

US EPA ARCHIVE DOCUMENT

Chemical Waste Management, Kettleman Hills Facility
B-18 Landfill Expansion Project

Biological Assessment
July 2011 Revision

Attachment 2

Kreyenhagen Hills Conservation Bank Service Area

The Kreyenhagen Hills Conservation Bank service area (service area) is located in Fresno, Kern, and Kings Counties, and is bounded on the south by California State Highway 46, and on the southwest by the San Luis Obispo/Kern, Monterey/Kings, and San Benito/Fresno county line. The service area is bounded on the west by San Benito/Fresno county line, on the northwest by the Merced/Fresno county line, and on the north by the Madera/Fresno county line. The service area is bounded on the east by Dickerson Avenue, beginning at the Madera/Fresno county line, southward to its intersection with Henderson Road, continuing southeast on Henderson Avenue through the town of Caruthers to its intersection with West Avenue. The eastern boundary continues south along West Avenue to Elkhorn Avenue, and east along Elkhorn Avenue to its intersection with California State Highway 41. The eastern boundary continues south on California State Highway 41 to the town of Stratford and its intersection with 20 ½ Avenue. It continues on 20 ½ Avenue, which becomes an unnamed country road until it reaches the Kings/Kern county line, from this point the eastern boundary continues due south to California State Highway 46.

KREYENHAGEN HILLS CONSERVATION BANK AGREEMENT

This CONSERVATION BANK AGREEMENT ("Agreement") is made and entered into this 23 day of December, 2005, between Wildlands, Inc. ("Owner") and the United States Fish and Wildlife Service (USFWS) (referenced jointly as the "Parties"). The purpose of this Agreement is to establish the terms and conditions for a Conservation Bank on certain real property to be known as the Kreyenhagen Hills Conservation Bank.

I. AGREEMENT RECITALS

WHEREAS:

A. Wildlands, Inc., a company incorporated in the State of California with an office in Visalia, CA, is the owner ("Owner") of real property located in the County of Fresno, including real property located east of the Fresno/San Luis Obispo County Line, south of the City of Coalinga, north of Cholame Lake, and west of Interstate 5, and more completely described in **Exhibit A** (general and site location maps) and illustrated in **Exhibit B** (title report, legal description, and parcel map) attached hereto ("Property").

B. The USFWS exercises jurisdiction with respect to the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat pursuant to various federal laws including the Endangered Species Act, 16 U.S.C. § 1531 et seq. ("ESA"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) et seq.

C. It is anticipated that activities including construction and development activities ("Activities") will occur in the "Service Area" for this Conservation Bank, as set forth and attached hereto as **Exhibit C**, that will necessitate the implementation of mitigation and compensatory conservation measures for impacts to species and habitat subject to this Agreement ("Covered Species").

D. Establishment of this Conservation Bank represents an excellent opportunity to conserve highly valuable biological resources. The Conservation Bank will provide permanent conservation and protection for endangered and threatened species and any additional species the Parties determine will be adequately conserved as a result of implementation of this Agreement, including all life stages and associated habitat, for the endangered: San Joaquin kit fox (*Vulpes macrotis mutica*) and the federal and California species of concern western spadefoot toad (*Scaphiopus hammondi*) ("Covered Species"). A general description of biological resources, including geographic location and features, topography, vegetation, past and present land use, species, Covered Species, and habitat occurring on the Property, is set forth in the Management Plan at **Exhibit D**. Any recovery plan for any Covered Species shall be referenced in the Management Plan and shall be appended to this Agreement.

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E. In accordance with this Agreement, the Parties desire to establish a Conservation Bank on the Property to be known as the “Kreyenhagen Hills Conservation Bank” or “Conservation Bank” to provide for the permanent conservation and management of the Property for the benefit of Covered Species, which shall be used for mitigation and compensatory conservation through the sale or conveyance of “Conservation Credits” as provided herein.

F. Implementation of this Conservation Bank will be accomplished by recording Conservation Easements in accordance with California Civil Code § 815 and this Agreement that will burden the Property in perpetuity to accomplish the conservation and recovery of Covered Species and associated habitat.

G. This Agreement sets forth the terms and conditions by which the Conservation Bank will be established, implemented, and governed, as set forth below:

II. AGREEMENT DEFINITIONS

1. The terms used in this Agreement are defined as set forth below:

(1) “Activity or Activities” means construction, alteration, or development including, but not limited to, the construction, development, occupation, or operation of industrial, commercial, or residential property, as well as any related or associated actions, within the “Service Area.”

(2) “Agreement” means this document.

(3) “Conservation Bank” means the conservation bank established pursuant to this Agreement.

(4) “Conservation Credit” means a unit of mitigation or compensatory conservation determined by the Parties by use of a proportionate credit formula or other method set forth in the Credit Evaluation attached hereto at **Exhibit E**, which is available to serve as mitigation or compensation for Activities in the Service Area as determined on a project-by-project basis.

(5) “Conservation Easement” means any conservation easement established in perpetuity and recorded on the Property for conservation purposes consistent with this Agreement and subject to and in accordance with the provisions of California Civil Code § 815 and USFWS approval, in the form set forth at **Exhibit F** (including any property description and parcel map), and which shall be attached hereto at **Exhibit F**.

(6) “Covered Species” means endangered and threatened species and any additional species which the Parties determine will be adequately conserved as a result of implementation

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of this Agreement, including all life stages and associated habitat, as set forth in the Agreement Recitals and the Management Plan attached hereto at **Exhibit D**.

(7) “Credit Evaluation” or “proportionate credit formula” means an evaluation undertaken to formulate the value of each Conservation Credit in relation to the acreage of habitat on a Conservation Easement recorded on the Property (where, for instance, a proportionate credit formula means one acre of habitat on a recorded Conservation Easement equals one Conservation Credit), which shall be attached hereto as **Exhibit E**.

(8) “Credit Sales Approval” means written approval provided by the USFWS to a project proponent indicating that conservation credits purchased from the Conservation Bank may be used as mitigation or compensatory conservation for Activities in the Service Area.

(9) “Credit Receipt” means a receipt including information in the form attached hereto at **Exhibit I**, executed by Owner and issued for each sale or conveyance of a Conservation Credit.

(10) “Declaration of Trust” means a declaration by the trustee holding the Endowment Fund, in the form set forth at **Exhibit I**, providing that the Endowment Fund will be utilized for conservation purposes consistent with this Agreement, any Conservation Easement, the Management Plan, and any Management Agreement, and which shall be attached to this Agreement as **Exhibit K** upon approval of the USFWS.

(11) “ESA” means the Endangered Species Act, 16 U.S.C. § 1531 et seq., including all regulations promulgated pursuant to that Act.

(12) “Endowment Deposit” means a sum that the Parties determine shall be calculated by a method set forth in **Exhibit J** which shall be collected with the sale or conveyance of each Conservation Credit and deposited into the Endowment Fund until full funding in the Target Amount is achieved for the purpose of perpetually endowing the management of the Conservation Bank for conservation purposes consistent with this Agreement, any Conservation Easement, and the Management Plan.

(13) “Endowment Fund” means a dedicated, non-wasting, interest-bearing account to be established by Owner concurrent with execution of this Agreement and funded with Endowment Deposits collected from the sale or conveyance of Conservation Credits, and which shall generate interest to be used exclusively for management of the Conservation Bank for conservation purposes consistent with this Agreement, any Conservation Easement, and the Management Plan.

(14) “Interim Management Account” means a dedicated interest-bearing account to be established by Owner concurrent with execution of this Agreement and funded with fees collected from the initial sale or conveyance of Conservation Credits in an amount determined by the Parties as set forth at **Exhibit J**, for use as a contingency fund for management of the Conservation Bank until the Endowment Fund Target Amount and Target Date are achieved, at which time the Interim Management Account may be terminated and all funds (excepting interest

retained by Owner) shall be transferred to the Endowment Fund for management of the Conservation Bank for one year consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan.

(15) “Interim Management Period” means the period of time prior to full funding of the Endowment Account in the Target Amount, when Owner shall be responsible for all costs and any management obligations that the Parties agree are to be performed in accordance with this Agreement, any Conservation Easement, and the Management Plan.

(16) “Management Agreement” means an agreement approved by the USFWS between the Conservation Bank Owner and an approved party for implementation of the Management Plan utilizing the funding mechanisms established by this Agreement.

(17) “Management Plan” means the operation and management plan approved by the Parties for the purpose of governing implementation of the terms and conditions of this Agreement, attached hereto as **Exhibit D**.

(18) “Owner” means the possessor of legal title to the Property subject to this Agreement, its successors, or assigns.

(19) “Property” means Owner’s real property upon which Conservation Easements may be recorded and a Conservation Bank may be established as described in this Agreement.

(20) “Property Assessment” means a written assessment of the number of acres on the Property that Owner warrants may be burdened by Conservation Easement(s) for conservation purposes in accordance with California Civil Code § 815 and this Agreement, and which excludes any portion of the Property subject to any right of way, easement, encumbrance, or any other matter that prevents establishment of a Conservation Easement on that portion of the Property for conservation purposes in accordance with California Civil Code § 815 and this Agreement, and which shall be attached hereto at **Exhibit G**.

(21) “Property Assessment Acknowledgment” means a Property Assessment that is signed and dated by the USFWS, with a copy to be returned to Owner and a copy to be attached hereto at **Exhibit G**.

(22) “Service Area”(also known as “Credit Area”) means the geographic area described on the map and in the narrative description set forth at **Exhibit C**, within which impacts that occur may be mitigated or compensated through the use of Conservation Credits.

(23) “Target Amount” means an amount the Parties determine concurrent with calculation of the Endowment Deposit which is the amount at which the Endowment Fund shall be fully funded, as set forth at **Exhibit J**.

(24) “Target Date” means the date by which the Parties determine the Endowment Fund

shall be fully funded, as set forth at **Exhibit J**.

(25) “USFWS” means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

III. TERMS AND CONDITIONS OF AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Agreement Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0. CONSERVATION BANK EVALUATION AND ACCEPTANCE

1.1. Evaluation of the Property has been undertaken by representatives of the USFWS who have inspected and generally evaluated the Property for purposes of determining its biological values in connection with the sale of Conservation Credits. As a result of benefits accruing to wildlife resources including sensitive, threatened, and endangered species and their habitats, and particularly to the Covered Species and associated habitat, and upon establishment of the Conservation Bank, the USFWS acknowledges that, subject to any limitations provided in this Agreement, the Property possesses biological values sufficient for issuance of Conservation Credits as contemplated by this Agreement.

1.2. Notwithstanding anything to the contrary in this Agreement, in the event that the Property is evaluated and the USFWS reasonably determines that portions of the Property have been damaged subsequent to the date of this Agreement and: (1) the effect of such damage has been to materially impair the habitat values on such damaged Property; and (2) Owner has not reasonably restored habitat value to such damaged Property or provided the USFWS with reasonable evidence that habitat value will be restored, then the USFWS may, at its discretion, either reduce the number of Conservation Credits allocated to the Conservation Bank in proportion to the damaged area or, if the USFWS determines that habitat values on the Property have been so impaired as to render the Property unsuitable for use as a Conservation Bank, the USFWS may terminate this Agreement.

2.0. ESTABLISHMENT AND DEVELOPMENT OF CONSERVATION BANK

2.1. The Conservation Bank shall be deemed established when:

(a) Owner provides the USFWS with general and site location maps (**Exhibit A**), and a title report, legal description, and legal parcel map for the Property (**Exhibit B**), describing Owner’s interest in the Property and documenting any encumbrances (other than monetary encumbrances, which must be subordinated or removed), easements, restrictions, or other matters affecting the property.

(b) Owner records a Conservation Easement on the Property in the County where

the Property is located which covers the Property or a portion of the Property that the USFWS determines constitutes a biologically sustainable unit for conservation purposes contemplated by this Agreement, which shall be in a form subject to USFWS approval and attached hereto as **Exhibit F**, and which shall be held by a party approved by the USFWS.

(c) Owner provides the USFWS with a "Property Assessment" that identifies the number of acres on the Property that Owner warrants may be burdened by Conservation Easement(s) for conservation purposes in accordance with this Agreement, to be attached hereto as **Exhibit G**.

(d) USFWS provides Owner with a "Property Assessment Acknowledgment" by signing and dating the Property Assessment, with a signed copy to be returned to Owner and a copy to be attached hereto as **Exhibit G**.

(e) Owner provides the USFWS with a Level I Environmental Contaminants Survey for the Property subject to USFWS approval, to be attached hereto as **Exhibit H**.

(f) The Parties prepare a Management Plan in accordance with this Agreement and Owner satisfies any criteria (such as restoration or enhancement of the Property) required to be performed or completed before Conservation Credits may be sold or conveyed pursuant to the Management Plan.

(g) Owner establishes and deposits funds into an Interim Management Account in an amount the Parties agree is sufficient to fund the Conservation Bank and Management Plan for one year after full funding of the Endowment Fund at the Target Amount has been achieved.

(h) Owner establishes an Endowment Fund account for Endowment Deposits held in trust by an approved party in accordance with the terms and conditions of this Agreement, the Management Plan, and any Conservation Easement, subject to approval of the USFWS.

2.2. Owner shall provide the USFWS with copies of all Conservation Easements recorded on the Property in the form attached hereto as **Exhibit F**, along with a legal parcel map and description of the Property to be covered by any Conservation Easement. Any Conservation Easement shall be attached hereto and incorporated herein as **Exhibit F**, subject to USFWS approval, including approval of the party holding and maintaining the Conservation Easement. When any Conservation Easement is recorded on the Property, Owner shall provide the USFWS with an updated Property Assessment of the acres potentially and actually available in the Conservation Bank for conservation purposes in accordance with this Agreement and the USFWS shall provide Owner with a revised Property Assessment Acknowledgment.

2.3. The Property subject to this Agreement may be expanded in accordance with and by amendment to this Agreement upon approval of the Parties, with any expansion of the Property described in a general and site location map, title report, legal description, and legal parcel map to be incorporated in **Exhibits A and B** of this Agreement.

2.4. Owner shall pay any and all taxes and charges associated with the Property, obtaining a valid title report, and establishing, recording, selling, and conveying any Conservation Credit, Easement, or the Conservation Bank.

3.0. CONSERVATION CREDITS

3.1. Upon establishment of the Conservation Bank in accordance with Section 2.0 of this Agreement, Owner may sell and convey Conservation Credits to any project proponent that furnishes a Credit Sales Approval authorizing use of Conservation Credits from the Conservation Bank as mitigation or compensatory conservation for Activities within the Service Area on a project-by-project basis consistent with this Agreement, and Owner shall have the exclusive right to determine the price for any and all Conservation Credits.

3.2. The value of each Conservation Credit in relation to the acreage on a Conservation Easement recorded on the Property shall be determined in accordance with the Credit Evaluation or proportionate credit formula (where, for instance, one acre of habitat on a recorded Conservation Easement equals one Conservation Credit), attached hereto as **Exhibit E**.

3.3. Owner shall issue a "Credit Receipt," (including information set forth in forms attached hereto at **Exhibit I**), executed by Owner to each purchaser and shall provide a copy of the Credit Receipt to the USFWS within thirty (30) days of issuance. If Owner conveys any Conservation Credit to mitigate Activities undertaken on its own property, Owner shall produce a Credit Receipt for the conveyance and shall provide a copy of the Credit Receipt to the USFWS.

3.4. Funds from the initial sale or conveyance of Conservation Credits shall be deposited into the Interim Management Account in an amount determined by the Parties in accordance with Section 4.0 of this Agreement, and Credit Receipts may be used as evidence that Conservation Credits in the Conservation Bank have been obtained in accordance with a Credit Sales Approval to satisfy requirements for mitigation or compensatory conservation for Activities in the Service Area.

3.5. Upon each sale or conveyance of a Conservation Credit by Owner, the requisite Endowment Deposit shall be deposited into the Endowment Fund in accordance with Section 4.0 of this Agreement and Owner shall provide the USFWS with a copy of the receipt for such Endowment Deposit as provided in Section 4.0 of this Agreement.

3.6. Upon approval of the Parties, the total number of available Conservation Credits may be increased due to a change in methodology used by the USFWS to determine habitat value, by the discovery of new biological findings that support an increased number of credits under the current methodology used by the USFWS, or by expansion or restoration of the Property, in accordance with and by amendment to this Agreement.

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4.0. ENDOWMENT DEPOSITS AND ENDOWMENT FUND

4.1. As a condition of establishment of this Conservation Bank, Owner shall establish a dedicated, non-wasting, interest-bearing account to be funded with Endowment Deposits collected from the sale or conveyance of Conservation Credits, which shall constitute the “Endowment Fund”. The Endowment Fund shall be held in trust, and Owner shall ensure that any trustee or manager of the Property or Conservation Bank shall utilize the Endowment Fund consistent and in accordance with this Agreement, the Management Plan, and any Conservation Easement. Any Declaration of Trust or Management Agreement shall be in the form set forth in **Exhibit I**, subject to the approval of the USFWS, and shall be attached to this Agreement as **Exhibit K**.

4.2. Concurrent with the sale or conveyance of each Conservation Credit, Owner shall deposit into the Endowment Fund an “Endowment Deposit”, an amount based upon projected Property management costs (including costs for unforeseen or changed circumstances such as fire, flood, listing of new species) which the Parties calculate by employment of a mutually agreeable method (such as a Property Analysis Record), attached hereto at **Exhibit J**. The calculation of the Endowment Deposit shall account for inflation, which may be incorporated in calculations of projected Property management costs, but may otherwise be revised annually on the execution date of this Agreement beginning in the calendar year following execution of this Agreement in accordance with any increase in the Consumer Price Index (CPI) published by the U.S. Department of Labor, Bureau of Statistics, for the nearest metropolitan area for that year (the CPI adjustment).

4.3. Owner shall provide the USFWS with the receipt or other evidence of each Endowment Deposit, which shall be delivered to the USFWS with the Credit Receipt as set forth in Section 3.0, within thirty (30) days of each sale or conveyance of a Conservation Credit. Owner or the Endowment Fund trustee may employ the services of an escrow company to manage the sale of Conservation Credits or Endowment Deposits subject to and in accordance with the terms and conditions of this Agreement.

4.4. In calculating the Endowment Deposit, the Parties shall establish a “Target Date” for full funding of the Endowment Fund at a “Target Amount”, which shall be determined concurrent with calculation of the Endowment Deposit and shall be set forth and attached hereto at **Exhibit J**. In the event that the Target Amount is not achieved by the Target Date, within thirty (30) days thereafter, Owner shall deposit into the Endowment Fund the difference between the amount in the Endowment Fund and the Target Amount. If the Endowment Deposit has not been calculated to account for inflation (**Exhibit J**), the Target Amount shall be revised to reflect the result of CPI adjustments, as set forth in this Section. Owner shall ensure that the Target Amount is available upon transfer, assignment, or termination of this Agreement. The Target Amount may be revised if the total number of Conservation Credits in the Conservation Bank is increased in accordance with this Agreement.

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4.5. As a condition of establishment of this Conservation Bank and before full funding of the Endowment Fund at the Target Amount by the Target Date, Owner shall deposit fees other than Endowment Deposits that are collected from the initial sale or conveyance of Conservation Credits into a dedicated, interest-bearing "Interim Management Account", in an amount determined by the Parties as set forth at **Exhibit J**, as a contingency fund that may not be expended except by agreement of the Parties and must be replenished if expended. Upon achievement of the Target Amount and Target Date, the Interim Management Account may be terminated and all funds (excepting interest retained by Owner) shall be transferred to the Endowment Fund for management of the Conservation Bank for one year consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan.

4.6. Prior to full funding of the Endowment Account in the Target Amount, Owner shall be responsible for all costs and any management obligations that the Parties agree are to be performed during this "Interim Management Period" in accordance with this Agreement, any Conservation Easement, and the Management Plan. During the Interim Management Period, if the Parties agree that the Interim Management Account may be expended, the Interim Management Account shall be replenished from the succeeding sale of Conservation Credits or by Owner before it is transferred to the Endowment Fund for management of the Conservation Bank. The Parties may, but need not, agree to extend the Target Date in order that sales of Conservation Credits may be used to replenish the Interim Management Account, but Owner shall continue to be responsible for costs and management obligations during this extended Interim Management Period.

4.7. Upon full funding of the Endowment Fund at the Target Amount by the Target Date, the Endowment Fund shall be held and managed for conservation purposes consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan. The accrued interest and earnings from the Endowment Fund shall be used exclusively to fund and defray costs and expenses reasonably incurred for the management of the Property and Conservation Bank, including labor costs, contracts, equipment, materials, and signage. Upon satisfaction of the Target Amount, all funds collected from the sale or conveyance of Conservation Credits may be retained by Owner.

4.8. Funds from the Endowment Fund other than interest and earnings may not be expended unless a written request for approval is submitted to the USFWS detailing the reasons for the request, and upon written approval by the USFWS, which shall be based upon whether the request is in furtherance of a conservation purpose contemplated by this Agreement and may include provisions for restoration of amounts expended within a prescribed time period.

4.9. Upon transfer, assignment, or termination of this Agreement, any funds in the Interim Management Account and the Endowment Fund shall continue to be expended in a manner consistent and in accordance with the conservation purposes for which they were established pursuant to this Agreement and California Civil Code § 815, any Conservation Easement, and the Management Plan.

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5.0. CONSERVATION BANK DATABASE

5.1. A Conservation Bank database, or ledger, shall be established and maintained by Owner for the purpose of tracking funds from the sale and conveyance of Conservation Credits. The database or ledger shall include a numerical accounting of all Conservation Credits available, sold or conveyed, the balance of Conservation Credits remaining, and the aggregate of funds collected, deposited, and accrued in any Interim Management Account and the Endowment Fund, as follows:

(a) For each individual sale or conveyance of any Conservation Credit, the database shall state the number and type of Conservation Credits sold or conveyed, the name, address, County, and telephone number of the entity purchasing or receiving any Conservation Credit, and the Activity (and the project name and USFWS file number for the project, if available) for which any Conservation Credit was sold or conveyed.

(b) Within thirty (30) days of each sale or conveyance of any Conservation Credit, Owner shall provide the USFWS with the Credit Receipt and an Endowment Deposit receipt, along with an updated accounting of all funds in any Interim Management Account and all Endowment Deposits collected and deposited into the Endowment Fund, as well as an updated accounting of all Conservation Credits sold or conveyed as of the date of sale or conveyance.

(c) Owner shall provide the database or ledger to the USFWS upon request and on an annual basis no later than February 15th, beginning in the calendar year following execution of this Agreement.

(d) Owner shall be responsible for satisfying all of the requirements set forth in this Section until such time as there are no available Conservation Credits remaining for sale or conveyance in the Conservation Bank.

6.0. MANAGEMENT OF CONSERVATION BANK

6.1. Owner, its successors, or assigns, shall ensure that the Conservation Bank is managed and maintained consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan, and may transfer management responsibilities to a manager approved by the USFWS on the condition that Owner enters into a Management Agreement subject to the approval of the USFWS, in the form set forth at **Exhibit I**, and attached hereto as **Exhibit K**.

6.2. As a condition of establishment of this Conservation Bank, Owner, the USFWS, and/or any Management Agreement manager shall agree upon a Management Plan for the Property, which shall be prepared by Owner and/or an approved manager in consultation with the USFWS and shall be attached hereto as **Exhibit D**. The Management Plan shall describe biological resources occurring on the Property and shall provide for the implementation and

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prioritization of specific management measures and tasks for conservation purposes contemplated by this Agreement, including:

(a) a general description of biological resources, including geographic location and features, topography, vegetation, past and present land use, species, Covered Species, and habitat occurring on the Property;

(b) specific measures for ongoing management of the Property and biological resources, as well as measures for Property management should unforeseen or changed circumstances occur, such as fire, flood, or listing of new species;

(c) specific measures for regular and ongoing monitoring of the Property to be conducted by a third party monitor expressly approved by the USFWS.

6.3. Upon the request of any Party to this Agreement or any Management Agreement, the Parties shall meet and confer to revise the Management Plan to better preserve the habitat and conservation values of the Property. Any changes to the Management Plan shall be subject to USFWS approval and shall be appended to the Management Plan attached hereto as **Exhibit D**.

6.4. Owner and any manager shall ensure that reasonable efforts are employed to prevent third party use of the Property in a manner not in accordance with this Agreement, any Conservation Easement, and the Management Plan, including restriction of public access to the Property. Representatives of the USFWS shall have a right to enter the Property at any time and USFWS guests may enter with twenty-four (24) hours prior notice by the USFWS to Owner or any Management Agreement manager.

6.5. Owner and any Management Agreement manager shall ensure that an accounting and management report is provided to the USFWS upon request and on an annual basis no later than February 15th, beginning in the calendar year following execution of this Agreement, which shall include the following:

(a) An accounting of all funds expended in the management of the Property during the previous year;

(b) A general description of the status of the Property;

(c) The results of any biological monitoring or studies conducted on the Property;

(d) A description of all management actions taken on the Property along with a description of any problems encountered in managing the Property; and

(e) A description of management actions that will be undertaken in accordance with this Agreement, any Conservation Easement, and the Management Plan in the coming year.

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6.7. Upon transfer or assignment of this Agreement or any Management Agreement, all books and records and all rights and responsibilities contained herein shall be transferred or assigned with this Agreement or any Management Agreement and shall continue to be administered consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan.

7.0. OWNER COVENANTS

7.1. Owner hereby agrees and covenants for so long as this Agreement is in effect, that:

(a) Owner shall not discharge or release to the Property, or permit others to discharge or release to the Property, any material or substance deemed “hazardous” or “toxic” under any federal, state, or local environmental law;

(b) Owner shall not create any encumbrance to the title of the Property other than those set forth in **Exhibit B** and accounted for in the Property Assessment (**Exhibit G**), and Owner shall not execute, renew, or extend any lien, license, or similar interest without the prior written consent of the USFWS;

(c) Owner shall not construct any structure or engage in any activity or use of the Property, including mineral exploration, excavating, draining, dredging, or other alteration of the Property, that is not consistent with and in accordance with this Agreement, any Conservation Easement, and the Management Plan, without the prior written consent of the USFWS; and

(d) Owner shall ensure that the Property is maintained to ensure its suitability as a Conservation Bank consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan.

8.0. COOPERATION OF THE USFWS

8.1. The USFWS shall reasonably cooperate with Owner and any approved manager in the implementation of this Agreement. Such cooperation shall include:

(a) Acknowledging to prospective Conservation Credit purchasers that Conservation Credits are available as mitigation or compensatory conservation for Activities within the Service Area;

(b) Acknowledging that the Conservation Bank is “approved” by the USFWS and including the Conservation Bank on a list maintained by the USFWS of approved conservation banks and making such list available to prospective Conservation Credit purchasers;

(c) Confirming to prospective Conservation Credit purchasers that purchase of the

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required number of Conservation Credits from the Conservation Bank shall serve as mitigation or compensatory compensation for incidental take caused by Activities in the Service Area.

9.0. TRANSFER, ASSIGNMENT, TERMINATION OF AGREEMENT

9.1. Owner shall have the right to convey or transfer the Property prior to establishment of the Conservation Bank in accordance with this Agreement and subject to written concurrence by the USFWS. If such transfer is made without the prior written concurrence of the USFWS, such transfer shall result in the termination of this Agreement.

9.2. Upon establishment of the Conservation Bank pursuant to this Agreement, any transfer or assignment of any portion of, or interest in, the Conservation Bank shall be made only with the prior written concurrence of the USFWS, which concurrence shall be subject to the requirement that the successor or assign assume all obligations pursuant to this Agreement and have sufficient financial capacity to carry out any unfunded Agreement obligations. Transfer or assignment of this Agreement to a party approved in writing by the USFWS shall also be subject to the requirement that any funds in an Interim Management Account and the Endowment Fund shall continue to be expended in a manner consistent and in accordance with this Agreement, any Conservation Easement, and the Management Plan.

9.3. The USFWS may terminate this Agreement on the condition that each of the following has occurred: (i) Owner has breached one or more Owner Covenants or terms and conditions set forth herein; (ii) Owner has received written notice of such breach from the USFWS; and (iii) Owner has failed to cure such breach within thirty (30) days after such notice; provided that in the event such breach is curable in the judgment of the USFWS, but cannot reasonably be cured within such thirty (30) day period, the USFWS shall not terminate this Agreement so long as Owner has commenced the cure of such breach and is diligently pursuing such cure to completion. Nothing in this paragraph is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) at law available to the USFWS in the event of a threatened or actual breach of this Agreement. If this Agreement is terminated, funds in an Interim Management Account and the Endowment Fund shall continue to be expended in a manner consistent and in accordance with the conservation purposes for which they were established pursuant to this Agreement and California Civil Code § 815, any Conservation Easement, and the Management Plan, and any Conservation Easement shall continue in perpetuity as a covenant running with the land.

9.4. Upon written concurrence of the USFWS, this Agreement may be terminated following the sale or conveyance of all available Conservation Credits and satisfaction of all substantive terms and conditions of this Agreement other than ongoing management obligations such as maintenance and monitoring, as set forth in the Management Plan, provided that the Endowment Fund shall continue to be expended in a manner consistent and in accordance with the conservation purposes for which it was established pursuant to this Agreement and California Civil Code § 815, any Conservation Easement, and the Management Plan, and any Conservation

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Easement shall continue in perpetuity as a covenant running with the land.

10.0. REMEDIES AND ENFORCEMENT OF AGREEMENT

10.1. The Parties shall each have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and to seek remedies for any breach or violation thereof. Nothing in this Agreement shall be deemed to limit USFWS jurisdiction over endangered, threatened, and sensitive species and biological resources, or to restrict the ability of the USFWS to seek civil or criminal penalties or otherwise fully discharge its responsibilities under applicable law including the ESA.

10.2. The Parties agree to work together in good faith to resolve disputes concerning this Agreement but any Party may seek any available remedy. Unless an aggrieved party has initiated administrative proceedings or suit in federal court, the Parties may elect to employ an informal dispute resolution process whereby:

(a) The aggrieved Party shall notify any other Party of the Provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation;

(b) The Party alleged to be in violation shall have thirty (30) days or such other time as may be agreed upon to respond and, during this time, may seek clarification of the initial notice and shall use its best efforts to provide any responsive information;

(c) Within thirty (30) days after such response was provided or due, Party representatives shall confer and negotiate in good faith toward a resolution satisfactory to each Party, or shall establish a specific process and timetable to seek such solution.

11.0. ENTIRE AGREEMENT

11.1. This Agreement constitutes the entire agreement of the Parties, and no other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Agreement shall be binding or valid.

11.2. This Agreement is not subject to amendment or modification except by written consent of the Parties and any attempted modification not in compliance with this requirement shall be void. Any amendment or modification to this Agreement shall be included in an addendum or an Exhibit to this Agreement with reference to the specific provisions modified or deleted.

11.3. All Exhibits referred to in this Agreement are attached to this Agreement and are incorporated herein by reference.

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12.0. SUCCESSORS AND ASSIGNS

13.1. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

13.2. Owner may transfer or assign its rights and obligations under this Agreement consistent with applicable USFWS regulations, this Agreement, and with the prior written approval of the USFWS, which approval shall not be unreasonably withheld.

13.0. NOTICE

13.1. Any notice, demand, or request permitted or required by this Agreement shall be delivered personally, sent by facsimile, or sent by recognized overnight delivery service, to the persons in the positions set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as either the Parties may from time to time specify in writing:

Owner(s): Wildlands, Inc.
208 W. Main Street, Suite U-2
Visalia, CA 93291
Attention: Craig Bailey;

USFWS: United States Fish and Wildlife Office
2800 Cottage Way
Sacramento, CA 95825-1890
Attention: Manager, California/Nevada Operations Office

With a copy to: United States Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way
Sacramento, CA 95825-1890
Attention: Field Supervisor

14.0. ATTORNEY FEES

14.1. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs.

15.0. AVAILABILITY OF FUNDS

15.1. Implementation of this Agreement by the USFWS is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Agreement may be construed to require the obligation, appropriation, or expenditure of

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any money from the United States Treasury. The USFWS is not required under this Agreement to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

16.0. ELECTED OFFICIALS

16.1. No member or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

17.0. NO PARTNERSHIPS

17.1. This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.

18.0. GOVERNING LAW

18.1. This Agreement shall be governed by and construed in accordance with the Federal Endangered Species Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) et seq., the laws of the State of California, and other applicable federal laws and regulations. Nothing in this Agreement is intended to limit the authority of the USFWS to seek penalties or otherwise fulfill its responsibilities under the ESA or as an agency of the Federal government.

19.0. COUNTERPARTS

19.1. This Agreement may be executed in identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

AGREEMENT EXHIBITS

1. The following Exhibits are attachments incorporated in this Conservation Bank Agreement:

- Exhibit A - General Location Map and Site Location Map for Property
- Exhibit B - Title Report, Legal Description and Legal Parcel Map for Property
- Exhibit C - Service Area (or "Credit Area")
- Exhibit D - Management Plan
- Exhibit E - Credit Evaluation (or proportionate credit formula)
- Exhibit F - Easement form, Easement(s), Parcel Map(s), Property Description(s),
- Exhibit G - Property Assessment and Property Assessment Acknowledgment

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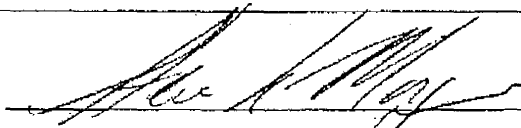
Exhibit H - Level I Environmental Assessment

Exhibit I - Credit Receipt form; Declaration of Trust form; Management Agreement form

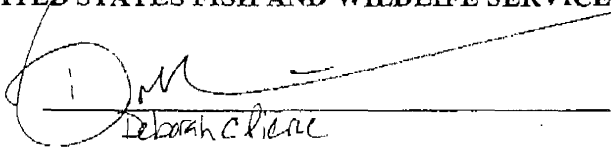
Exhibit J - Endowment Deposit, Target Amount, Target Date, Interim Management Account

Exhibit K - Declaration of Trust, Management Agreement

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this _____
Conservation Bank Agreement as of the date last signed below.

By:  Date: 12/15/05
Title: STEVEN K. MORGAN
CEO

UNITED STATES FISH AND WILDLIFE SERVICE

By:  Date: 12/23/05
Title: Manager, California/Nevada Operations Office
Acting

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