any such claims, demands, actions, defenses, and causes of action, present and future, known or unknown, contemplated or uncontemplated, arising out of or in connection with the Released Claims described below, and for any and all damages of any kind whatsoever which have been or which might hereafter be incurred or sustained by the Parties in connection with said Released Claims, and which might exist against the Parties herein or any other person in favor of the Parties.

9. **Waiver of Civil Code § 1542.** The Parties hereby agree as further consideration and inducement for this Agreement that it shall apply to all unknown and unanticipated claims, injuries, and damages resulting from the Released Claims herein, as well as those now disclosed and, therefore, each Party waives the provision of § 1542 of the Civil Code of the State of California, which reads as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY, AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties understand and acknowledge the significance and consequence of such specific waiver of Civil Code Section 1542 and hereby assume full responsibility for any injuries, damages, loss, or liability they may hereinafter incur from the above-specified Released Claims.

10. **Representation by Counsel.** The Parties agree they have been represented in negotiations for and in preparation of this Agreement by independent counsel and they have had it fully explained to them by their own counsel and are fully aware of its contents and of its legal effect.

11. **Reliance on Own Judgment.** The Parties agree that each Party hereto, in entering into this Agreement, relies upon its own investigation and judgment in regard to all matters herein contained and they have not relied on any representations made by the other Parties; that this Agreement is made and entered into by each of the Parties hereto of their own volition, and each of the Parties hereto warrants that this Agreement was made and entered into free of any duress, coercion, or undue influence from any source whatsoever.

12. **Final Integrated Agreement.** It is expressly understood and agreed that this Agreement, with all attachments, constitutes the complete and final agreement between the Parties hereto regarding the settlement of this litigation and there are no claims or promises not expressed in this Agreement. This Agreement contains the entire agreement among the Parties hereto with respect to the matters covered hereby and supersedes all prior negotiations or agreements, written or oral, among the Parties. No other agreement, statement, or promise made by any Party hereto which is not contained herein shall be

binding or valid. This Agreement may only be modified in writing and signed by all Parties hereto.

13. **No Admissions.** This Agreement is entered into in full compromise of disputed claims. It is fully acknowledged by all Parties hereto that the execution of this Agreement, and the settlement of the Litigation, is not and shall not be construed in any way as an admission of wrongdoing or liability on the part of any of the Parties hereto, and that said Parties completely deny any liability and merely intend, by their actions, pursuant to this Agreement, to avoid prolonged and further litigation. This Agreement shall be admissible in court solely for the purpose of enforcing its terms.

14. **Governing Law and Interpretation.** This Agreement is entered into in the State of California and shall be governed by, and construed and interpreted in accordance with the laws of that state. The Parties agree that each Party hereto, and counsel for each Party, have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply to any interpretation of this Agreement.

15. **Benefit and Bind Successors.** This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto, their executors, administrators, heirs, successors, assigns, officers, directors, shareholders, members, partners, agents, attorneys, representatives, and employees.

16. **Attorneys' Fees.** In the event any Party to this Agreement breaches the terms of this Agreement, the prevailing Party in any lawsuit or court proceeding brought upon this Agreement shall be entitled to recover all its attorneys' fees and costs incurred in the enforcement or interpretation of this Agreement, whether incurred for litigation or otherwise.

17. **Signature and Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one (1) and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the dates listed below.

DISCOVERY:

DISCOVERY BUILDERS, INC.,
a California corporation

By:_____
Name:_____
Its:_____

Date:_____

Approved as to form and content:

_____
Name:_____
Its:_____

Date:_____

CITY:

CITY OF BRENTWOOD,
a California municipal corporation

By:_____
Name:_____
Its:_____

Date:_____

Approved as to form and content:

_____
Name:_____
Its:_____

Date:_____

CONSERVANCY:

GOVERNING BOARD OF THE EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY

By:_____
Name:_____
Its:_____

Date:_____

Approved as to form and content:

_____
Name:_____
Its:_____

Date:_____

EXHIBIT A

MULTI-PARTY MITIGATION AND LAND DEDICATION IN-LIEU OF FEE AGREEMENT

(See attached.)

OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR
65 Civic Avenue
Pittsburg, CA 94565

TO: Mayor and Council Members

FROM: Garrett Evans, City Manager

SUBJECT: Adoption of a City Council Resolution Approving an Exclusive Negotiating Rights Agreement between the City of Pittsburg and Global Resources Trading, LLC for Two Waterfront Properties

MEETING DATE: January 19, 2021

EXECUTIVE SUMMARY

Global Resources Trading, LLC (Developer) proposes to enter into an Exclusive Negotiating Rights Agreement (ENRA) for the lease and development of two adjacent City-owned properties, one of which is comprised of use-restricted tidelands property granted by the State to the City.

FISCAL IMPACT

There is no fiscal impact to the City by approving the ENRA.

RECOMMENDATION

Staff recommends that City Council adopt a Resolution approving the ENRA between the City and the Developer.

BACKGROUND

On October 3, 2019, the City recorded Parcel Map Waiver 19-02 (Doc-2019-0166581-00) and Parcel Map Waiver 19-03 (Doc-2019-0166586) for lot line adjustments. The City is the owner of the properties shown as Lot 1 (City Property) and Lot 2 (Granted Property) in Figure 1 below (collectively, “Properties”). These Properties are the subject of this ENRA.

Figure 1. Excerpt of recorded Parcel Map Waivers 19-02 (Doc-2019-0166581-00) and 19-03 (Doc-2019-0166586) showing the Properties.

Lot 2 is tidelands property granted to the City by the State pursuant to Senate Bill 551, Chapter 422, Statutes of 2011. By law, only certain types of uses are allowed on tidelands property. In addition, the property may not be sold, and any lease is limited in duration to no more than 49 years.

The business proposal includes both a hotel with a banquet facility. The Developer is a premier wholesaler of seafood and meat based out of Discovery Bay, which distributes to

many local restaurants and grocers including Whole Foods. Developer also currently leases two modular buildings on Lots 1 and 2 to operate a bait shop and fish market. Prior to creating Global Resources Trading, LLC, Peter Nguyen (CEO) successfully owned and operated his own commercial fishing vessel from 1985 to 1995. Mr. Nguyen also has experience in the restaurant industry, having successfully operated Hong Kong Restaurant, in Union City, CA, from 1995 to 2001. He sold this business in 2001.

In 2018, the City entered into an ENRA with the Developer for development of a fish market and seafood restaurant at these Properties. Since then, the Developer has purchased another building in Pittsburg for these purposes.

SUBCOMMITTEE FINDINGS

This item has not been presented to a Subcommittee.

STAFF ANALYSIS

Development of the Properties is anticipated to be a catalyst that will inspire additional commercial waterfront tenants and increased recreational use of the waterfront. The Developer's proposal to enter into a Tidelands Lease and a City Lease (collectively, "Leases") to construct a hotel on Granted Lands satisfies the State operational requirements. In addition, the proposed use aligns with the City's State-approved Trust Lands Use Plan (TLUP) and General Plan goals of creating pedestrian-friendly connectivity between downtown and the Pittsburg Marina. It fits the existing Marine Commercial zoning designation and has the potential to decrease blight experienced by the surrounding community as a result of the Properties' historic vacancy.

Per the City's TLUP, the Developer must complete all permitting and review processes for the project prior to execution of a Tidelands Lease, which will be done concurrently with the City Lease (see Attachment 3 for the Tidelands permitting and lease process per the TLUP). It is therefore anticipated that the Developer will undertake a large upfront investment cost for permitting, geological review, and environmental work required prior to execution of Leases.

Development of an ENRA will establish the procedures and standards for the negotiations between the City and the Developer for the proposed hotel. Successful negotiations will result in Leases and if necessary, a Development Agreement (DA) to be submitted for City Council consideration in accordance with the TLUP, General Plan, and other applicable laws, including but not limited to the California Environmental Quality Act (CEQA).

Staff and the Developer have met and discussed the development opportunities on the Properties. Upon approval of the ENRA, staff will continue to meet with the Developer to discuss and finalize the Leases, and if applicable, a DA. The negotiating period (Negotiating Period) under the ENRA shall commence on February 1, 2021 (ENRA Commencement Date) and terminate in one hundred twenty (120) calendar days from the ENRA Commencement Date. The ENRA may be extended in order to complete a CEQA analysis.

Unless extended, the ENRA will terminate if Leases or if applicable, a DA, are not executed by the City and the Developer by the expiration of the Negotiating Period. If the City and the Developer execute the Leases or if applicable, a DA then, upon such execution, the ENRA shall terminate, and all rights and obligations of the parties shall be set forth in the executed Leases and if applicable, the DA.

ATTACHMENTS: Resolution
Exclusive Negotiation Rights Agreement
Trust Lands Use Plans Excerpt

Report Prepared By: Sara Bellafronte, Administrative Analyst II

BEFORE THE CITY COUNCIL OF THE CITY OF PITTSBURG

In the Matter of:

Adoption of a City Council Resolution Approving an Exclusive Negotiating Rights Agreement between the City of Pittsburg And Global Resources Trading, LLC for Two Waterfront Properties	)	RESOLUTION NO. 21-

WHEREAS, on October 3, 2019, the City recorded Parcel Map Waiver 19-02 (Doc-2019-0166581-00) and Parcel Map Waiver 19-03 (Doc-2019-0166586) for lot line adjustments; and

WHEREAS, the City is the owner of certain real properties shown as Lot 1 (the City Property) and Lot 2 (the Granted Property) of said Parcel Map Waivers (collectively, the Properties); and

WHEREAS, the City was granted the Granted Property by the State pursuant to Senate Bill 551, Chapter 422, Statutes of 2011, which imposes restrictions on the property; and

WHEREAS, Global Resources Trading, LLC's (Developer) proposes to lease the Properties for the purposes of building and operating a hotel with a banquet facility, and such proposal satisfies the state's operational requirements and conforms with the City's Trust Lands Use Plan (TLUP), General Plan, and Zoning Ordinance; and

WHEREAS, in conformance with the City's TLUP, the Developer must complete all permitting and review processes for the project prior to execution of a Tidelands Lease for Lot 2, which is anticipated concurrently with the City Lease. It is further anticipated that the Developer will incur a large upfront expenditure for permitting, geological review, and environmental work required prior to execution of Leases, and

WHEREAS, development of the Properties is anticipated to be a catalyst that will inspire additional commercial waterfront tenants and increased recreational use of the waterfront; and

WHEREAS, the City and Developer propose to enter into an Exclusive Negotiating Rights Agreement (ENRA) for the lease and development of the Properties.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Pittsburg hereby approves the ENRA and authorizes the City Manager or designee to execute such other documents and take such further actions as may be necessary or appropriate to carry out the City's obligations pursuant to this Resolution, and to modify the ENRA provided that such modifications do not materially alter the business terms set forth in the ENRA.

PASSED AND ADOPTED by the City Council of the City of Pittsburg at a regular meeting on the 19th day of January, 2021, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

Merl Craft, Mayor

ATTEST:

Alice E. Evenson, City Clerk

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
BETWEEN THE CITY OF PITTSBURG AND
GLOBAL RESOURCES TRADING, LLC

This Exclusive Negotiating Rights Agreement (this "**Agreement**") is entered into as of February 1, 2021 (the "**Effective Date**"), by and between the City of Pittsburg, a California municipal corporation (the "**City"**), and Global Resources Trading, LLC (the "**Developer**"), with reference to the following facts:

Recitals

A. On October 3, 2019, the City recorded Parcel Map Waiver 19-02 (Doc-2019-0166581-00) and Parcel Map Waiver 19-03 (Doc-2019-0166586) for lot line adjustments.

B. The City is the owner of certain real properties shown as Lot 1 (the **"City Property"**) and Lot 2 (the **"Granted Property"**) of said Parcel Map Waivers as more particularly described in Exhibit A attached to this Agreement and incorporated herein (collectively, the **"Properties").**

C. The City was granted the Granted Property by the California State Lands Commission under Senate Bill 551, Chapter 422, Statutes of 2011. Pursuant to the statute, the Granted Property shall not be conveyed in fee simple, and any lease is subject to a limit of no more than 49 years.

B. The Developer proposes to construct a hotel with banquet facility on these Properties (the "**Proposed Project**").

C. The purpose of this Agreement is to establish procedures and standards for negotiation by the City with the Developer of (i) a Tidelands Lease of the Granted Property, (ii) a City Lease of the City Property (collectively **"Leases"**), and if applicable, (iii) a Development Agreement (the "**DA**") relating to the Proposed Project on the Properties. The Leases and DA shall include, at a minimum, provisions setting forth the lease rate and a detailed description of the Proposed Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
EXCLUSIVE NEGOTIATING RIGHT

Section 1.1 Good Faith Negotiations. The City and the Developer shall negotiate diligently and in good faith, during the Negotiating Period (defined in Section 1.2 below), the terms of the Leases of the Properties and, if applicable, the DA for

setting forth obligations of the parties for the Proposed Project. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks set forth in Article 3 to facilitate negotiation of mutually satisfactory Leases, and if applicable, DA. This Agreement does not impose a binding obligation on City to convey any interest in the Properties to Developer, nor does it obligate City to grant any approvals or authorizations required for the Proposed Project or improvements constructed on the Properties. Notwithstanding the foregoing, the City shall not engage in negotiations with, any third party regarding the Properties while the Negotiating Period (defined below, and as potentially extended) is in effect.

The issues to be addressed include, but are not limited to, conditions by which the City will lease the Properties to Developer, a development schedule for the Proposed Project, financing of the Proposed Project development, marketing and management of the Proposed Project, design and aesthetic considerations of the Proposed Project, and the provision of public improvements related to the Proposed Project.

Section 1.2 Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall commence on the Effective Date of this Agreement and terminate one hundred twenty (120) calendar days from the Effective Date of this Agreement. If, during the initial Negotiating Period, negotiations with the Developer have progressed sufficiently to the point where there are draft Leases, and DA if applicable, that, in the opinion of the City Manager, warrants initiation of the environmental review process required by the California Environmental Quality Act ("**CEQA**"), then the City Manager may extend the Negotiating Period by written notice to the Developer for the period of the environmental review process required by CEQA if anticipated to extend beyond the Negotiating Period established under this Agreement but in no event shall such extension exceed a six (6) month period. If, as a result of the environmental review process required by CEQA, there is an administrative or legal challenge, all of the timeframes set forth in this Agreement shall be stayed for the duration of any such challenge, through any appeal periods. The Developer understands that such an extension in no way obligates the City to approve Leases, the DA or any other agreement at the conclusion of the environmental review process.

In addition, the City may extend the Negotiating Period for up to sixty (60) days by written notice to the Developer from the City Manager if, in the City Manager's judgment, sufficient progress toward mutually acceptable Leases, and DA if applicable, has been made during the initial Negotiating Period to merit such extension.

If Leases, and DA if applicable, have not been presented to the City Council, with staff's supporting recommendation and approved by the Developer by the expiration of the Negotiating Period (as may be extended under this Section), then this Agreement shall terminate and neither party shall have any further rights or obligations under this Agreement except as set forth in Sections 3.2(d), 3.2(e), 4.2 and 4.6. If the City and the Developer (or a related entity approved by the City Manager in writing) execute Leases, and DA if applicable, then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed Leases and DA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the City shall not negotiate with any entity, other than the Developer, regarding development of the Properties or any portion thereof, or solicit or entertain bids or proposals to do so. This provision shall not preclude the City from providing copies of documents or information related to the Properties in response to a request under the California Public Records Act or other law.

Section 1.4 Reimbursement Payments to City.

(a) Developer is willing to provide funds to the City to reimburse for staff and legal costs and expenses incurred by the City in connection with this Agreement ("Reimbursement Payments"). The City will use the non-refundable Reimbursement Payments by Developer to reimburse the City for its reasonable expenses incurred in providing and administering the services necessary and relating to this Agreement and the processing of any application resulting from this Agreement. These services will be limited to the following, unless previously agreed by the Parties hereto:

(1) Staff and legal costs incurred by the City in connection with effectuating the terms of this Agreement, including charges by the City Attorney, outside counsel retained by the City Attorney, Community Development or other City departments working with the Developer;

(2) All environmental analysis in accordance with the requirements of the California Environmental Quality Act;

(3) Such other analyses or similar matters which are reasonably related to the City's performance under this Agreement, provided Developer is notified in advance of such other analyses and approves any costs and expenses associated therewith. Developer recognizes and accepts that any delay by the Developer in approving such costs and expenses may, in turn, delay the City's review and processing pursuant to this Agreement. Furthermore, Developer recognizes and accepts that Developer's decision to not approve analyses and costs and expenses hereunder may result in the City having insufficient information for good faith negotiation. Neither of these events, should they occur, constitute default or bad faith by the City, as referenced herein. However, if any study requested by City cannot be completed within the Negotiating Period, the City shall have the option of cancelling such study, revising such study so it can be completed during the Negotiating Period, or extending the Negotiating Period to a reasonable time after completion of such study.

Developer acknowledges the Reimbursement Payments do not include any additional fees and charges required by law, ordinance or resolution to be paid to the City by Developer, such as application fees, inspection fees, and other

processing fees for entitlements or permits that may be required by this Agreement or a possible DA.

(b) Developer shall pay to the City Ten Thousand Dollars ($10,000) as an initial deposit for the Reimbursement Payments.

Developer acknowledges that the nature and scope of the costs and expenses incurred by the City, as described herein, are dependent upon factors that may be largely outside of the control of the City. Accordingly, Developer acknowledges and agrees that the amount of the initial Reimbursement Payment made by Developer to the City for deposit does not represent an estimate of the actual final costs and expenses of such services that may need to be rendered by the City in the performance of its duties under this Agreement.

(c) City will bill Developer on a monthly basis for reasonable costs and expenses incurred by the City under this Agreement, and in conformance with the provisions of Section 1.4(a). The City will provide supporting documentation describing the costs and expenses incurred and the time involved in each task. To avoid waiver of attorney-client privilege, supporting documentation for legal costs and expenses will be brief summaries, All bills for Reimbursement Payments with the supporting documentation shall be sent to the attention of:

Global Resources Trading, LLC
1951 Windward Point
Discovery Bay, CA 94505
Attn: Peter Nguyen

The City will provide Developer, on a monthly basis, costs and expenses deducted from the initial deposit with the supporting documentation describing the costs and expenses incurred and the time involved in each task. Thereafter, if Developer fails to make the Reimbursement Payment(s) within thirty (30) days of the date of the bill, or within such greater periods of time as may be provided in the notice or as agreed upon by the Parties in writing, then the City may direct that all negotiations performed under this Agreement be suspended until Developer has made such additional Reimbursement Payment(s). Such suspension shall not constitute default by the City as referenced herein.

(d) The Reimbursement Payments under this Agreement shall in no way influence the actions of the City in respect to the Good Faith Negotiations provided for by this Agreement. Neither Developer nor any other person providing funding for the Reimbursement Payments shall, because of such payments under this Agreement, have any expectation as to the results of the good faith negotiations.

ARTICLE 2
THE DEVELOPER

Section 2.1 Identification of Developer Representatives. The Developer, its address, and its authorized representatives to negotiate the Leases with the City are as follows:

Global Resources Trading, LLC
1951 Windward Point
Discovery Bay, CA 94505
Attn: Peter Nguyen

Section 2.2 Development Entity. The Developer shall make full disclosure to the City of all information pertinent to the ownership, control, and financial capacity of the development entity that is proposed to serve as developer under the Leases and DA, including, but not limited to, the members of the Developer's development team, and (should the Development include for-rent units) the proposed property management company for the Development. Notwithstanding the foregoing, nothing in this Section 2.2 shall require Developer to give City access to Developer's financial books and records.

ARTICLE 3
NEGOTIATION/PRE-CONSTRUCTION TASKS

Section 3.1 Overview. During the Negotiating Period, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 and to accomplish the negotiation of mutually acceptable Leases and if applicable, a DA. To facilitate negotiation of the agreements, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support achievement of these goals.

Section 3.2 Developer's Activities Right of Entry.

(a) During the Negotiating Period, Developer will use its best efforts to prepare, at Developer's expense, any studies, surveys, plans, specifications, reports, and safety modifications ("**Developer's Activities**") Developer deems necessary or desirable in Developer's sole discretion, to complete its due diligence for the Properties. Developer's Activities may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses, design studies, and installation of City-approved perimeter safety fencing around the Properties. The Developer will have rights of access to the Properties to prepare the Developer's Activities.

(b) Developer hereby agrees to notify the City twenty-four (24) hours or at least one business day, whichever is greater, in advance of Developer's intention to enter the Properties.

(c) Developer will provide the City with work plans, drawings, and descriptions of any intrusive activity Developer intends to perform. Developer must keep the Properties in a safe condition during its entry. Unless excused by the City in writing in the sole discretion of the City Manager, Developer shall repair, restore and return the Properties to their condition immediately preceding Developer's entry and sampling thereon at Developer's sole expense.

(d) Without limiting any other indemnity provisions set forth in this Agreement, Developer shall indemnify, defend with counsel approved by City and hold the City, its officials, officers, employees, agents and volunteers harmless from and against all claims resulting from or arising in connection with entry and Developer's Activities upon the Properties by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section. Developer's indemnification obligations set forth in this Section 3.2 shall survive the termination of this Agreement.

(e) If upon expiration of this Agreement the Parties have not successfully negotiated the Leases, and DA if applicable, and no uncured default by City has occurred, Developer will provide City, only upon City's written request and within fifteen (15) days following such request, copies of the Developer's Activities completed by such date (provided City has paid for the requested Developer's Activities). If, upon expiration of this Agreement, the Parties have not successfully negotiated Leases, and a DA if applicable, and no uncured default by City has occurred, Developer will provide City, only upon City's written request, and within fifteen (15) days following such request, copies of all documentation of the Developer's Activities completed after the expiration of the Negotiating Period if Developer does not intend to complete such Developer Activities commenced prior to the expiration of the Negotiating Period. "Successful negotiation" for the purposes of this Agreement shall mean Developer approval and staff supporting recommendation to the City Council of the affected agreements.

(f) Upon installation of City-approved perimeter safety fencing around the Properties, all maintenance, whether required by the City or undertaken by the Developer, shall be at the sole cost of the Developer. Developer's obligations set forth in this Section 3.2 shall survive the termination of this Agreement.

Section 3.3 City Reports. The City shall provide the Developer with copies of all reports, studies, analyses, and similar documents prepared or commissioned by the City with respect to this Agreement, the Properties and the Proposed Project, promptly upon their completion, as long as the Developer has paid the City for the costs and expenses relating thereto. The Developer acknowledges that the City will need sufficient, detailed information about the Proposed Project including, without limitation, the financial information described in Sections 3.6 and 3.7, to make informed decisions about the content and approval of the agreements. Nothing in this Section 3.3 obligates the City to undertake any studies or analyses.

Section 3.4 Planning Approvals. The Developer acknowledges that the Proposed Project requires approvals and entitlements from the City (the "**Planning Approvals**"). During the Negotiating Period, the Developer shall submit preliminary Property plans and designs for the Proposed Project and architectural designs for all buildings within the Proposed Project to the City and the appropriate City departments for their informal review. The Developer understands that a formal application for the Planning Approvals and issuance of the Planning Approvals (in accordance with all applicable requirements of CEQA) will be a pre-disposition condition under the Leases in addition to other pre-disposition conditions.

Section 3.5 Utilities. The Developer shall consult with the utility companies serving the area of the Properties to determine if utility capacity exists to serve the Proposed Project and if existing utility facilities require expansion, relocation, or underground installation in connection with development of the Proposed Project. The City shall assist and cooperate with the Developer in such consultations.

Section 3.6 Financial Proforma Analysis. Within forty five (45) calendar days of the Effective Date, the Developer shall provide the City with a detailed financial proforma for the Proposed Project containing, among other matters typically contained in such proformas, a detailed development cost, budget, and a detailed operating income and expense estimate (excluding confidential or proprietary information). The financial proforma will be used to evidence the financial feasibility of the Proposed Project.

Section 3.7 Financing. Within ninety (90) calendar days of the Effective Date, the Developer shall submit to the City evidence of financing. The Developer shall show to the reasonable satisfaction of the City that the Developer has sufficient loan financing committed to pay the costs related to the development and completion of the improvements from a commercial financial institution.

Section 3.8 Progress Reports. Upon reasonable notice, as from time to time requested by the City, the Developer shall make oral or written progress reports advising the City on studies being made and matters being evaluated by the Developer with respect to this Agreement and the Proposed Project, including the status of the environmental site assessments, geotechnical investigations, biological assessments, traffic impacts, cultural and archaeological studies, parking and circulation studies, pedestrian connectivity, and general site planning and architectural design work.

ARTICLE 4
GENERAL PROVISIONS

Section 4.1 Limitation on Effect of Agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate either the City or the Developer to enter into any agreement. This Agreement (and any extension of the Negotiating Period) shall not obligate the City to lease, or otherwise transfer, the Properties, or any portion thereof, to the Developer or any other entity, nor does it grant the Developer the

right to develop the Proposed Project. This Agreement (and any extension of the Negotiating Period) shall not obligate the City to dispose of the Properties or any portion of the Properties. This Agreement (and any extension of the Negotiating Period) shall not obligate the City to provide any financial assistance to the Developer. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City and City Council action the final discretion and approval regarding the execution of any Lease or DA, any transfer of the Properties, and all proceedings and decisions in connection therewith. Any Leases or DA resulting from negotiations pursuant to this Agreement shall become effective only if and after such Leases, and DA if applicable, have been considered and approved by the City Council of the City, following conduct of all legally required procedures, and following completion of all applicable requirements of CEQA.

Section 4.2 Indemnification. Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, excepting therefrom any and all administrative, legal or equitable actions or other proceedings alleging gross negligence or willful misconduct by the City (an "Action"). The parties shall cooperate in defending such Action. Developer shall pay for the City's reasonable costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and reasonable attorneys' fees expended by the City in defense of any such Action. The parties shall use best efforts to select mutually agreeable defense counsel. If the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis the City for all such court costs, attorney fees, and time referenced. This Section 4.2 shall survive the termination, invalidation or nullification of this Agreement.

Section 4.3 Notices. Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, with signature required, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attn: City Manager

Developer: Global Resources Trading, LLC
1951 Windward Point
Discovery Bay, CA 94505
Attn: Peter Nguyen

Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.4 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against the Properties or any portion of the Properties, with respect to this Agreement or any dispute or act arising from it.

Section 4.5 Costs and Expenses. Except as set forth in Section 1.4 herein, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement.

Section 4.6 No Commissions. The City shall not be liable for any Leases or DA that may result from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent, or finder retained by the Developer. The terms of this Section will survive the expiration or earlier termination of this Agreement.

Section 4.7 Default and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Developer's sole remedy shall be to terminate this Agreement and to recover from the City all costs for the Developer’s Studies. Following such termination, neither party shall have any further right, remedy, or obligation under this Agreement; provided, however, that the Developer's indemnification obligations pursuant to Sections 3.2(d), 4.2 and 4.6 shall survive such termination. In the event of an uncured default by the City, Developer will retain Developer Studies resulting from this Agreement, the Leases, and the DA.

In the event of an uncured default by the Developer, the City's sole remedy shall be to terminate this Agreement and to recover any unpaid Reimbursement Payments previously invoiced and/or including expenses incurred prior to Developer’s default. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the Developer's indemnification obligations pursuant to Sections 3.2(d), 4.2 and 4.6 shall survive such termination. In the event of an uncured default by Developer, City may request, and Developer may not unreasonably withhold, Developer’s Studies resulting from this Agreement, the Leases, and the DA without payment by City.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

(c) Not a Default. The City Council and Planning Commission have the authority to review and consider the Proposed Project no later than the expiration date of this Agreement, unless extended in writing by the parties hereto. The City Council's decision whether or not to approve the Proposed Project is final and may not be challenged. The City's disapproval or other action, and any action by the Planning Commission are not events of default.

Section 4.8 Assignment. The Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void.

Section 4.9 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.10 Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

Section 4.11 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Contra Costa County, California.

Section 4.12 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement. This Agreement has been mutually prepared by the parties and the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to this Agreement including, but not limited to, California Civil Code Section 1654, as may be amended from time to time.

Section 4.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 4.14 Authority to Execute. The undersigned represent and warrant they are each duly authorized to execute this Agreement on behalf of their respective party and to take the actions necessary to perform hereunder without the need to seek further authorization from the entity each represents.

Section 4.15 No Agency, Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of agency relationship, joint venture or

partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

WHEREFORE, the parties have executed this Agreement on or as of the date first above written.

CITY OF PITTSBURG	**GLOBAL RESOURCES TRADING, LLC**
A California municipal corporation	Developer
_____	_____
Garrett Evans, City Manager	Peter Nguyen, Chief Executive Officer

Attest:

_____
Alice E. Evenson, City Clerk

Approved as to Form:

_____
Donna Mooney, City Attorney

EXHIBIT A

RESULTANT LOT 1

A portion of that parcel of land situate in the City of Pittsburg, County of Contra Costa, State of California and designated as New Lot 4 as shown and so designated on that certain Parcel Map Waiver, recorded on October 1 3, 2019 as Document No. 2019-0166581-00, Official Records of Contra Costa County and being further described as follows:

Beginning at the southwest corner of said New Lot 4; thence from said **POINT OF BEGINNING** coincident with the westerly line of said New Lot 4, also being the easterly right-of-way line of Marina Boulevard as described in that certain Quitclaim Deed recorded on February 5, 2008, as Document No. 2008-0023740 Official Records of Contra Costa County, North 29°29'52" West a distance of 226.68 feet; thence leaving said easterly line, coincident with the north line of said New Lot 4, North 43°02'22" East a distance of 82.90 feet to the easterly corner of New Lot 3 as shown and so designated on said Parcel Map Waiver; thence leaving said northerly line, North 43°02'22" East a distance of 97.84 feet to a point on the Grant Line as shown and so designated on that certain Record of Survey entitled "RECORD OF SURVEY RS 3661 TIDE AND SUBMERGED LANDS GRANTED IN TRUST TO THE CITY OF PITTSBURG PURSUANT TO CHAPTER 422, STATUTES OF 2011" filed for record on December 11, 2014 in Book 149 of Licensed Surveyor's Maps, at Page 27, Contra Costa County Records, said point also being the northeast corner of Resultant Lot 1; thence coincident with said Grant Line for the following seven (7) courses and distances:

1. South 18°55'08" East a distance of 12.99 feet;
2. South 04°57'05" East a distance of 78.03 feet;
3. South 00°49'30" West a distance of 42.70 feet;
4. South 02°38'48" East a distance of 15.85 feet;
5. South 31°14'44" East a distance of 66.45 feet;
6. South 47°48'44" East a distance of 52.31 feet; and
7. South 12°19'44" East a distance of 2.85 feet to the southerly line of said New Lot 4;

thence coincident with said southerly line of New Lot 4 for the following three (3) courses and distances:

1. South 40°42'47" West a distance of 73.60 feet;
2. South 43°44'02" West a distance of 2.07 feet; and
3. South 58°35'09" West a distance of 55.31 feet to the Point of Beginning.

Containing 82.66 acres of land or 3,600,701 square feet, more or less.

RESULTANT LOT 2

A portion of that parcel of land situate in the City of Pittsburg, County of Contra Costa, State of California and designated as New Lot 4 as shown and so designated on that certain Parcel Map Waiver, recorded on October 3, 2019 as Document No. 2019-0166758-00, Official Records of Contra Costa County and being further described as follows:

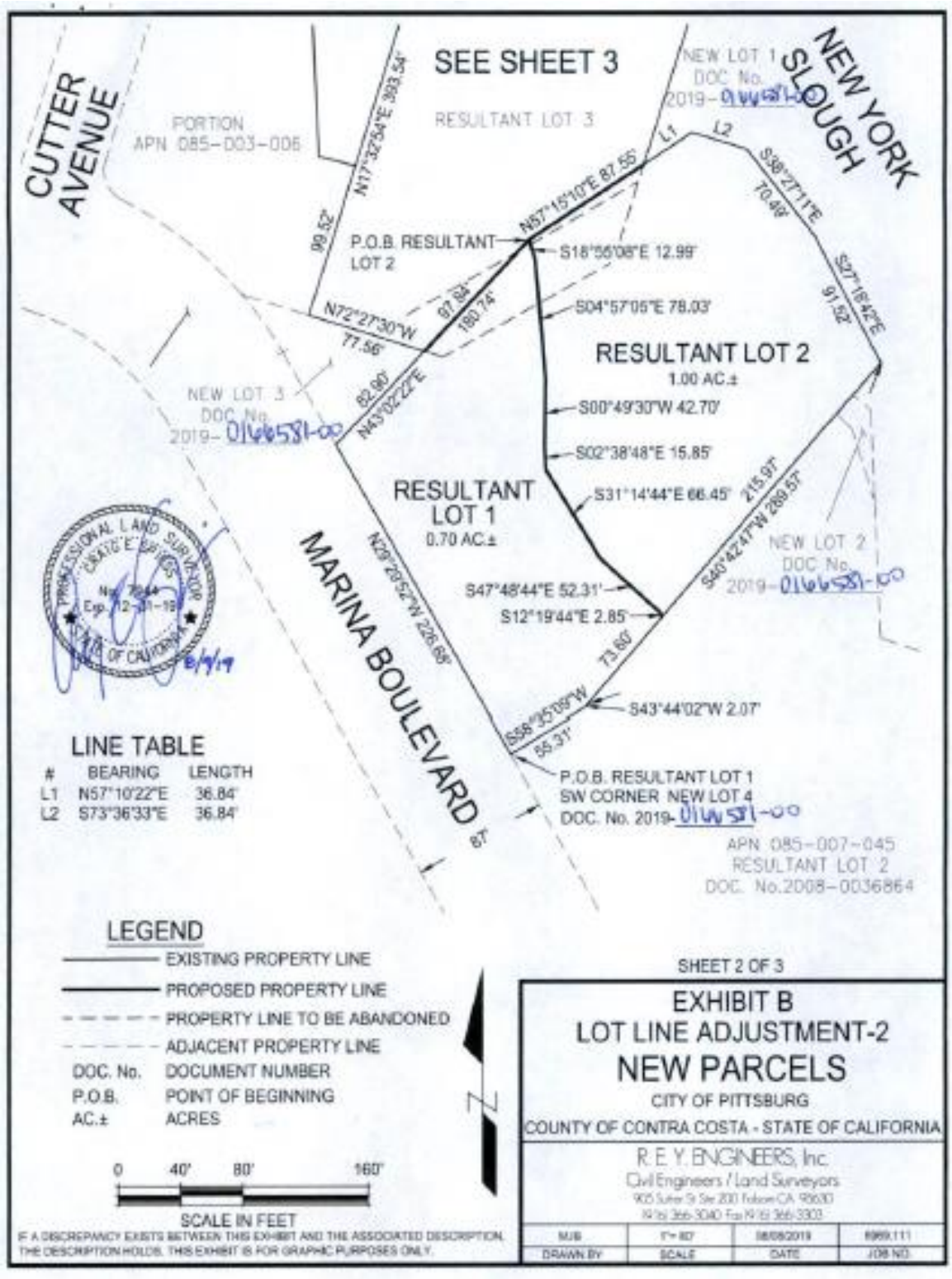
Beginning at the northeast corner of the aforesaid Resultant Lot 1; thence from said **POINT OF BEGINNING** North 57°15'10" East a distance of 87.55 feet to a point on the northerly line of said New Lot 4; thence coincident with the northerly, easterly and southerly lines of said New Lot 4 for the following five (5) courses and distances:

1. North 57°10'22" East a distance of 36.84 feet;
2. South 73°36'33" East a distance of 36.84 feet;
3. South 38°27'11" West a distance of 70.49 feet;
4. South 27°18'42" East a distance of 91.52 feet to the southeast corner of said New Lot 4; and
5. South 40°42'47" West a distance of 215.97 feet to a point on the Grant Line as shown and so designated on that on that certain Record of Survey entitled "RECORD OF SURVEY RS 3661 TIDE AND SUBMERGED LANDS GRANTED IN TRUST TO THE CITY OF PITTSBURG PURSUANT TO CHAPTER 422, STATUTES OF 2011", filed for record on December 11, 2014 in Book 149 of Licensed Surveyor's Maps, at Page 27, Contra Costa County Records;

thence leaving said southerly line and coincident with said Grant Line for the following seven (7) courses and distances:

1. North 12°19'44" West a distance of 2.85 feet;
2. North 47°48'44" West a distance of 52.31 feet;
3. North 31°14'44" West a distance of 66.45 feet;
4. North 02°38'48" West a distance of 15.85 feet;
5. North 00°49'30" East a distance of 42.70 feet;
6. North 04°57'05" West a distance of 78.03 feet; and
7. North 18°55'08" West a distance of 12.99 feet to the Point of Beginning.

Containing 1.00 acres of land or 43,400 square feet, more or less.


SEE SHEET 3
CUTTER AVENUE
NEW YORK SLOUGH
PORTION APN 085-003-006
RESULTANT LOT 3
NEW LOT 1 DOC. No. 2019-0166581-00
N17°32'54"E 393.54'
99.52'
P.O.B. RESULTANT LOT 2
N57°15'10"E 87.55'
L1
L2
S38°27'11"E 70.40'
S18°56'08"E 12.99'
S27°18'42"E 91.52'
S04°57'05"E 78.03'
N72°27'30"W 77.56'
97.83'
180.74'
RESULTANT LOT 2
1.00 AC.±
NEW LOT 3 DOC. No. 2019-0166581-00
82.90'
N43°02'22"E
S00°49'30"W 42.70'
S02°38'48"E 15.85'
RESULTANT LOT 1
0.70 AC.±
S31°14'44"E 66.45'
215.97'
S40°42'47"W 269.57'
NEW LOT 2 DOC. No. 2019-0166581-00
MARINA BOULEVARD
N29°28'52"W 226.66'
S47°48'44"E 52.31'
S12°19'44"E 2.85'
73.60'
S43°44'02"W 2.07'
S58°35'09"W 55.31'
87'
P.O.B. RESULTANT LOT 1 SW CORNER NEW LOT 4 DOC. No. 2019-0166581-00
APN 085-007-045 RESULTANT LOT 2 DOC. No.2008-0036864
PROFESSIONAL LAND SURVEYOR No. 7944 Exp. 12-31-19 STATE OF CALIFORNIA
8/9/19
LINE TABLE
BEARING LENGTH
L1 N57°10'22"E 36.84'
L2 S73°36'33"E 36.84'
LEGEND
EXISTING PROPERTY LINE
PROPOSED PROPERTY LINE
PROPERTY LINE TO BE ABANDONED
ADJACENT PROPERTY LINE
DOC. No. DOCUMENT NUMBER
P.O.B. POINT OF BEGINNING
AC.± ACRES
0 40' 80' 160'
SCALE IN FEET
IF A DISCREPANCY EXISTS BETWEEN THIS EXHIBIT AND THE ASSOCIATED DESCRIPTION, THE DESCRIPTION HOLDS. THIS EXHIBIT IS FOR GRAPHIC PURPOSES ONLY.
SHEET 2 OF 3
EXHIBIT B
LOT LINE ADJUSTMENT-2
NEW PARCELS
CITY OF PITTSBURG
COUNTY OF CONTRA COSTA - STATE OF CALIFORNIA
R. E. Y. ENGINEERS, Inc.
Civil Engineers / Land Surveyors
905 Sutter St Ste 200 Folsom CA 95630
(916) 366-3040 Fax (916) 366-3303
MJB | 1"=80' | 08/09/2019 | 6969.111
DRAWN BY | SCALE | DATE | JOB NO.

Policy 47 - Policies call on the Commission, working with other agencies and the general public, to develop a regional strategy for

- Protecting critical developed areas along the shoreline from flooding;
- Enhancing the natural resources of the Bay by preserving existing habitat and identifying areas where tidal wetlands can migrate landward; and
- Improving the ability of communities to adapt to sea level rise in ways that advance economic prosperity, social equity and environmental protection.

(SFBCDC 2011 *San Francisco Bay Plan*)

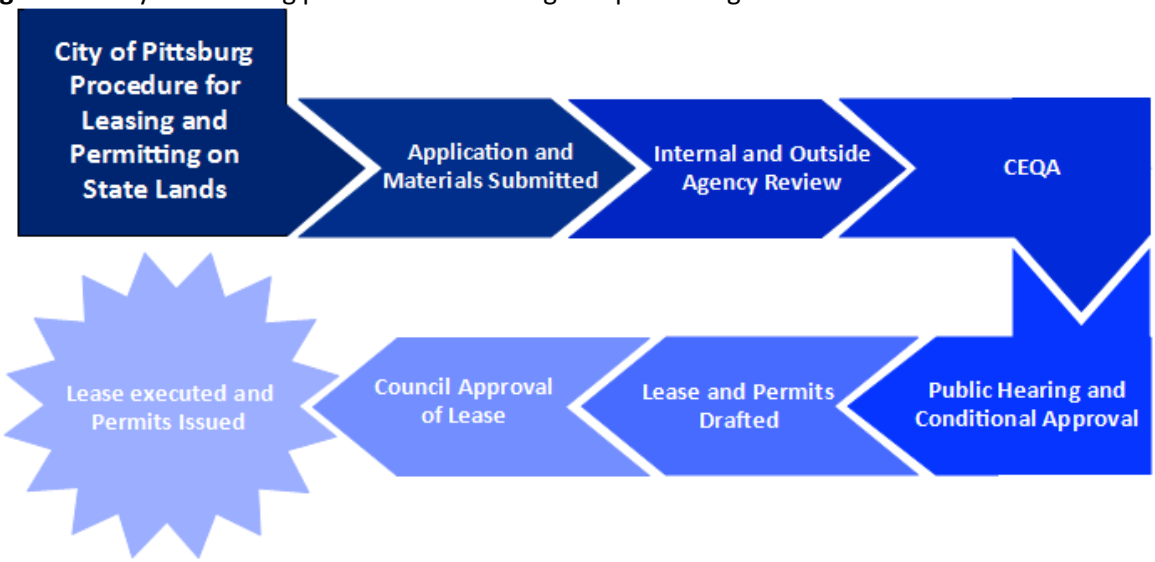
5. Procedures and Regulations for Trust Lands Leases and Developments

Given Pittsburg's custodial responsibility over Trust Lands within its boundaries, and its long-term vision of access, preservation, and integration, the City manages leasing and development at the waterfront per the following process.

Leasing and Permitting Procedure

The chart below outlines the application and review process for leasing and permitted development on Trust Lands in Pittsburg. Building, Planning, and Engineering permit applications and forms for can be found on the City's website at http://www.ci.pittsburg.ca.us/index.aspx?page=180. A detailed description of the process is as follows:

Figure 12. City of Pittsburg procedure for leasing and permitting on State Lands.



Step 1. Depending on the scope of the project, applicants first submit their application materials and fees to the City of Pittsburg Planning, Building, or Engineering Department. Application materials may include but are not limited to:

- Planning or Building Permit Application Form
- Scope of Work
- Dredging/Excavation Plan
- Bank Stabilization Plan
- Site/Location Plan

- Floor Plan
- Building Elevations
- Cross Sections
- Materials and Color Samples Board
- Grading Plan
- Photometric Plan
- Landscaping Plan
- Stormwater Control Plan Report and Exhibit

Upon receipt of a complete application and supplemental materials, staff estimates processing costs, and issues the applicant a reimbursement agreement to assure recovery by the City of the total cost to process an application for their project and the planned use of State Trust Lands.

Step 2. Several City departments including Planning, Building, and Engineering, along with any relevant outside agencies, including the State Lands Commission, (see Attachment 3) then conduct review of submittals to determine whether the proposed project is (a) consistent with the City and State policies, practices and procedures; (b) conducive to public access; (c) consistent with environmental safeguards and policies of the State; and (d) otherwise in the best interest of the State. A list of the City's General Plan Waterfront Development Policies with which staff will determine preliminary approval status can be found in Attachment 4, and all Municipal Code requirements can be found in the City of Pittsburg Municipal Code.

In the event the application is deemed incomplete, City staff will specify additional information required and notify the applicant. Upon receipt of any additional material, staff will respond within 30 calendar days as to whether the application is complete. Should the applicant fail to provide a complete application within a reasonable period of time, the file may be closed and all or any part of the fees retained by the City. There is an appeal process whereby an applicant may appeal the staff determination that an application is incomplete.

At this stage, State Lands Commission approval for leases for port industrial facilities are required per Chapter 422, st 2011, Section 3(1).

Step 3. Once approval is received from all outside agencies, the City initiates the California Environmental Quality Act (CEQA) process. On many proposed projects the City is the Lead Agency for this process.

Step 4. After a successful CEQA process in which the project is exempted or found compliant, the City Council and/or Planning Commission consider the item in a public hearing for conditional approval. The following table demonstrates types of projects and public meetings to which they are subject.

Project Type	Public Meeting Required
General Plan Amendment	Planning Commission and City Council
Rezoning or Zoning Text Change	Planning Commission and City Council
Design Review	Planning Commission or City Council
Variance	Planning Commission
Development Agreement	Planning Commission and City Council
Affordable Housing Agreement	City Council

Step 5. If approved by the City Council and/or Planning Commission, a lease is drafted according to an appraisal of upland property which the City obtains using the expense deposit collected in Step 1. Terms and conditions of the City's waterfront leases vary. A sample lease can be seen as Attachment 5. At this step all necessary City and Outside Agency permits are prepared as well.

Step 6. Once mutually agreed upon, the lease is brought before the City Council for approval during a City Council meeting.

Step 7. If approved by the Council, the project is allowed to proceed with the project. The lease is then executed and all permits are issued.