



DATE: September 9, 2015
TO: WMA Board
FROM: Gary Wolff, Executive Director
SUBJECT: Sale of a Conservation Easement to Golden Hills LLC (Wind Farm Developer)

Background and Summary of Draft Purchase Agreement

We own about 1600 acres in eastern Alameda County for the purpose of development as a publicly owned landfill or composting facility. We refer to the possibility of a future public landfill as the issue of "Reserve Landfill Capacity." The purpose of a reserve is to ensure that adequate long-term capacity exists and will be available to Alameda County residents and businesses at a reasonable price.

We also have an easement on some of the land for a wind farm, and receive around \$375,000 of revenue per year at present under the terms of the easement. Replacement of the old wind generators with larger, but many fewer, wind generators began in April and is expected to be complete in December ('repowering'). The construction and maintenance of the wind farm involves impacts on terrestrial species habitat (red legged frog, tiger salamander, kit fox, and burrowing owls) that the project developer must mitigate.

The developer (Golden Hills LLC, a subsidiary of NextEra Energy) would like to purchase a conservation easement on some of our property that is outside the wind farm. None of this land is within the areas previously identified for a public landfill or composting facility, so granting an easement would not prevent development of these facilities. But the Authority will need to mitigate for habitat loss if a landfill is developed, so selling a conservation easement could increase the cost of developing a landfill on our land. However, such development is not likely for several decades and might never occur. And if it occurs, the Authority would very likely need to purchase additional land to provide a buffer zone around the area to be filled. Unless that land is already in a conservation easement, it or land we already own outside the easement desired by Golden Hills will be available to mitigate for any habitat impacts of landfill development.

The WMA Board at its July meeting provided direction to me regarding the price and terms of payment for Golden Hills LLC's purchase of a conservation easement on a portion of the Authority's property. Consistent with this direction, the term sheet (Attachment A) and draft purchase agreement based on it (Attachment B) include a 'guarantee' to purchase a minimum of 200 acres of easement at a minimum of \$9,500 per acre – conditional on approval of the Resource Agencies (CA

Department of Fish and Wildlife and the US Fish and Wildlife Service). If fewer than 200 acres are approved by the Resource Agencies, Golden Hills is obligated to pay us for all of the approved acres.

This amounts to a ‘guaranteed’ payment of up to \$1.9 million. They can also pay us \$9,500 per acre for up to another 108 acres at their sole option. They may or may not need these additional acres to meet their habitat mitigation obligations, which have not yet been fully defined by the Resource Agencies. If they were to pay for an easement on all 308 acres, at \$9,500 per acre, the total payment would be \$2.926 million. (To account for the time value of money, a higher price of \$10,000 per acre will apply if Golden Hills LLC records the easement after October 7, 2016.)

As is typical for conservation easements, the purchase agreement calls for a land trust (or other qualified entity) to hold and monitor compliance with the easement. Golden Hills LLC will not only pay us for the conservation easement but will also pay the land trust an endowment to pay for all future costs of maintaining and monitoring the conservation easement to ensure compliance with terms specified by the Resource Agencies. The endowment amount must be approved by the Resource Agencies, along with the written plan for maintenance and monitoring of the easement. Golden Hills LLC will choose the entity that will hold the conservation easement and endowment but that choice will be subject to our reasonable approval. We will be able to continue to use the property for activities consistent with habitat protection -- such as grazing or communications towers -- and keep all revenue from such activities.

The purchase agreement also requires Golden Hills LLC to pay us \$55,000 within 30 days after the purchase agreement is signed by both parties. This covers the high end of our cost estimate for staff and legal time to negotiate the purchase agreement and establish a conservation easement. This payment is in addition to the easement purchase payment described above.

Value of Conservation Easements:

Several sources of conservation easement value data are available. First, we had our property appraised for planning purposes in early 2013. The two parcels proposed for conservation easements appraised at about \$5,000 per acre, but the appraisal did not include an assessment of their value as conservation easements. Selling a conservation easement on these parcels will reduce their market value if the Authority were to sell the parcels outright at a later time; perhaps by 70% based on the technical memoranda described below.

The list of comparable properties in the 2013 appraisal did include four transactions where public agencies bought land (not just easements) for habitat mitigation purposes. The average of those four transactions after adjusting for the passage of time at 2.6% per year (see basis for that percentage below) was about \$6,600 per acre. Excluding one transaction that was far below the other three raises the average to about \$7,700. The highest of these land purchases was at \$10,727 per acre. The appraiser subtracted \$3,400 per acre from that price specifically to remove habitat mitigation value from their assessment of our parcel's market value excluding habitat value. Adding back \$3,400 per acre to the \$5,000 per acre appraised value of our parcels, then adjusting for passage of time, yields about \$9,050 per acre if we were to sell the parcels outright for conservation purposes.

Second, we asked several knowledgeable parties for more recent data. The California Rangeland Trust said that the few recent transactions they were aware of in eastern Alameda County ranged in price from \$5,000 to \$8,750 per acre. The Tri-Valley Conservancy said that recent transactions they are aware of north of Livermore were in the range of \$9,000 to \$10,000 per acre. They also said that transactions south of Livermore on land suitable for viticulture were much higher (over \$20,000 per acre). A consultant experienced with conservation easement transactions in Alameda County also said that recent transactions he is aware of were in the range of \$9,000 to \$10,000.

Third, we reviewed two technical memoranda and associated data that were developed as part of regional conservation planning efforts (Hausrath Economics Group, Assessment of Open Space Land Sales Used in Santa Clara Valley Habitat Plan Economic Analysis, April 6, 2012; and Economic and Planning Systems, NCCP/HCP Land Cost Data, EPS #11028, August 3, 2006). The actual transactions documented in these memos for larger parcels (120 acres +) were generally lower in price than are being discussed here, even after adjustment for the historic rate of inflation reported for open space purchase in eastern Contra Costa County (2.6% per year from around 1970 to around 2000). The 2012 memorandum provides a table of 'proposed land acquisition cost assumptions' in Santa Clara County that shows \$6,000 per acre for 'remote hill areas' and \$8,000 per acre for 'near hill areas', in 2010 dollars. Adjusting for six years at the 2.6% figure noted above yields possible average values of about \$7,000 ('remote hills') and about \$9,300 ('near hills').

However, many of the parcels were purchased for open space, not specifically due to the presence of species habitat. Three transactions in Santa Clara County did reportedly include similar habitat to that which may exist on our properties. The parcels involved were sold for \$5,461 (April 2003), \$6,280 (October 2001), and \$10,167 (January 2007) per acre, in the month and year indicated in parentheses. The highest valued parcel reportedly had wetlands and ponds and habitat for all four species named above. But the relevance of an eight year old land purchase in Santa Clara County is difficult to assess. This transaction was before the real estate bubble burst in 2008, and it was a land purchase not just an easement purchase. Also, the 'guarantee' in our draft agreement has value. These transactions typically involve an option, which the potential purchaser might or might not execute after seeking options on more acres than are necessary. The 'guarantee' prevents Golden Hills LLC from using our agreement as a bargaining tool with other property owners, but then failing to close a deal with us if one of those owners agrees to a lower price per acre. Although that could happen with the 108 acres above the 200 acre 'guarantee', it is less likely because the incremental cost to Golden Hills LLC of adding acres to a 200 acre conservation easement with us is small compared to creating another easement altogether, and the Resource Agencies prefer large contiguous conserved areas, rather than the same acreage spread among multiple non-contiguous parcels.

Recommendation:

Recommend that the Board approve the draft purchase agreement provided in Attachment B.

Attachment A: signed term sheet

Attachment B: draft conservation easement purchase agreement

Financial Term Sheet for Purchase of Conservation Easement

Between Golden Hills Wind, LLC and ACWMA

Offer 2

The Alameda County Waste Management Authority ("ACWMA") and Golden Hills Wind, LLC ("Golden Hills") hereby agree to enter into an agreement for the purchase of a conservation easement ("Purchase Agreement") for the approximately 308 acre South Flynn and Patterson Pass properties shown on the attached map, ("Conservation Easement Property") subject to the financial terms below and such other terms as are reasonable and customary for the purchase and sale of conservation easements.

(See 7(29)15)

1. Golden Hills shall pay ACWMA fifty-five thousand dollars (\$55,000) within thirty (30) days after Golden Hills and ACWMA have entered into a Purchase Agreement that guarantees Golden Hills's purchase of at least two hundred (200) acres of the Conservation Easement Property. This payment is non-refundable and will not be credited against the conservation easement purchase price described in paragraph 2 and 3 below.
2. Upon recordation of the conservation easement, Golden Hills shall pay ACWMA nine thousand five hundred dollars (\$9,500) per acre of the Conservation Easement Property included in the conservation easement. If recordation of the conservation easement occurs after October 7, 2016, Golden Hills shall increase the amount it pays ACWMA to ten thousand dollars (\$10,000) per acre of the Conservation Easement Property included in the conservation easement. If recordation of the conservation easement does not occur prior to August 1, 2017, then prior to August 31, 2017, Golden Hills shall pay ACWMA the ten thousand dollar (\$10,000) per acre price for two hundred (200) acres of the Conservation Easement Property, or for that acreage (if any) suitable for mitigation pursuant to paragraph 3.
3. Golden Hills shall compensate ACWMA for two hundred (200) acres within the Conservation Easement Property unless the California Department of Fish and Wildlife ("CDFW") or the United States Fish and Wildlife Service ("USFWS") determines and states in writing that there are not two hundred (200) acres of the Conservation Easement Property that are suitable for mitigation and identifies the location of the unsuitable acreage, in which case, Golden Hills shall compensate ACWMA for only the portion of the Conservation Easement Property that is suitable for mitigation, if any. If no such written statement is provided prior to August 31, 2017, Golden Hills shall pay ACWMA the ten thousand dollar (\$10,000) per acre price for two hundred (200) acres of the Conservation Easement Property.
4. Golden Hills shall convey funds to the holder of the conservation easement (or other qualified entity) for an endowment to pay for the costs of long-term management and stewardship of the Conservation Easement Property, including the costs of maintaining, inspecting, monitoring, or otherwise managing the conservation easement. The endowment, or other mechanism acceptable to the Authority, shall include funds to

[Signature]

compensate ACWMA for any additional costs it incurs to improve, insure, or restore the Conservation Easement Property in compliance with any conservation easement, CDFW, or USFWS requirements. Such costs shall not include ACWMA legal or staff costs.

5. The holder of the conservation easement and endowment are subject to approval by ACWMA. Such approval may not be unreasonably withheld.
6. ACWMA will retain all payments made by tenants, lessees, and licensees of the Conservation Easement Property, and ACWMA will be able to continue grazing the Conservation Easement Property and undertaking any other activity on the Conservation Easement Property allowed by the conservation easement with tenants, lessees, and licensees of ACWMA's choice.
7. Each person executing this term sheet on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of such party and that all requisite approvals of such party have been obtained.

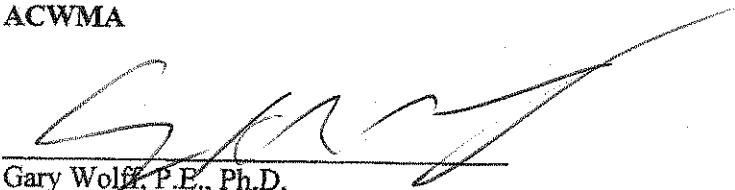
Golden Hills



John DiDonato
Vice President, Golden Hills Wind, LLC

Date: July 24, 2015

ACWMA



Gary Wolf, P.E., Ph.D.
Executive Director
Alameda County Waste Management Authority

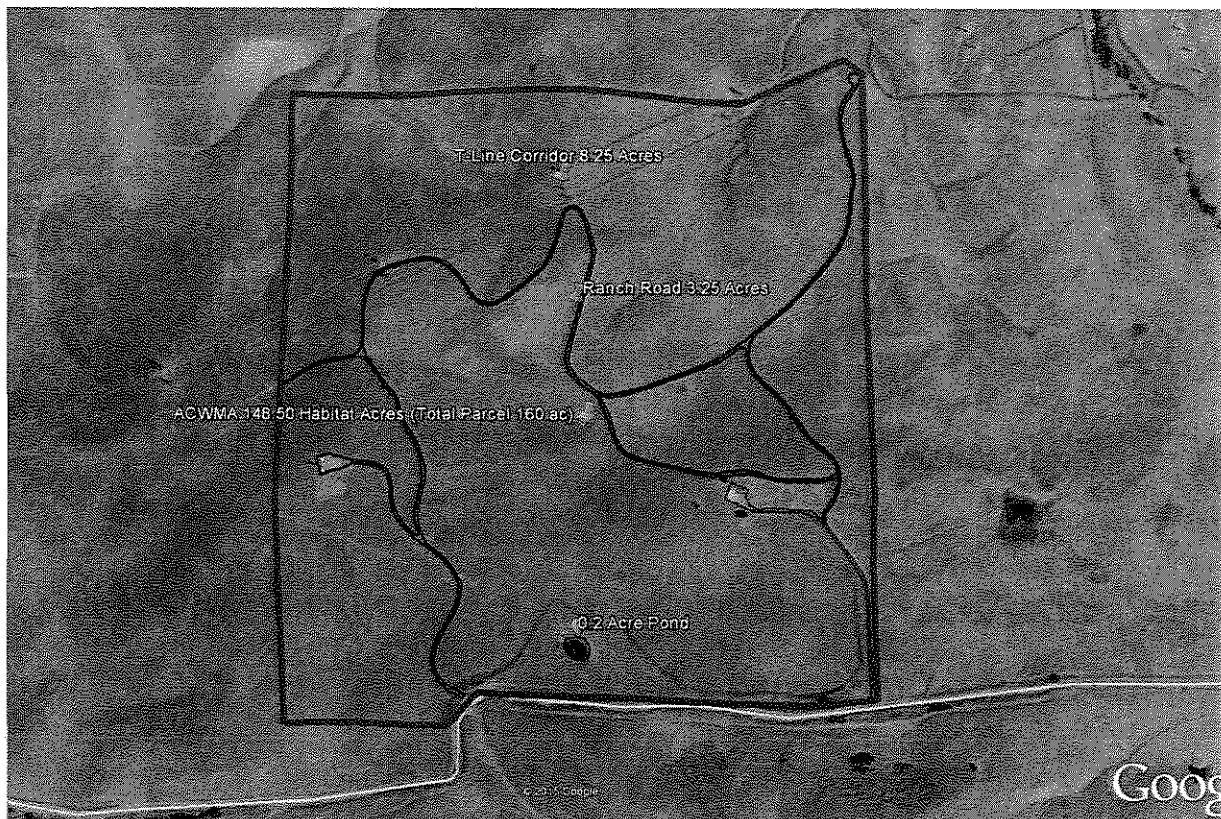
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695139.2

Attachment A

Maps for discussion on the 6-5-2015 conference call

Preliminary draft map of the ACWMA Patterson Pass Rd. property for review



**Habitat acreage could further be reduced by disked fire breaks, title encumbrances that could not be subordinated, and/or any other wildlife agency required reductions (e.g., set back from Patterson Pass Road).

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Attachment A

Preliminary draft map of the ACWMA So. Flynn Rd. property for review



**Habitat acreage could further be reduced by disked fire breaks, title encumbrances that could not be subordinated, and/or any other wildlife agency required reductions (e.g., set back from Flynn Road).

G. J.

Attachment A

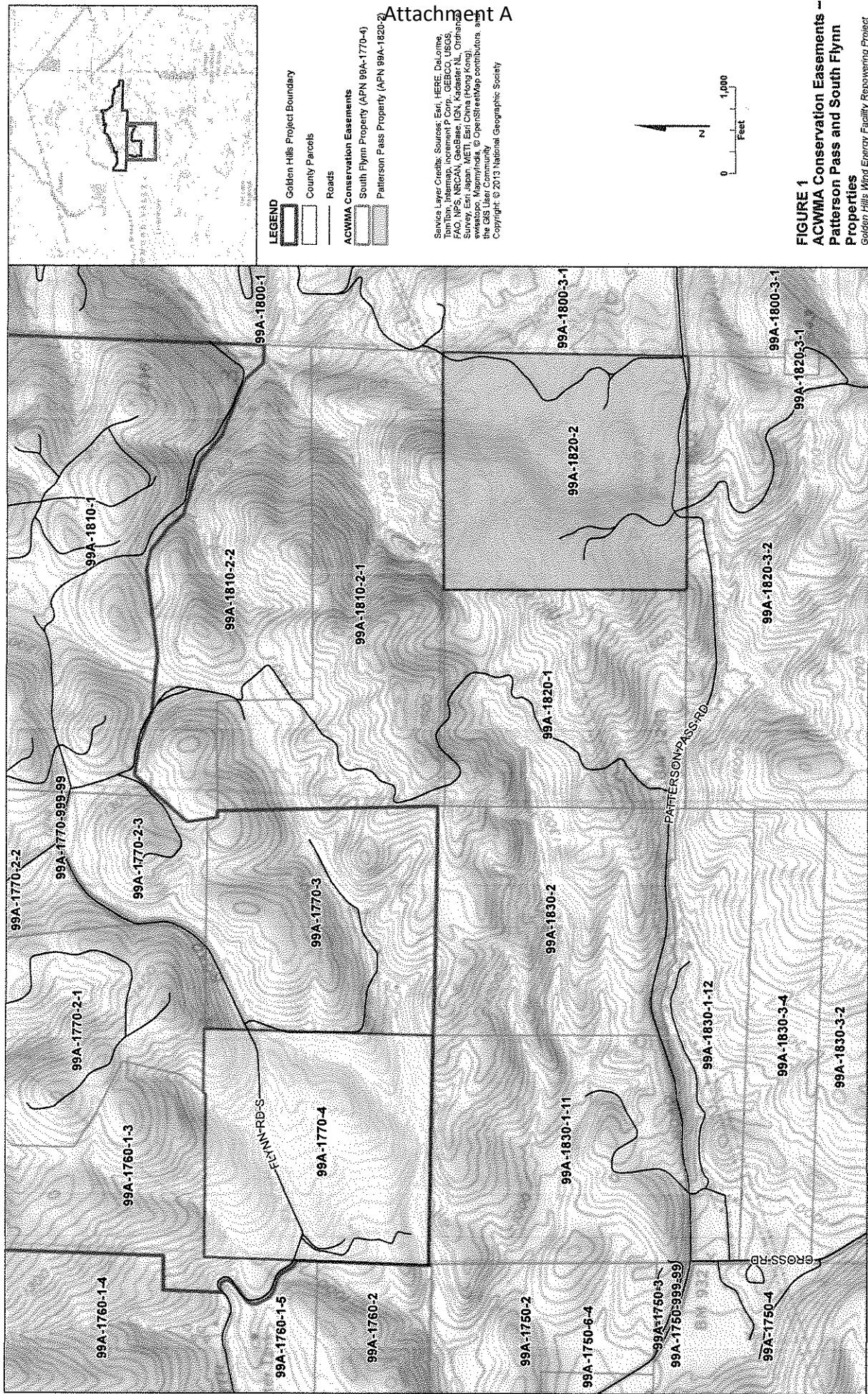


FIGURE 1
ACMWA Conservation Easements –
Patterson Pass and South Flynn
Properties
Golden Hills Wind Energy Facility Repowering Project

Attachment A

AGREEMENT FOR PURCHASE OF CONSERVATION EASEMENT

This Purchase Agreement (“Agreement”) is made and entered into by and between Alameda County Waste Management Authority (“Seller”) and Golden Hills Wind, LLC (“Buyer”) as of _____, 2015 (“Effective Date”). Seller and Buyer are the herein referred to as “Parties,” and each is a “Party.”

RECITALS

A. Seller is the owner in fee simple of certain real property consisting of approximately 1,632.45 acres located in the unincorporated area of Alameda County, California, of which the land that is the subject of this Agreement is described in Exhibit A, attached hereto and incorporated herein (“**Conservation Easement Property**” or “**Property**”).

B. Buyer desires to purchase a conservation easement from Seller that will then be granted by Seller to a mutually agreed upon land trust or other entity authorized to hold conservation easements (“**Grantee**”) and that is acceptable to Grantee, the California Department of Fish and Wildlife (“**CDFW**”) and the United States Fish and Wildlife Service (“**USFWS**”) (collectively, “**the Resource Agencies**”). This conservation easement will be managed in accordance with a mitigation plan required in connection with Buyer’s permit for the Golden Hills Wind Repowering Project (“**Repowering Project**”).

C. The Seller has agreed to grant to Grantee a conservation easement on the Property, in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained herein, the Parties agree as follows:

AGREEMENT

1. PURCHASE AND SALE

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller for the consideration and subject to the terms and conditions set forth in this Agreement, a conservation easement, which will be granted to Grantee; negotiated by Seller, Grantee, and the Resource Agencies; and substantially in the form and substance of the instrument attached hereto as Exhibit B and incorporated herein by reference (the “**Conservation Easement**”).

2. PURCHASE PRICE

2.1 Administrative Costs

Buyer shall pay Seller fifty-five thousand dollars (\$55,000) within thirty (30) days after Buyer and Seller have entered into this Agreement. This payment is non-refundable and will not be credited against the payments required in Sections 2.2 and 2.3.

2.2 Purchase Price

(a) Buyer shall compensate Seller for purchase of a Conservation Easement on at least two hundred (200) acres within the Conservation Easement Property unless CDFW or USFWS provides written documentation stating or showing that there are not two hundred (200) acres of the Conservation Easement Property that are suitable for mitigation and identifying the location of the unsuitable acreage, in which case, Buyer shall compensate Seller for only the portion of the Conservation Easement Property that is suitable for mitigation, if any, as provided in Section 2.2(b). The amount that Buyer must pay Seller under this Agreement for the purchase of the Conservation Easement is the “Purchase Price.”

(b) The amount of the Purchase Price is contingent on the date that the Conservation Easement is recorded, if ever. The Purchase Price shall be as follows:

(1) If the Conservation Easement is recorded on or before October 7, 2016, Buyer shall pay Seller nine thousand five hundred dollars (\$9,500) per acre of the Conservation Easement Property included in the Conservation Easement. If the acreage included in the Conservation Easement is less than two hundred (200) acres and CDFW or USFWS has not provided written documentation stating or showing that there are not two hundred (200) acres of the Conservation Easement Property that are suitable for mitigation and identifying the location of the unsuitable acreage, then Buyer shall also pay Seller nine thousand five hundred dollars (\$9,500) per acre for the difference in acreage between 200 acres and the acreage included in the Conservation Easement.

(2) If the Conservation Easement is recorded after October 7, 2016, but on or before July 31, 2017, Buyer shall pay Seller ten thousand dollars (\$10,000) per acre of the Conservation Easement Property included in the Conservation Easement. If the acreage included in the Conservation Easement is less than two hundred (200) acres

and CDFW or USFWS has not provided written documentation stating or showing that there are not two hundred (200) acres of the Conservation Easement Property that are suitable for mitigation and identifying the location of the unsuitable acreage, then Buyer shall also pay Seller ten thousand dollars (\$10,000) per acre for the difference in acreage between two hundred (200) acres and the acreage included in the Conservation Easement.

(3) If the Conservation Easement is not recorded prior to August 1, 2017, then prior to August 31, 2017, Buyer shall pay Seller directly ten thousand dollars (\$10,000) per acre for two hundred (200) acres of the Conservation Easement Property. However, if CDFW or USFWS has provided written documentation prior to August 31, 2017 stating or showing that some portion of the Conservation Easement Property is not suitable for mitigation, pursuant to Section 2.2(a), Buyer shall pay Seller ten thousand dollars (\$10,000) per acre for only that acreage of the Conservation Easement Property (if any) that is suitable for mitigation.

2.3 Endowment

Buyer shall convey funds to Grantee for an endowment that is sufficient to pay for the costs of long-term management and stewardship of the Conservation Easement Property, including the costs of maintaining, inspecting, monitoring, or otherwise managing the Conservation Easement in accordance with the Repowering Project mitigation plan. The endowment, or other mechanism acceptable to Seller, (“**Endowment**”) shall include funds to compensate Seller for any additional costs it incurs to improve, insure, or restore the Conservation Easement Property in compliance with any Conservation Easement, CDFW, or USFWS requirements. Such costs shall not include Seller’s legal or staff costs. Buyer shall provide Seller all documents related to calculation of the Endowment, and the amount and coverage of the Endowment shall be subject to review and approval by Seller, which shall not be unreasonably withheld.

3. GRANTEE EASEMENT HOLDER

The Grantee shall be a land trust or other entity authorized to hold conservation easements in the State of California. In addition to acceptance of Grantee by the Resource Agencies, any Grantee for the Conservation Easement shall be subject to approval by Seller, whose approval may not be unreasonably withheld.

4. SELLER'S LEASES ON PROPERTY

Seller shall retain all payments made by the tenants, lessees, and licensees of the Conservation Easement Property. Seller and any current or future tenants, lessees, and licensees of Seller's choice shall be able to continue grazing the Conservation Easement Property and to undertake any other activity on the Conservation Easement Property allowed by the Conservation Easement.

5. FUTURE AGREEMENTS

Seller and Buyer agree to negotiate in good faith with Grantee and the Resource Agencies to reach an acceptable form of the following documents and instruments, if required by Grantee or the Resource Agencies:

5.1 Conservation Easement to be conveyed to Grantee substantially in the form of Exhibit B, attached hereto.

5.2 Subordination and non-disturbance agreement by and between Grantee, Seller and any mortgagee having lien rights and each tenant having possession rights over the Easement Property, pursuant to which such mortgagee and tenant agrees, among other things, not to disturb Grantee's possession and use of the Property.

5.3 Agreement for conveyances of the Conservation Easement by and between Seller, Grantee and Buyer.

5.4 Property assessment and warranty for the benefit of the Resource Agencies, which may be conclusively relied upon by them in approving the Mitigation Agreement. Buyer shall reimburse Seller for any out-of-pocket costs incurred to obtain such assessment or warranty, excluding attorney's fees.

5.5 Mitigation agreement by and between Seller, Grantee and Buyer pursuant to the mitigation plan in connection with the Repowering Project.

5.6 Escrow instructions for the closing of this transaction.

5.7 Access easement to be conveyed to Grantee, if the Conservation Easement Property does not have legal access to a public road, over lands of the Seller ("Access Easement Property").

5.8 A title commitment insuring the Grantee's easement interest in the Conservation Easement Property and Access Easement Property, if any, in an amount of coverage required by Grantee and with title exceptions acceptable to Grantee ("Title Commitment").

6. ACCESS TO AND INSPECTIONS OF PROPERTY

After the Effective Date and until the Closing Date, Buyer shall have the right to use all existing easements and roads providing access to the Property and to enter upon the Property and to perform, at its expense any tests, surveys, studies or other activities (collectively, “**activities**”) needed to determine the suitability of the Property for mitigation or the acreage of all or a portion of the Property. Buyer shall not interfere with Seller’s (including its lessees’, licensees’ and tenants’) operations on the Property while conducting any such activities and shall promptly repair any damage to the Property caused by its, Grantee’s, or the Resource Agencies’ entry onto the Property. Buyer shall indemnify, defend, protect and hold Seller harmless from and against any and all loss, cost, damage, injury, claim (including claims of lien for work or labor performed or materials or supplies furnished), liability, or expense (including reasonable attorneys’ fees) as a result of, arising out of, or in any way connected with the exercise of Buyer’s, Grantee’s, the Resource Agencies’ (or their agents, contractors, employees, or authorized representatives) entry onto the Property in connection with this Agreement except for (i) any loss, liability, cost or expense due solely the acts of Seller or any tenants, (ii) any diminution in value of the Property arising from or related to matters discovered by Buyer during its investigation of the Property, (iii) any latent defects in the Property discovered by Buyer, (iv) liability which results from the release of preexisting toxic or Hazardous Materials on or about the Property resulting from normal environmental testing procedures, and (v) liability which arises from the results or findings of such tests. This indemnification provision shall survive termination of this Agreement. Buyer shall provide to Seller a copy of the results of any survey or other activities.

7. CLOSING CONDITIONS

It shall be a condition precedent to closing that each of every one of the following conditions shall have been satisfied at or before closing:

7.1 Purchase Price

Buyer will deliver to the Escrow Holder the full Purchase Price in cash or other immediately available funds.

7.2 Covenants

All of the covenants (including, but not limited to, those in Section 5 herein), representations, warranties, and agreements of the Parties set forth in this Agreement shall be true, correct, and complete as of the Effective Date and as of the Closing Date.

7.3 Title

The Title Commitment shall be acceptable to the Grantee.

8. ESCROW AND CLOSING

8.1 Opening of Escrow

Promptly upon execution of this Agreement, the Parties shall open an escrow with Chicago Title Insurance Company or any other title company acceptable to all Parties (“Escrow Holder”) by delivering a fully-executed copy of this Agreement to the Escrow Holder. This Agreement shall constitute not only the terms for the Purchase and Sale of the Conservation Easement, but also instructions to Escrow Holder for the consummation of this Agreement through Escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending this Agreement unless specifically so instructed by the Parties or Grantee. Subject to the reasonable approval of the Parties, Escrow Holder may, however, include its standard general escrow provisions on the condition that this Agreement shall supersede any conflicting escrow instructions executed upon Escrow Holder’s request. Escrow Holder is hereby appointed and instructed to conduct the Escrow in accordance with the terms of this Agreement, applicable law, and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the U.S. Internal Revenue Code, Title 26, and the California Revenue and Taxation Code.

8.2 Closing Date

The Parties shall close this Escrow on the date that the Conservation Easement is recorded. If the Conservation Easement has not been recorded and this Escrow closed prior to September 30, 2017, the Escrow Holder shall, unless notified by both Parties to the contrary, return to the depositor thereof items which may have been deposited hereunder.

8.3 Escrow Instructions

Seller and Buyer shall deposit with Escrow Holder all funds, documents, instructions, and instruments necessary to consummate the transaction contemplated by the Agreement within the time specified herein or within a reasonable amount of time after the Effective Date but before the Closing Date.

8.4 Seller’s Delivery of Documents

(a) Within thirty (30) days after the Effective Date, Seller shall deliver to Buyer the following instruments and items to the extent these items are in the Seller’s possession or control:

(1) All reports covering underground soil and water conditions at the Property and in the possession of Seller or its agent;

- (2) Copies of all licenses and other permits and inspection reports with respect to the Property issued by appropriate governmental authorities;
- (3) All current leases, licenses, and any other agreements for any portion of the Property;
- (4) All existing surveys for any portion of the Property;
- (5) All existing title policies for any portion of the Property; and
- (6) All existing environmental reports for any portion of the Property.

(b) On or before the Closing Date, Seller shall deliver to Buyer through Escrow Holder the following:

- (1) An executed and recordable Conservation Easement, if not delivered by Grantee;
- (2) Executed and recordable, if required, originals of those agreements and documents referred to in Section 5.2 through 5.7 herein; and
- (3) All other documents reasonably required by the Escrow Agent or Title Insurer.

8.5 Buyer's Delivery of Documents and Purchase Price

On or before the Closing Date, Buyer shall deliver to Seller through Escrow Holder the following:

- (a) The full Purchase Price in cash or immediately available funds;
- (b) An agreement for the conveyances of the Conservation Easement by and between Seller, Grantee, and Buyer;
- (c) The mitigation agreement by and between Seller, Grantee, and Buyer pursuant to the mitigation plan for the Repowering Project;
- (d) All documents reasonably required by the Escrow Agent or Title Insurer; and

(e) All closing costs including state, county, and city transfer taxes payable in connection with the Conservation Easement, if any; the title insurance premium for the Owner's Policy for Grantee; the escrow fees; and any recording fees payable in connection with recording the Conservation Easement.

8.6 Other Documents

Seller and Buyer shall, during the escrow period, execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the purchase and sale pursuant to the terms of this Agreement.

8.7 Expenses

Buyer shall pay the escrow fees, all recording costs and fees, and the cost of title insurance for Grantee.

8.8 Closing Instructions

Escrow Holder shall, when all required funds and instruments have been deposited into the Escrow by the appropriate parties and when all other conditions to closing have been fulfilled, cause the Conservation Easement, any Subordination and non-disturbance agreements, any Access Easement and any other documents required by Grantee to cure any objections to title to be recorded in the Office of the County Recorder of Alameda County. Upon closing, Escrow Holder shall deliver the original policy of title insurance required herein or an acceptable Title Commitment to Grantee and the Escrow Holder's check (or wired funds) for the Purchase Price to Seller. Escrow Holder shall also deliver, as the case may be, all other necessary documents or instruments to the Parties.

9. TERMINATION

9.1 Failure of Condition

Should any condition set forth in this Agreement not be satisfied (or waived), the Parties shall have the right to terminate this Agreement. In the event this Agreement is terminated and Escrow is canceled for any reason provided in this Agreement, all Parties shall be excused from any further obligations hereunder. Upon any such termination of Escrow, Buyer shall be liable to Escrow Holder for payment of its title and escrow cancellation charges unless such termination was due to the fault of Seller, in which case Seller shall be liable to Escrow Holder for such charges. Each Party expressly reserves any and all other rights and remedies which it may have against any other Party by reason of a wrongful termination, failure to close Escrow, or failure to pay the full Purchase Price.

9.2 Failure to Record Easement

If a Conservation Easement has not been recorded on or before September 30, 2017, this Agreement shall terminate, and no Party shall have any further obligations with regard to a conservation easement for all or a portion of the Conservation Easement Property. Regardless, even if this Agreement terminates, Buyer must pay to Seller any amounts due under this Agreement, including the Administrative Costs as set forth in Section 2.1 and any amounts due pursuant to Section 2.2(b)(3).

9.3 Written Notice of No Suitable Mitigation Acreage

If, prior to August 31, 2017, CDFW or USFWS provides written documentation stating or showing that none of the Conservation Easement Property is suitable for mitigation, this Agreement shall terminate, and no Party shall have any further obligations with regard to a conservation easement for all or a portion of the Conservation Easement Property. Regardless, even if this Agreement terminates, the Buyer must pay to Seller the Administrative Costs as set forth in Section 2.1.

9.4 Notice of Termination

Any Party wishing to terminate this Agreement under this Section must first give five (5) days written notice to the other Party of its decision to terminate the Agreement. This notice shall explain the reason(s) for termination.

10. REPRESENTATIONS, WARRANTIES, AND COVENANTS

10.1 Authority and Execution

Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so and has full right and authority to enter into this Agreement and to incur all of its obligations hereunder.

10.2 Code Violations

Seller has no actual knowledge of and has not received any notice of any unresolved code violation affecting the Property.

10.3 Accuracy of Documents

To Seller's actual knowledge, all of the documents and records provided in connection with the transaction contemplated herein shall be true and correct copies of such documents and records.

10.4 Public Improvements; Condemnation

Seller has no actual knowledge of any intended or contemplated public improvements or condemnation of the Property.

10.5 Litigation

To Seller's actual knowledge there are no pending claims or lawsuits, and to Seller's knowledge, there are no threatened claims or lawsuits relating in any manner to the Property or on account of the surface or subsurface physical characteristics of the Property.

10.6 Environmental Laws; Hazardous Materials

(a) Seller warrants and represents to Buyer that to Seller's actual knowledge the Property is not now, has not been during the period of Seller's ownership, and was not during any period prior to Seller's ownership:

(1) In violation of any past or present federal, state, or local statute, regulation, ordinance, administrative order, judicial order, or any similar requirement having the force and effect of law, relating to the protection of human health or the environment (an "**Environmental Law**") including, but not limited to, any federal, state, or local regulation relating to industrial hygiene or soil or ground water conditions; or

(2) Used to generate, manufacture, store, refine, or dispose of any flammable, explosive, or radioactive material; hazardous waste; toxic substance or related material; oil, waste oil, or other petroleum based materials; or any other substance or material defined or designated as a hazardous or toxic substance, material, or waste by any federal, state, or local law or environmental statute, regulation, or ordinance presently in effect or as amended or promulgated in the future (a "**Hazardous Material**"). Notwithstanding any other provision of this Agreement, the term "Hazardous Material" shall not include any material customarily used and legally permitted for forestry, agricultural, or limited residential purposes, which material is used in customary quantities and in accordance with label instructions and applicable Environmental Laws.

(b) Seller warrants and represents to Buyer that, except as disclosed by Seller to Buyer in writing prior to the Effective Date, Seller has no actual knowledge of receiving any written notice from any local, state, or federal governmental entity or agency or other source of any use, discharge, release, generation, storage, or disposal on, above, in, under, or around the Property of any Hazardous Materials, and Seller has no actual knowledge of the use, discharge, or release of such Hazardous Materials on the Property .

(c) Seller covenants to Buyer that from the Effective Date until the Closing Date, Seller shall not, in violation of any of the Applicable Hazardous Materials Laws, knowingly use, generate, manufacture, place, store, treat, release, dispose, or discharge any Hazardous Materials on, in, or under the Property or the ground or surface waters thereof, or cause or suffer any such activity to occur, in violation of any of the applicable Environmental Laws.

10.7 Bankruptcy

Seller has not filed for bankruptcy or other proceeding for the protection of debtors under state or federal law and knows of no similar involuntary proceeding that have been filed or threatened against it.

10.8 Closing Warranties

All representations, warranties, and covenants in this Section shall be true and accurate on the Closing Date.

10.9 Title. Seller has fee simple title as of the Effective Date, and shall have fee simple title, as of the Closing Date to the Conservation Easement Property and Access Easement Property, if any.

10.10 Future Title Matters. Seller shall not, after the Effective Date, consent to or subject the Conservation Easement Property to any liens, encumbrances, covenants, conditions, restrictions, easements, or rights-of-way, or seek any zoning changes or take any other action that might affect or modify the status of title to the Conservation Easement Property (other than curing or removing title exceptions as contemplated herein) without Buyer's prior written consent. If Seller violates the provisions of the preceding sentence, Seller shall, prior to the Closing Date, and at its expense, effect the release of any such liens, encumbrances, covenants, conditions, restrictions, easements and rights-of-way, and take such steps as are necessary to return the zoning and title of the Conservation Easement Property to the condition that existed as of the Effective Date or as agreed to by Buyer.

10.11 Other Agreements. That as of the Effective Date, except as shown on the Preliminary Reports for the Conservation Easement Property that have been provided to Buyer (Title No. 12-59043491-MK and 12-59043492-MK), there are no leases or other agreements for occupancy in effect with respect to the Property other than an unrecorded grazing lease, an agreement with the East Bay Regional Communication System Authority regarding a communication tower, and agreement with the Bay Area Air Quality Management District regarding an air monitoring station, a lease with Altamont Infrastructure for a radio tower, and the Amended and Restated Easement Agreement entered into by Seller and Green Ridge Power dated October 21, 2004, and the First

Amendment to Amended and Restated Easement Agreement entered into by Seller and Green Ridge Power dated June 6, 2014, which has been assigned to Buyer.

10.12. No Right of First Refusal. With the exception of this Agreement, no person or entity has a right of first refusal, option to purchase, or other right to purchase the Conservation Easement Property pursuant to an agreement to which Seller is a party.

11. REMEDIES ON DEFAULT

In the event that Buyer or Seller default in the performance of a material covenant or agreement to be performed (for purposes of this Section a “**Defaulting Party**”) by the Defaulting Party under this Agreement, the non-defaulting party shall have the following remedies:

11.1 Specific Performance

The non-defaulting party shall have the right to institute legal action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such default.

11.2 Right to Terminate

If, prior to the Closing Date, Seller or Buyer fails to perform any obligation to the other under this Agreement for any reason other than the failure to occur of a condition precedent to the Party’s obligations hereunder, the non-defaulting party shall give the Defaulting Party prompt written notice of such a default or failure. If by thirty (30) days after that written notice of such default or failure, the Defaulting Party fails to cure such breach, the non-defaulting party may terminate this Agreement, in which event the Parties shall have no further obligations or liabilities to one another except those obligations specifically stated herein to survive termination of this Agreement.

11.3 Damages

(a) A Defaulting Party shall not be liable to a non-defaulting party for damages caused by any default of the Defaulting Party, including general, special, or consequential damages except in the following circumstances:

(1) Buyer’s Damages. If Seller defaults in the performance of a material covenant or agreement to be performed by Seller under this Purchase Agreement, or one of Buyer’s condition precedent is not satisfied because Seller frustrated such fulfillment by some affirmative act or negligent omission, and, solely as a result of either such circumstance, Buyer is prevented from or elects not to

proceed with the purchase of the Conservation Easement and Buyer terminates this Agreement, then Buyer's damages shall be limited to:

- (A) Seller's reimbursement to Buyer of the Administrative Costs payment described herein in Section 2.1; and
- (B) Seller's reimbursement to Buyer of any actual and reasonable title, escrow, legal, and inspection fees incurred by Buyer in connection with the performance of its investigation due diligence review of the Property consistent with this Agreement.

(2) Seller's Damages. If Buyer defaults in the performance of a material covenant or agreement to be performed by Seller under this Purchase Agreement, or one of Seller's condition precedent is not satisfied because Buyer frustrated such fulfillment by some affirmative act or negligent omission, and, solely as a result of either such circumstance, Seller is prevented from or elects not to proceed with the sale of the Conservation Easement and Seller terminates this Agreement, then Seller's damages shall be limited to Buyer's payment to Seller of the amounts due under this Agreement, including payment in full of the Administrative Costs pursuant to Section 2.1 and any amount due pursuant to Section 2.2(b)(3).

(b) In the event that this Purchase Agreement is terminated because CDFW or USFW, prior to August 31, 2017, provides written notice that none of the Conservation Easement Property is suitable for mitigation, no Party shall be liable to the other Party for any damages except as otherwise provided in this Agreement.

THE PARTIES HAVE AGREED THAT BUYER'S AND SELLER'S ACTUAL DAMAGES IN THE EVENT OF THE CIRCUMSTANCES SPECIFIED ABOVE WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, BUYER'S AND SELLER'S RIGHT TO RECOVER AS SPECIFIED ABOVE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT BUYER AND SELLER WOULD INCUR IN SUCH EVENT. BY PLACING ITS INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: Buyer: AAC Seller: _____

12. MISCELLANEOUS

12.1 Survival; Termination

The representations and warranties of the Parties contained or provided for in this Agreement shall survive the Closing Date and any termination of this Agreement and shall be and continue in effect notwithstanding the fact that any Party may waive compliance with any other term, provision, or condition of this Agreement.

12.2 Notices

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests, and other communications required or permitted by the terms hereof to be given to any person or entity shall be in writing, and any such notice shall become effective five (5) business days after being deposited in the United States mail, certified or registered, with appropriate postage prepaid for first-class mail or, if delivered by hand, overnight courier (such as Federal Express), or in the form of a confirmed facsimile transmission, when received. All notices shall be directed to the address of such person or entity set forth below, or at such other address as any Party shall hereafter designate in writing and deliver to the others in accordance with this paragraph:

Seller:

Alameda County Waste Management Authority
1537 Webster Street
Oakland, CA 94612
Attention: Executive Director

Buyer:

Golden Hills Wind, LLC
700 Universe Blvd.
Juno Beach, FL 33408
Attention: Business Management

12.3 Severability

Unless a term or provision is material consideration for this Agreement, the invalidity or unenforceability of any term or provision of this Agreement or the non-application of any such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions of this

Agreement shall not be invalidated but shall remain in full force and effect and shall be construed as if such invalid, unenforceable, or inapplicable provision were omitted so long as the purposes of the Agreement can still be carried out.

12.4 Waiver; Modification

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as required by this Section.

12.5 Amendments

The terms of this Agreement may be waived, modified, and amended only by an instrument in writing duly executed by Seller and Buyer.

12.6 Time of Essence

Time is of the essence for each provision of this Agreement in which time is an element.

12.7 Assignment

Except as expressly permitted herein, neither Party to this Agreement shall assign its rights or obligations under this Agreement to any third party without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

12.8 Binding on Successors and Assigns

This Agreement and all of its terms, conditions, and covenants are intended to be fully effective and binding, to the extent permitted by law, on the successors and permitted assigns of the Parties.

12.9 Counterparts

This Agreement may be executed by the Parties in separate counterparts, and all such counterparts shall together constitute one and the same instrument. This Agreement may also be executed by delivery of e-mail transmission or confirmed facsimile transmission to the Parties, as set forth above, of an executed counterpart original of this Agreement. The Parties shall thereafter exchange the original documents bearing original signatures, but the failure to do so shall not affect the enforceability of this Agreement.

12.10 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California applicable to agreements made and performed entirely within the State, including all matters of construction, validity, and performance.

12.11 Broker's Commission

Each Party represents and warrants to the other Party that it has retained no broker or other party to whom a commission or finder's fee is due with respect to this transaction. Each Party shall defend, indemnify, and hold the other Party harmless from and against all claims, expenses, or costs arising in connection with a breach of this warranty and representation.

12.12 Costs

Regardless of whether closing occurs, each Party shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including, without limitation, fees of attorneys, engineers, and accountants, except as otherwise expressly provided herein.

12.13 Attorneys' Fees

In the event of any action or proceeding brought by any Party to enforce the terms of or arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs and expenses incurred in connection therewith, including reasonable attorneys' fees.

12.14 Cooperation

Each Party hereto will, upon the reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

12.15 Entire Agreement

The Parties intend that this Agreement (including all of the attached exhibits, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The Parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever

(including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative, or other legal proceeding involving this Agreement.

12.16 Interpretation

Each Party acknowledges that it and its legal counsel have reviewed this Agreement. The Parties agree that the terms and conditions of this Agreement shall not be construed against any Party on the basis of such Party's drafting, in whole or in part, of such terms and conditions. Wherever used herein, the singular number shall include the plural and vice versa, and the use of any gender shall include all other genders, all as the context may require.

12.17 No Agency

The Parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement.

12.18 Exhibits

All exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety.

12.19 Headings

The headings in this Agreement are for convenience only and are not intended to, and will not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.

12.20 Business Days

If any action is required under the provisions of this Agreement to occur by a date that is a Saturday, Sunday, or legal holiday, such date shall be extended to the first day thereafter that is not a Saturday, Sunday, or legal holiday.

12.21 Execution and Condition Precedent to Enforcement

This Agreement shall be effective and enforceable on the later of the last date of execution by the undersigned Parties. This Agreement shall not be binding upon either Party until approved and signed by each Party. Each of the Parties has been represented by legal counsel in the negotiation and review of this Agreement and enters into this Agreement informed by the advice of counsel.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written.

SELLER:

**Alameda County Waste
Management Authority**

Date

Gary Wolff, P.E., Ph.D.
Executive Director

BUYER:

Golden Hills Wind, LLC

9/10/15
Date

Sealce
~~John DiDonato~~ Andrew Kushner
Vice President, Golden Hills Wind, LLC

699040.5

EXHIBIT A

Conservation Easement Property

Parcel 1

The Southwest 1/4 of Section 4 Township 3 South, Range 3 East, Mt. Diablo Base and Meridian, according to the Official Plat of the survey of said lands returned to the general land Office by the surveyor general.

Excepting from the above described land the portion thereof included in a forty foot roadway conveyed by T.W. Twohey, et al, to County of Alameda, by Deed dated March 31, 1914 and Recorded June 4, 1915, in Book 2339 of Deeds at Page 285, Alameda County Records.

Excepting therefrom:

All oil, minerals, gas or mines in, on, or under the herein described property, as reserved in the following deeds:

(1) Mary Seeband to John W. Twohney, dated August 14, 1917 and recorded in Book 2585 of Deeds, at Page 357, Series No. R29163 Alameda County Records, affecting an undivided 1/8 interest;

(2) Elizabeth Smith to John W. Twohney, dated August 14, 1917 and recorded in Book 2604 of Deeds, at Page 59, Series No. R29165 Alameda County Records, affecting an undivided 1/8 interest;

(3) Joseph P. Twohney and wife to Margaret Twohney, dated January 28, 1918 and recorded in Book 2758 of Deeds, at Page 113, Series No. S11606 Alameda County Records, affecting an undivided 1/8 interest.

(4) From Mary Fallon et ux, recorded February 9, 1979, Series No. 79-25834, Alameda County Records as follows: Grantor reserves 75% of oil petroleum, natural gas, mineral rights and other hydrocarbon substances lying below a depth of 500 vertical feet from the surface of said land for the purpose of exploring for, extracting, mining, boring, removing or marketing said substances, however, without any right of entry upon the surface of said land.

Excepting therefrom that portion described in the deed to the County of Alameda, Recorded June 4, 1915, Book 2339 of Deeds, Page 285, Series No. Q2320, Alameda County Records.

Assessor's Parcel No. 099A-1770-004

Parcel 2

The Northeast 1/4 of Section 10, Township 3 South, Range 3 East, Mount Diablo Base and Meridian.

Assessor's Parcel No.: 099A-1820-002

EXHIBIT B TO AGREEMENT FOR PURCHASE OF CONSERVATION EASEMENT

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the ____ day of _____ 201_____, by [owner] ("Grantor"), in favor of [conservation manager] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately [] acres, located in the unincorporated area of the County of Alameda, State of California, and designated Assessor's Parcel Number(s) [] (the "Preserve Property"). The Preserve Property provides [] acres of habitat conservation for [State and Federally listed endangered species]. The Preserve Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Preserve Property possesses [wildlife and habitat] values of great importance to Grantee, the people of the State of California and the people of the United States.

C. The Preserve Property provides high quality natural, restored and/or enhanced habitat for the [], and contains breeding, non-breeding, foraging and dispersal habitats for these species. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Preserve Property.

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

E. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for

biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

F. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h)(3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

G. This Conservation Easement is granted pursuant to the California Endangered Species Act Incidental Take Permit No. [] by and between GOLDEN HILLS WIND, LLC, a Delaware limited liability company (“Golden Hills Wind”) and CDFW, dated [] (the “Permit”) and as a means to implement certain agreed upon conservation measures as described in the Biological Opinion, USFWS File No. [], issued by the Sacramento Field Office of the USFWS. The conservation measures in the Biological Opinion are proposed by Golden Hills Wind as a means of minimizing the effects of the Golden Hills Wind Repowering Project on species listed under the federal Endangered Species Act. The Permit and conservation measures in the Biological Opinion provide mitigation for certain impacts of decommissioning and reclaiming [] wind turbine generators and [] wind turbine foundations, and constructing [] new wind turbine generators and associated infrastructure located in the County of Alameda, State of California and require implementation of a final [Golden Hills Wind Ecological Preserve Management Plan] (as applicable, the "Management Plan") created thereunder. CDFW and USFWS are together referred to in this Conservation Easement as the "Wildlife Agencies"

H. The Permit, the Biological Opinion, and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

I. A final, approved copy of the Permit, the Biological Opinion, the Management Plan, and any amendments thereto approved by the Wildlife Agencies, shall be kept on file at the offices of the Wildlife Agencies. If Grantor, or any successor or assign, requires an official copy of the Permits, the Management Plan, or any amendments thereto, it should request a copy from the Wildlife Agencies at the addresses for notices listed in Paragraph 12 of this Conservation Easement.

J. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and

conveys to Grantee a conservation easement in perpetuity over the Preserve Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Preserve Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Permits and the Management Plan, and to prevent any use of the Preserve Property that will impair or interfere with the Conservation Values of the Preserve Property. Grantor intends that this Conservation Easement will confine the use of the Preserve Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Permits and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Preserve Property.

(b) To enter the Preserve Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Permits, and the Management Plan and to implement at Grantee's sole discretion Permits and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Preserve Property.

(c) To prevent any activity on or use of the Preserve Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Preserve Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Preserve Property shall remain a part of and be put to beneficial use upon the Preserve Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Preserve Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Preserve Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

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

(a) Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities;

and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement except for vegetation management and weed abatement and the prevention of catastrophic wildfire as specifically provided in the Management Plan when these activities do not involve the disturbance to burrows or the destruction of aquatic habitat.

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways as illustrated in the Management Plan or as needed for land management activities or emergency uses as specified within the Management Plan, provided however the use by [] shall not be a prohibited use.

(c) Agricultural activity of any kind except grazing as specifically provided for in the Management Plan.

(d) Recreational activities and facilities, except for low-intensity recreational activities so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan. “Low-intensity activities” are defined as activities that allow passive enjoyment of wildlife and other resources provided by the Property, including, but not limited to, hiking, wildlife viewing, or guided interpretive or educational activities.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Preserve Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind except for the purpose of limiting access onto the Preserve Property as specifically provided in the Management Plan.

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or exotic animal species.

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

(k) Altering the surface or general topography of the Preserve Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Preserve Property with concrete, asphalt or any other impervious material, except for those management activities specified in the Permits or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease, except for vegetation management, and weed abatement

as specifically provided in the Management Plan.

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Preserve Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for pond maintenance or restoration activities in existing pond features or created pond features as specifically provided in the Management Plan to promote California red-legged frog and California tiger salamander breeding habitat.

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Preserve Property; changing the place or purpose of use of the water rights; 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 Preserve Property, 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 Preserve Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Preserve Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Preserve Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Preserve Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Wildlife Agencies on an annual basis.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Preserve Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary and reasonable actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Permits and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Preserve Property, including the right to engage in or permit or invite others to engage in all uses of the Preserve Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation

Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Preserve Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Preserve Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Preserve Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Preserve Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party (as determined in any litigation, alternative dispute resolution process, or by agreement of the parties), in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this

Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Preserve Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Preserve Property resulting from such causes; (ii) acts by Grantee or its employees; or (iii) acts by third parties who unlawfully enter the Preserve Property despite Grantor's compliance with Section 5 of this Conservation Easement.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the Permits or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Preserve Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section 7. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) Reversion.

If CDFW or USFWS determines that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the Permits or the Management Plan then, pursuant to

California Government Code Section 65965(d), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Wildlife Agencies.

8. **Fence Installation and Maintenance.** Grantor shall install and maintain a fence reasonably satisfactory to Grantee to facilitate the grazing regime of the Preserve Property and protect the Conservation Values of the Preserve Property, including but not limited to wildlife corridors, all as specifically provided for in the Management Plan.

8. **Access.**

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

9. **Costs and Liabilities.**

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Preserve Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Preserve Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Preserve Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) **Taxes; No Liens.**

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Preserve Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Preserve Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Preserve Property.

(b) **Hold Harmless.**

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Preserve Property, regardless of cause, except

that this indemnification shall be inapplicable to any Claim to the extent due to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party.

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries (as defined in Section 14(m) below) and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Preserve Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. Provided, however, that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim to the extent due to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

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

10. Transfer of Conservation Easement or Preserve Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Wildlife Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Wildlife Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code

Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Wildlife Agencies. Grantee shall require the assignee to record the assignment in the county where the Preserve Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Preserve Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Preserve Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the Permits, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Wildlife Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Wildlife Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Preserve Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Wildlife Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Preserve Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee or Third Party Beneficiary desires or is required to give to the other shall be in writing, with a copy to each of the Wildlife Agencies, and shall be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class registered United States mail, postage fully prepaid, addressed as follows:

To Grantor: [owner]
[owner address]

To Grantee: [conservation manager]
[address]

To CDFW: [Department of Fish and Wildlife
Bay Delta Region, Region 3
7329 Silverado Trail
Napa, CA. 94558

Attn: Regional Manager]

With a copy to: [Department of Fish and Wildlife
Office of General Counsel
1416 Ninth Street, 12th Floor
Sacramento, CA 95814-2090
Attn: General Counsel]

To USFWS: [United States Fish and Wildlife Service
Sacramento Field Office
2800 Cottage Way
Room W-2605
Sacramento, CA. 95825
Attn: Field Supervisor]

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Wildlife Agencies. 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 registered first class mail, five (5) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Wildlife Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Preserve Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Wildlife Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

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

(d) Entire Agreement.

This document (including its exhibits and the Permits and Management Plan, all of which are incorporated by reference in this document) sets forth the entire agreement of the parties and the Wildlife Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

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

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Preserve Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

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

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Property, or transported to or from or affecting the Preserve Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground

storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Preserve Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Preserve Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

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

(B) The obligations or liabilities of a person described in 42 U.S.C. § 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 Preserve Property; or

(E) Any control over Grantor's ability to investigate, remove,

remediate or otherwise clean up any Hazardous Materials associated with the Preserve Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), 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 Conservation Easement. The term "Hazardous Material" shall not include any material customarily used and legally permitted for uses of the Preserve Property allowed under this Conservation Easement, provided such material is used in customary quantities and in accordance with label instructions and applicable Environmental Laws and is specified in the Management Plan.

(6) 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. Grantor represents warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Preserve Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Preserve Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Wildlife Agencies pursuant to the Property Assessment and Warranty dated [], signed by Grantor and incorporated herein by reference as **Exhibit B** attached hereto, there is no outstanding mortgage, lien, encumbrance or other interest in the Preserve Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded subordination agreement approved by Grantee and the Wildlife Agencies.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Preserve Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Preserve Property, without first obtaining the written consent of Grantee and the Wildlife Agencies. Such consent may be withheld if Grantee or the Wildlife Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Preserve Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Preserve Property that is subject to this Conservation Easement and complies with Section

10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Wildlife Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Preserve Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiaries

Grantor and Grantee acknowledge that the CDFW and USFWS (the “Third-Party Beneficiaries”) are each third party beneficiaries of this Conservation Easement with the right of access to the Preserve Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor’s obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Preserve Property is specified in and governed by the Permits and the Management Plan.

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

GRANTOR:	GRANTEE:
[owner]	[conservation manager]
By: _____	By: _____
Name: _____	Its: _____
Its: _____	Dated: _____
Dated: _____	

EXHIBITS

A – Preserve Property Legal Description

B – Property Assessment and Warranty

Approved as to Form:

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: _____

Dated: _____

[Terry R. Gibson
Deputy General Counsel]

Approved as to form:

OFFICE OF THE REGIONAL SOLICITOR, PACIFIC SOUTHWEST REGION
OFFICE OF THE SOLICITOR
U.S. DEPARTMENT OF THE INTERIOR

By: _____

Dated: _____

[James A. Monroe
Assistant Regional Solicitor]

**Exhibit A to
Conservation Easement Deed**

LEGAL DESCRIPTION OF PRESERVE PROPERTY

[A MAP OF THE PRESERVE PROPERTY FOLLOWS.]

**Exhibit B to
Conservation Easement Deed**

PROPERTY ASSESSMENT AND WARRANTY

[Grantor, Grantee and the Wildlife Agencies each have a copy of the Property Assessment and Warranty dated [], which is incorporated herein by reference.]

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