



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-01262

October 24, 2017

Public Hearing Item 17

Title: Update to City Council Concerning Choice of Mitigation Property Operator for The Greenbriar Project (P11-093) [Noticed 09/08/2017] {Continued from 09/19/2017}

Location: South of Elkhorn Boulevard, West of State Highway 70/99, and North of Interstate 5, District 1

Recommendation: Conduct a public hearing and upon conclusion, pass a Motion to make no recommendation to the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife concerning a mitigation property operator.

Contact: Arwen Wacht, Program Specialist, (916) 808-7535; Teresa Haenggi, Senior Planner (916) 808-7554, Community Development Department

Presenter: Arwen Wacht, Program Specialist, (916) 808-7535; Teresa Haenggi, Senior Planner (916) 808-7554, Community Development Department

Attachments:

1-Description/Analysis

2-Letter from Peter Tateishi dated August 18, 2017

3-Letter from The Natomas Basin Conservancy dated August 23, 2017

4-CDFW Application for Requesting to Hold and Manage Mitigation Land

Description/Analysis

Issue Detail: On May 30, 2017, the City Council approved entitlements to allow for the future development of the Greenbriar Planned Unit Development (PUD) area and the project approval included compliance with the following condition:

By June 15, 2017 the District 1 City Councilmember and the Greenbriar applicant shall appoint a neutral third-party negotiator to convene discussions between the Greenbriar applicant and the Natomas Basin Conservancy including the TNBC Board, staff and technical advisory committee to explore mutually acceptable options for the Natomas Basin Conservancy to own and manage the Greenbriar mitigation properties. The negotiator shall report back to the District 1 City Councilmember and the Greenbriar applicant by June 30, 2017 or later as mutually agreed upon by both parties to report on the status of negotiations. If the parties have not come to agreement, the matter will be referred to the Sacramento City Council within 30 days for its public hearing and recommendation to the wildlife agencies. The applicant may solicit proposals from qualified land operators, including the Natomas Basin Conservancy, for Phase 1 mitigation properties. The same procedures and time frame shall be followed for the selection of a conservation operator for Phase 2 mitigation properties. Final selection of the third-party operator shall be subject to approval by the United States Fish and Wildlife Service and the California Department of Fish and Game.

This condition required mediation between the applicant and the Natomas Basin Conservancy (TNBC) to explore a mutually acceptable option for TNBC to own and manage the Greenbriar mitigation properties. On August 18, 2017, the City received a letter from the mediator, Peter Tateishi (see Attachment 2), with a detailed timeline of the mediation efforts. Mr. Tateishi advised that the mediation attempt had failed and recommended that mediation efforts be ceased. A response letter was received from TNBC (see Attachment 3).

The condition also stipulates that if mediation should fail, the matter would be brought back to City Council within 30 days for a recommendation from City Council to the wildlife agencies.

Policy Considerations: Not applicable.

Economic Impacts: Not applicable.

Environmental Considerations: The original project (P05-069) approval and subsequent modifications (P11-093) received California Environmental Quality Act (CEQA) review. Compliance with these conditions is consistent with the original project as modified for the Greenbriar development. None of the circumstances set forth in CEQA Guidelines section

15162 is present (no change in project or circumstances, no new significant effects or mitigation measures, and no new significant information) and no further CEQA review is required.

Sustainability: Not applicable.

Commission/Committee Action: No additional commission/committee action has occurred since the May 30, 2017, City Council hearing for the Greenbriar Project (P11-093).

Rationale for Recommendation: The wildlife agencies, the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife have jurisdiction to review and provide concurrence on an applicant's proposal and agreement for a plan operator. The City does not have decision-making authority on a plan operator, but may make a recommendation. Staff recommends that the City Council make no recommendation to the wildlife agencies and to leave this decision to those agencies. The rationale for this position is that staff have not solicited, received, or evaluated alternate proposals for owning and operating the Greenbriar mitigation properties and have no basis for making a recommendation.

Financial Considerations: Not applicable.

Local Business Enterprise (LBE): None.

Background: On May 30, 2017, the City Council approved entitlements to allow for the future development of the Greenbriar Planned Unit Development (PUD) area. The Greenbriar Development Project is a transit-oriented, mixed-density residential and retail/commercial development on the Greenbriar Project Site with associated infrastructure constructed on adjacent lands. "Greenbriar Project" refers to the project in its full scope, which includes construction of a mixed-use development on the Greenbriar Project Site, off-site infrastructure improvements, establishment of several habitat reserves, and implementation of the Greenbriar Conservation Strategy.

On August 18, 2017, the City received a letter from the mediator, Peter Tateishi (see Attachment 2), with a detailed timeline of the mediation efforts and a final recommendation that due to lack of desire to overcome the perceived risks involved with this process to allow them to move forward, that mediation efforts be ceased on this matter. On August 23, 2017, the City received a response letter from the Natomas Basin Conservancy (see Attachment 3).

The wildlife agencies have the jurisdiction to review and provide concurrence on an applicant's proposal and agreement for a plan operator. The US Fish and Wildlife Service's Biological Opinion specifically noted that dedication of mitigation land/conservation sites including the

structure for funding must be to a “Service-approved” third-party plan operator. (May 16, 2017, US Fish and Wildlife Service’s Biological Opinion, page 12.) The wildlife agencies have substantial discretion in approving a “qualified” plan operator. (Refer to Government Code 65965-65968 [state law].) Under state law, as an example, the statute generally requires that the entity be one qualified to do business in California, and if it is a nonprofit, it should have as its purpose the conservation and management of fish and wildlife “including direct protection or stewardship of land, water, or natural wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.” (Gov. Code 65965, subds. (g), (h).) The California Department of Fish and Wildlife has an application form (see Attachment 4). The application indicates that the California Department of Fish and Wildlife looks for evidence of current and anticipated mitigation land holdings, monitoring reports and enforcement policies, and a stewardship policy, in addition to information on tax and financial status.

Since the process with TNBC did not move forward, as was reported by the mediator, the Greenbriar applicant is negotiating with at least two different “certified’ plan managers. Because the Greenbriar applicant team is still in those negotiations, it would not provide staff with any further details. Further, staff have not independently solicited, received or evaluated any proposals for owning and operating the Greenbriar mitigation properties.

August 18, 2017

Honorable Angelique Ashby
Councilmember, District 1
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

Re: Greenbriar Project Mediation Efforts Update

Council Member Ashby:

On June 15, my services were retained to mediate an agreement for management services for the Greenbriar Project between the Natomas Basin Conservancy (TNBC) and the Greenbriar Project owners (Greenbriar). Additionally, the City retained Petrea Marchand to assist in my efforts by serving as the independent land use/biology advisor.

The mediation team made outreach to both TNBC and Greenbriar in June to begin pre-negotiation meetings where expectations, ground rules, and desired outcomes were discussed. At that time, the question was posed to both parties about negotiating in good faith and a desire to try and reach a positive agreement. Both parties indicated that it was their desire to try and reach an agreement and that they would negotiate in good faith towards that effort.

As the mediation team did research on the project and outreach to the agencies of jurisdiction with the state and federal government, we also worked with both parties to try and set negotiation schedules and parameters on times that would work. The mediation team stalled on these efforts. It was made clear to the mediation team that unless the issue around "indemnification" was resolved between the two parties, negotiations would not begin.

The mediation team waited 10 days before they were authorized to engage on negotiating an indemnification agreement between the two parties. We then engaged with haste the parties to discuss their needs in an agreement for indemnification. We spoke to TNBC about their needs which boiled down to three concerns:

- Indemnification and hold harmless from the project owners and partners;
- Indemnification from any third party resulting from conversations, negotiations, lack of agreements, and/or due to agreements made or had; and
- Full reimbursement of costs and fees resulting from these negotiations.

The mediation team took these concerns to Greenbriar and worked out a response as follows:

- Mutual indemnification and hold harmless between the two negotiating parties;
- Third party indemnification would be built into any final agreement reached between the two parties; and
- Greenbriar would pay for legal and professional service fees up to a cap based on a recommendation of anticipated costs from TNBC.

We presented these concepts to TNBC who responded by email on July 14, 2017:

"Peter: Less than 24 hours after I got your call, the Conservancy's leadership has discussed the points you presented. There was unanimous agreement and we will get back with you Monday to discuss."

TNBC worked with their people to develop a proposed indemnification agreement and presented that to the mediation team on July 18, 2017.

Greenbriar countered with a separate indemnification document on July 24, 2017.

The mediation team engaged both parties on their concerns, but neither party could come to resolution on the details of the indemnification document. In the opinion of the mediation team, we were not going to be able to resolve the differences.

We firmly believe that if we could have sat both parties down in negotiations that we could have come to some workable agreement around some of the mitigation management for the project. Unfortunately, we were not able to get to this process.

Though we had hoped for a better outcome, in the opinion of the mediation team, there was not enough desire to overcome the perceived risks involved with this process to allow us to move forward.

It is our recommendation that we cease mediation efforts.

Please do not hesitate to reach out with any questions or concerns.

Respectfully Submitted,



Peter Tateishi
Mediation Consultant

cc: Petrea Marchand – Consero Solutions

2150 RIVER PLAZA DRIVE
SUITE 460
SACRAMENTO, CA 95833
PHONE: 916.649.3331
FAX: 916.649.3322

August 23, 2017

Honorable Angelique Ashby
Councilmember, District 1
City of Sacramento
915 I Street, 5th Floor
Sacramento, CA 95814

RE: Response to Greenbriar "Exhibit A" report dated August 18, 2017.

Dear Councilmember Ashby:

This is responsive to a report issued by the City's negotiator in the matter of Greenbriar "Exhibit A" negotiations, dated August 18, 2017 and made available to the Conservancy on August 21, 2017.

While we take exception to many points made in the negotiator's communication with you, we do not believe it is worth engaging in a rebuttal. However, we do wish to be emphatic about one key point: the reason no traction has been made on the City's Greenbriar mitigation land initiative is because the Conservancy, after being asked to consider entering into negotiations, was never given reliable assurances it would be held harmless from claims by Greenbriar, indemnified from claims by third parties or reimbursed for actual costs. From the outset, and throughout the process, the Conservancy was clear and consistent in stating that these were necessary conditions to substantive negotiations with the Greenbriar development interests.

We are thankful that the City had enough confidence in the Conservancy that it was considered in this matter. We are also thankful for the time you and the negotiating team invested in the effort. The City can now move forward with this project and fulfill its desire for mitigation of the Greenbriar development.

Sincerely,

The Natomas Basin Conservancy, a California
Non-profit Public Benefit Corporation



By: John Roberts
Executive Director

c: Peter Tateishi



OFFICERS AND
BOARD OF DIRECTORS

STEVE WILLEY
Chair

CHANDRA CHILMAKURI
Secretary

DAVID CHRISTOPHEL
Treasurer

STEVEN COHN
Board Member

JEFFREY HELM
Board Member

JILL LEAL
Board Member

KEVIN MCRAE
Board Member

JEFF NORTON
Board Member

JOHN SHIREY
Board Member

EXECUTIVE OFFICER

John R. Roberts
Executive Director

Application for

Governmental Entity, Special District, or
Nonprofit Organization

Requesting to Hold and Manage Mitigation Land



This application will aid the California Department of Fish and Wildlife to exercise due diligence in reviewing the qualifications of an applicant to manage and steward land, water, or natural resources.

Dear Applicant,

When the California Department of Fish and Wildlife (CDFW) issues permits for a project, the project applicant may be required to transfer interest in real property to CDFW to mitigate the impact that the project will have on fish and wildlife resources. CDFW may authorize governmental entities, special districts, and non-profit organizations, to hold title and manage the mitigation lands (Gov. Code, § 65967).

Government Code section 65967 states, “[a] state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources.”

Completion and submittal of this application will assist CDFW in completing its due diligence obligation to determine whether an applicant is qualified to hold: a) fee title or b) a conservation easement for mitigation lands under Government Code sections 65965-65968.

We recommend you begin by answering the questions in the application. Please review your application for completeness. A complete list of all possible attachments to the application is provided on page iii in the Attachment Checklist. The attachments will vary among Applicants; some Applicants may be required to submit all or only a subset of the attachments listed on page iii. The application questions provide guidance on the attachments, including which attachments are appropriate for your organization.

Any blanks or missing documentation in the application may delay CDFW review or prevent the Applicant from qualifying. CDFW may request additional information during the review process. After completion, submit application to:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: Landscape Conservation Planning Program
1416 Ninth Street, Suite 1266
Sacramento, CA 95814

Multiple Region application

If you are applying to hold lands in multiple CDFW Regions, please submit one application package per Region to the address above. CDFW will distribute your application(s) to the appropriate Region(s). After CDFW reviews your application(s), you will receive notification of approval or denial from the Habitat Conservation Planning Branch (HCPB). Approval letters will indicate the Region(s) where you may hold and manage lands. If approved, your approval will expire five years from the date of the issuance letter.

Renewals

When renewing your approval, CDFW encourages you to submit your application package(s) at least six months prior to the expiration date. Application material requirements are subject to change (i.e., statutory or regulatory amendments); therefore, please consult with HCPB prior to renewing your application to ensure you have the most recent version of this application.

Attachment Checklist

The application questions, commencing on page 1, provide guidance on the attachments including which attachments are appropriate for your organization. A complete list of all possible attachments to the application is provided below. Please note that attachments will vary among Applicants. Applicants may be required to submit all or only a subset of the attachments listed below.

B. Mitigation Land Details			
Attached	Label	Question	Document Name
<input type="checkbox"/>	B.3.a	3	Table of Holdings (current and anticipated through the end of current year
<input type="checkbox"/>	B.3.b	3	Table of transferred properties as of current year
<input type="checkbox"/>	B.4.	4	Table of habitat types managed in California
<input type="checkbox"/>	B.5.	5	Table of species managed in California
<input type="checkbox"/>	B.6.	6	Most recent annual monitoring report
<input type="checkbox"/>	B.7.	7	Enforcement policy or procedures
<input type="checkbox"/>	B.8.	8	Amendment policy
C. California Council of Land Trusts			
<input type="checkbox"/>	C.9.	9	CCLT membership acknowledgement letter
D. Land Trust Accreditation Commission			
<input type="checkbox"/>	D.10.	10	Copy of LTAC accreditation letter and certificate
E. Tax Status			
<input type="checkbox"/>	E.11.	11	Letter evidencing Section 115 and 170(c)(1) status
<input type="checkbox"/>	E.13.	13	Form 990, 990-EZ, 990-N, 990-PF submitted LAST THREE YEARS
<input type="checkbox"/>	E.14.	14	Recent IRS Favorable Determination Letter number 1050, 1045, or 947
<input type="checkbox"/>	E.17.	17	Letter evidencing Registry of Charitable Trusts registration
<input type="checkbox"/>	E.20.	20	Documentation of investigation(s) and actions to resolve violations
F. Purpose			
<input type="checkbox"/>	F.17.a	21	Mission Statement
<input type="checkbox"/>	F.17.b	21	Articles of Incorporation
<input type="checkbox"/>	F.17.c	21	Bylaws
<input type="checkbox"/>	F.17.d	21	Vision Statement
<input type="checkbox"/>	F.17.e	21	Enabling legislation
<input type="checkbox"/>	F.17.f	21	Stewardship Policy
G. Public Information			
<input type="checkbox"/>	G.23.a	23	Organizational brochure, recent annual report, or recent newsletter
<input type="checkbox"/>	G.23.b	23	Screen shot of web site showing information about board members
H. Board Information, Procedures, and Protocols			
<input type="checkbox"/>	H.24.a	24	List of board members with officers identified
<input type="checkbox"/>	H.24.b	24	Biographical statement for each board member, major employments, and key affiliations
<input type="checkbox"/>	H.24.c	24	Identification of and title of any persons directly or indirectly compensated in last 3 years
<input type="checkbox"/>	H.24.d	24	The nature and amount of compensation for individuals compensated by Applicant
<input type="checkbox"/>	H.25.a	25	Board member job description
<input type="checkbox"/>	H.25.b	25	List of committees
<input type="checkbox"/>	H.25.c	25	Board roll call and meeting minutes from LAST THREE YEARS
<input type="checkbox"/>	H.26.a	26	Applicant's policies and guidelines for decisions concerning investments
<input type="checkbox"/>	H.26.b	26	Budget committee reports to the Board from the LAST THREE YEARS
<input type="checkbox"/>	H.29.a	29	Conflict of Interest Policy
<input type="checkbox"/>	H.29.b	29	Conflict of Interest Policy acknowledgement form
<input type="checkbox"/>	H.30.a	30	List of staff members and their CVs, volunteers, interns, consultants, etc.
<input type="checkbox"/>	H.30.b	30	Annual work plans, annual evaluations, strategic plan evaluations, etc.
<input type="checkbox"/>	H.30.c	30	Policy for evaluating personnel performance or description of how Applicant evaluates its programs
I. Financial Status			
<input type="checkbox"/>	I.31.	31	Financial statements and audits FROM LAST THREE YEARS
<input type="checkbox"/>	I.32.a	32	Financial reviews FROM LAST THREE YEARS ,
	I.32.b	32	Management letters and related correspondence that accompanied the most recent audit/review/compilation of Applicant's financial records
<input type="checkbox"/>	I.32.c	32	Minutes from the board meeting when the results of the audit/review/compilation of Applicant's financial records were presented
<input type="checkbox"/>	I.34.a	34	Investment policy
<input type="checkbox"/>	I.34.b	34	Investment guidelines
<input type="checkbox"/>	I.35.	35	Most recent annual fiscal report(s) for endowments held for mitigation lands
<input type="checkbox"/>	I.36.	36	Spending policy or spending rules
<input type="checkbox"/>	I.37.	37	Income projections, budget planning documents, business plan for next 3 years
<input type="checkbox"/>	I.39.	39	Bond or credit rating from LAST THREE YEARS

A. Applicant Contact Information

Organization/Business Name: _____

Street Address: _____

City, State, Zip: _____

Phone: _____

Website Address: _____

Application Date: _____

Contact Person: _____

Title: _____

Telephone Number: _____

E-Mail Address: _____

B. Mitigation Land Details


1) This application is to hold land on behalf of CDFW in the following region(s)¹:

- ☐ R1 Northern Region
- ☐ R2 North Central Region
- ☐ R3 Bay Delta Region
- ☐ R4 Central Region
- ☐ R5 South Coast Region
- ☐ R6 Inland Deserts Region
- ☐ R7 Marine Region

2) Identify Applicant's land management activities:

- ☐ Fee title/easement holder (purchase, donation, or mitigation)
- ☐ Land management
- ☐ Easement monitoring, enforcement, and defense
- ☐ Restoration, enhancement
- ☐ Land use or policy advocacy
- ☐ Education and/or community programs
- ☐ Administration (including fundraising)
- ☐ Other: _____

¹ Please submit one application per Region. Each Region will conduct independent reviews based on regionally specific factors, including, but not limited to, habitat types or species.

- 3) Provide an overview of fee title/easement holder activities:
- ☐ Number of conservation easements now held: _____ as of _____ (mm/dd/yyyy)
- ☐ Number of acres protected with conservation easements held by Applicant: _____ acres
- ☐ Number of fee properties now held: _____ as of _____ (mm/dd/yyyy)
- ☐ Number of acres owned in fee by Applicant: _____ acres
- ☐ Number of conservation easements and/or fee properties **once held** by Applicant and **transferred** to another organization or agency: _____ acres as of _____ (mm/dd/yyyy)
-  **B.3. Document(s) to submit: (a) table of holdings (current and anticipated through the end of current year), and (b) table of transferred properties as of current year.**

- 4) Provide a list of specific habitat types currently managed by the Applicant:

 **B.4. Document to submit: table of habitat types managed in California.**

- 5) Provide a list of species currently managed by the Applicant that are designated as rare, fully protected, species of special concern, candidate, threatened, or endangered:

 **B.5. Document to submit: table of species managed in California.**

- 6) Monitoring – Please describe the Applicant’s property monitoring and land management experience. Explain how the Applicant plans to monitor the mitigation property’s resource values on an annual basis:

 **B.6. Document to submit: most recent annual monitoring report.**


- 7) Enforcement – Explain how the Applicant will respond to a potential violation of an easement or fee title. Include the role of all parties involved such as, Board members, volunteers, staff, and partners in any enforcement action.

 **B.7. Document to submit: enforcement policy or procedures (unless completely addressed in stewardship policy).**

- 8) Conservation Easement Amendments – Explain how the Applicant handles a request to amend an easement. Does the Applicant have a written policy?

☐ Yes. Attach a copy of the Applicant’s amendment policy.

☐ No. Please explain:

 **B.8. Document to submit: amendment policy (unless completely addressed in stewardship policy).**

C. California Council of Land Trusts

- 9) Is the Applicant a member of the California Council of Land Trusts (CCLT)?
- ☐ Yes. Please attach a copy of the membership acknowledgment letter.
 - ☐ No.
 - ☐ Was membership denied, suspended, or revoked? Please indicate when and why.



C.9. Document to submit: CCLT membership acknowledgement letter.

D. Land Trust Alliance

- 10) Is the Applicant currently accredited through the Land Trust Accreditation Commission?
- ☐ Yes. Please attach a copy of the accreditation certificate and transmittal letter.
 - ☐ No.
 - ☐ Has application for accreditation been submitted? Please list date of submission and if the application was deemed complete.
 - ☐ Has accreditation been denied or application been withdrawn? Please explain when and why the application was denied or withdrawn.



D.10. Documents to submit: LTA Commission accreditation certificate and letter.

E. Tax Status

Governmental entities will complete questions 11, 12, and 20; non-profits will complete questions 13 through 20.

- 11) Is the Applicant recognized by the Internal Revenue Service (IRS) as a governmental entity under Internal Revenue Code sections 115 and 170(c)(1)? Please provide a copy of the official determination of its status as a political subdivision, instrumentality of government, or whether its revenue is exempt under Internal Revenue Code sections 115 and 170(c)(1).
- ☐ Yes. Indicate classification below, attach letter explaining how the applicant fits under this definition.
 - ☐ State Agency
 - ☐ County
 - ☐ City
 - ☐ Joint Powers Authority
 - ☐ A special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 or Division 26 (commencing with Section 35100) of the Public Resources Code.
 - ☐ Resource conservation district organized pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.
 - ☐ District organized or formed pursuant to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969).
 - ☐ County water district organized under Division 12 (commencing with Section 30000) of the Water Code, that has more than 5,000 acres of mitigation lands.
 - ☐ Special district formed pursuant to Chapter 2 (commencing with Section 11561) of Division 6 of the Public Utilities Code that provides water and wastewater treatment services.

- ☐ District organized or formed pursuant to the County Water Authority Act (Chapter 545 of the Statutes of 1943).
- ☐ Local flood control district formed pursuant to any law.
- ☐ Other

☐ No. Proceed to next question.



E.11. Documents to submit: letter evidencing Section 115 and 170(c)(1) status.

12) Is the Applicant current in reporting annual financial reports to the California State Controller's Office?

- ☐ Yes.
- ☐ No. Please explain:

13) Is the Applicant exempt from income tax under Internal Revenue Code section 501(a), described in section 501(c)(3), and is other than an organization described in sections 509(a)(1) through (4)?

- ☐ Yes. Attach appropriate IRS form and then, proceed to the next question.
- ☐ No. Applicant does not meet the qualifications.



E.13. Documents to submit: Form 990, 990-EZ, 990-N, 990-PF submitted the LAST THREE YEARS.

14) Is the Applicant recognized by the IRS as a 501(c)(3) qualified to do business in California?

- ☐ Yes. Attach a copy of a recent IRS Favorable Determination Letter.
- ☐ No. Applicant does not meet the qualifications.



E.14. Document to submit: recent IRS Favorable Determination Letter No. 1050, 1045, or 947.

15) Has the 501(c)(3) status ever been suspended or revoked?

- ☐ Yes. Explain why and identify the remedial actions that were taken.
- ☐ No. Proceed to the next question.

16) Is the Applicant a "qualified organization" as defined in Internal Revenue Code, section 170, subdivision (h), paragraph (3)?

- ☐ Yes. Attach a copy of a recent IRS Favorable Determination Letter and explain how the applicant fits under this definition.
- ☐ No. Applicant does not meet the qualifications.

17) Is the Applicant registered with the California Registry of Charitable Trusts maintained by the Attorney General pursuant to Government Code section 12585?

- ☐ Yes. Attach document evidencing registration.
- ☐ No. Applicant does not meet the qualifications.



E.17. Document to submit: letter evidencing Registry of Charitable Trusts registration.

18) Is the Applicant registered and current in reporting annual financial reports to the Attorney General's Office?

- ☐ Yes.
- ☐ No. Please explain:

- 19) Is the Applicant registered and current in its filing to do business in California through the Secretary of State?
- ☐ Yes.
- ☐ No. Applicant does not meet the qualifications.
- 20) Has the Applicant ever been reviewed or investigated by the Internal Revenue Service, Office of the Attorney General of CA, CA Board of Equalization, CA Employment Development Department, or CA Franchise Tax Board (except for the routine application for nonprofit incorporations or tax-exempt status)? Applicant shall sign a release authorizing the CDFW to contact the above agencies for verification.
- ☐ Yes. Attach an explanation, including whether the matter was resolved and the manner in which it was resolved.
- ☐ No.



E.20. Document to submit: documentation of investigation(s) and actions to resolve violations.

F. Purpose

- 21) Is the Applicant's principal purpose the direct protection and stewardship of natural lands or resources, including, but not limited to agricultural lands, wildlife habitat, wetlands, endangered species habitat, and open-space areas?
- ☐ Yes. Describe the Applicant's principal purpose and how it relates to the proposed conservation activities seeking approval under this application:
- ☐ Mission Statement
 - ☐ Articles of Incorporation
 - ☐ Bylaws
 - ☐ Vision Statement
 - ☐ Enabling legislation, if applicable
 - ☐ Stewardship Policy
- ☐ No. Please explain:



F.21. Documents to submit: (a) Mission Statement, (b) Articles of Incorporation, (c) Bylaws, (d) Vision Statement, (e) Enabling legislation, (f) Stewardship Policy.

- 22) Is the Applicant authorized to acquire and hold conservation easements pursuant to Civil Code section 815.3?
- ☐ Yes.
- ☐ No.
- ☐ Not applying to hold conservation easement(s).

G. Public Information

- 23) Does the Applicant provide information annually to the public about its activities to conserve land and/or water resources? Is information about board members accessible to the public?
- ☐ Yes. Please check all that apply and attach examples:
- ☐ Annual report
 - ☐ Newsletters/ brochure

- ☐ Web site/Twitter/Facebook/My Space/Podcasts/Blogs
- ☐ Other. Please explain.

☐ No. Please explain.



G.23. Documents to submit: (a) organizational brochure, recent annual report, or recent newsletter; and (b) indication of where board member names are readily-accessible and sample of document(s)/URLs/screenshots.

H. Board Information, Procedures, and Protocols

24) Is the Board of Directors an independent decision-making body guiding the affairs of the Applicant's organization? Pursuant to Corporations Code, section 5227, not more than 49 percent of persons serving on the Board may be directly or indirectly compensated by the Applicant.

- ☐ Yes. Attach supporting documentation.
- ☐ No. Explain or clarify and then skip to 25:



H.24. Documents to submit: (a) list of board members with officers identified; (b) biographical statement for each board member that includes major employment(s) and key affiliations for each; (c) identification and title of any persons (i.e., board president, treasurer, secretary, executive director, etc.) that the Applicant has either directly or indirectly compensated in the last three years; and (d) the nature and amount of compensation for individuals identified in (c).

25) Please explain how the Board of Directors is actively engaged in governance activities, overseeing financial management, policy, and programs of the Applicant, and if a majority of members regularly participate in board and committee meetings (if so, minimum needed for participation, how often)?



H.25. Documents to submit: (a) board member job description, (b) list of committees, and (c) meeting minutes including roll call showing the presence and absence of board members for the LAST THREE YEARS.

26) Does the Board review, approve, and document the following?

- ☐ Applicant's budget
- ☐ Periodic review of investments
- ☐ Financial status of the Applicant
- ☐ None of the above

Please explain how the review and approval is completed.



H.26. Documents to submit: (a) the Applicant's policies and guidelines for decisions concerning investments; (b) budget committee reports to the Board from LAST THREE YEARS (if applicable).

27) What is the process for periodic evaluation of the General Manager/Chief Executive Officer/Executive Director?

28) How involved is the Board in approving the acquisition of real property interests? Please explain the process.

29) Has the Board adopted a conflict of interest policy? Does the Board implement the policy? Does the Board review and reaffirm the policy annually?

☐ Yes. Attach supporting documentation.

☐ No. Explain or clarify:



H.29. Document(s) to submit: (a) conflict of interest policy; and (b) form that board members sign and acknowledge the policy.

30) Volunteers, staff, and/or consultants with appropriate knowledge, skills, and abilities to carry out Applicants programs.

a) Number of full-time staff?

b) Number of part-time staff?

c) Number of volunteers (excluding board members) and approximate volunteer hours each year?

d) Please describe Applicant's use of consultants.

e) Does Applicant include funds in their budget to support staff training through workshops, conferences, seminars, webinars, etc.?

☐ Yes. Explain and attach supporting documentation.

☐ No. Please explain:

f) Does the Applicant regularly evaluate its programs, activities, and long-term responsibilities to determine sufficient capacity (i.e., staff, volunteers, consultants) to carry out operations?

☐ Yes. Explain and attach supporting documentation.

☐ No. Please explain:



H.30. Document(s) to submit: (a) list of staff members and their curricula vitae, volunteers, interns, consultants, etc.; (b) annual work plans, annual evaluations, strategic plan evaluations, etc.; (c) policy for evaluating personnel performance or description of how Applicant evaluates its programs.

I. Financial Status

- 31) Financial Records – Does the Applicant prepare complete annual financial statements in compliance with Generally Accepted Accounting Principles (GAAP) and federal and state reporting requirements including the Uniform Supervision of Trustees for Charitable Purposes Act (Gov. Code, §§ 12580-12599.8)?

- ☐ Yes. Attach the **financial statements and audits** from **LAST THREE YEARS**.
☐ No. Please explain or clarify:



I.31. Documents to submit: financial statements and audits from LAST THREE YEARS.

- 32) Financial Review or Audit

The Applicant meets federal and state filing requirements, such as filing IRS Form 990, and has an annual financial review or audit, by a qualified financial advisor, in a manner appropriate for the scale of the organization and consistent the Uniform Supervision of Trustees for Charitable Purposes Act (see *Id.*).

Indicate how Applicant completes an annual financial review or audit:

- ☐ Fiscal year gross revenue of \$2,000,000 or more, prepares annual financial statements using GAAP, that are audited by an independent CPA as required by Gov. Code section 12586, subdivision (e)?
☐ Governmental entity with a fiscal year gross revenue of \$2,000,000 or more, that are audited by an independent CPA to the Governmental Accounting Standards.
☐ Fiscal year gross revenue less than \$1,000,000, prepares financial review or audit of year-end financial condition?
☐ Financial review completed by CPA.
☐ Financial compilation completed by CPA or qualified individual.
☐ None. Please explain or clarify:



I.32. Documents to submit: (a) financial reviews or audits from LAST THREE YEARS, (b) management letters and related correspondence that accompanied the most recent audit/review/compilation of Applicant's financial records, (c) minutes from the board meeting when the results of the audit/review/compilation of Applicant's financial records were presented.

- 33) Investment and Management of Funds – Does the Applicant comply with the Uniform Prudent Investor Act and Uniform Prudent Management of Institutional Funds Act (Probate Code, §§ 16045-16054, 18501-18510)?

- ☐ Yes
☐ No. Please explain or clarify:

- 34) Investment Guidelines – Does the Applicant meet the standards established by the California Debt and Investment Advisory Commission's "Local Agency Investment Guidelines" or California Prudent Investor?

- ☐ Yes.
☐ No. Please explain or clarify:



I.34. Document(s) to submit: (a) copy of the investment policy; and (b) any investment guidelines.

- 35) Endowments – Does Applicant hold endowments conveyed for mitigation lands in accordance with Government Code sections 65965 – 65968?

- ☐ Yes. Provide annual fiscal report(s) (Gov. Code, § 65966, subd. (e)(1)(A)-(H))
☐ No. Please explain or clarify:



I.35. Document(s) to submit: most recent annual fiscal report(s) for endowments held for mitigation lands.

- 36) Spending – Please provide an explanation on how the Applicant has adopted and implemented a spending policy or spending rules.



I.36. Document to submit: copy of the spending policy or spending rules.

- 37) Long-Term Funding – Please explain how the Applicant accumulates sufficient funds to meet the long-term funding needs of its commitments, such as land management and easement protection/defense, and please describe how the Applicant is actively working to accumulate these funds.



I.37. Documents to submit: (a) income projections, (b) budget planning documents, (c) business plan for next 3 years.

- 38) Transfer and Assignment – Has the Applicant made provisions for another public agency and/or non-profit to assume trustee responsibilities of the endowment funds in the event the Applicant is unable to continue operations?

- 39) Bonding and/or Credit Rating – Please provide Applicant's bond rating or credit rating documentation for the **LAST THREE YEARS**.

- ☐ No. Please explain or clarify:



I.39. Document(s) to submit: copy of Applicant's LAST THREE YEARS of bond or credit rating.

CERTIFICATION

I the undersigned certify that the information provided is correct and true to the best of my knowledge. I understand that any false statement herein may subject the Applicant to suspension or revocation of its eligibility to hold mitigation endowment funds. Further, if qualified the Applicant agrees to promptly report any substantive changes in legal status, purpose, or activities to the CDFW.

Signature

(Print name)

Date

RELEASE

I the undersigned, certify (or declare), under penalty of perjury under the laws of California that the foregoing is true and correct, that I do hereby authorize CDFW to contact the IRS; CA: FTB, SCO, BOE, EDD, DOJ and Attorney General to verify that there is no active investigation of our organization at this time.

Signature

(Print name)

Date