

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

Conformed Copy To:

Space above Line for Recorder's Use

Agreement Declaring Restrictive Covenants

This Agreement Declaring Restrictive Covenants, referred to herein as "ADRC", is entered into effective this _____ day of _____, 2019, by and between the Butte County Association of Governments, referred to herein as "BCAG", and the State of California, acting through its Department of Transportation, referred to herein as "CALTRANS".

WHEREAS, BCAG has or will acquire title to certain real property in the County of Butte, State of California, which is more particularly described in **Exhibit 1**, attached hereto and made a part of this ADRC, referred to herein as "MITIGATION PROPERTY".

WHEREAS, MITIGATION PROPERTY possesses significant conservation values that are of great importance to CALTRANS, BCAG, and the people of the State of California; and

WHEREAS, conservation values of MITIGATION PROPERTY include, without limitation, blue oak woodland habit, referred to herein as "CONSERVATION VALUES"; and

WHEREAS, both CALTRANS and BCAG desire and intend to restrict MITIGATION PROPERTY uses to preserve, protect, enhance, and restore CONSERVATION VALUES of MITIGATION PROPERTY and to prevent any use of MITIGATION PROPERTY that will impair or interfere with those CONSERVATION VALUES, referred to herein as "CONSERVATION PURPOSES"; and

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

Management and Maintenance

1. Although not an exhaustive list, none of the prohibited uses described in **Exhibit 2**, attached hereto and made a part of this ADRC, shall encumber MITIGATION PROPERTY.

2. CALTRANS will provide, pursuant to Cooperative Agreement 03-0654, funds to BCAG for the long-term management, maintenance, operation, preservation and protection of MITIGATION PROPERTY, hereinafter ENDOWMENT. CALTRANS and BCAG agree that long-term management is defined as the continuous operation, maintenance and management actions necessary to achieve results that positively affect the long-term preservation and protection of CONSERVATION VALUES of MITIGATION PROPERTY. Said long-term management shall be in accordance with this ADRC and the Land Management Plan dated [REDACTED], 2019, attached hereto as **Exhibit 3** and made a part of this ADRC.

3. BCAG will own, use, manage and maintain, now and in the future, the MITIGATION PROPERTY pursuant to and consistent with CONSERVATION PURPOSES. If BCAG fails to own, use, manage and maintain MITIGATION PROPERTY pursuant to the terms of this ADRC, BCAG will be required to cure said noticed violation within forty-five (45) calendar days of awareness of that violation. If BCAG fails to cure the violation within forty-five (45) calendar days of awareness, or where the violation cannot reasonably be cured within forty-five (45) calendar days, fails to begin curing such violation within that forty-five (45) calendar day period, or fails to continue diligently to cure such violation until finally cured, such failure will be deemed as a default of this ADRC. If a default occurs, CONSERVATION PURPOSES will have been deemed violated and BCAG must comply with the requirements set forth in provision 4 below.

4. In the event of a default, BCAG or BCAG's successor or assigns, shall transfer said MITIGATION PROPERTY and/or ENDOWMENT, at CALTRANS' discretion, to CALTRANS or to another qualified entity who can satisfy the CONSERVATION PURPOSES of this ADRC.

5. If MITIGATION PROPERTY is sold pursuant to a threat of eminent domain, bankruptcy, or taken by an exercise of the power of eminent domain, in whole or in part, BCAG shall notify STATE of the proposed sale or taking by sending written notice to: State of California, Department of Transportation, Legal Division, 1120 N Street, (MS57) Sacramento, CA 95814. BCAG shall then reimburse CALTRANS for the MITIGATION PROPERTY taken or sold, based upon CALTRANS pro rata participation (determined to be 100%) in the acquisition of said MITIGATION PROPERTY measured by the subsequent fair market value of MITIGATION PROPERTY, including improvements, at the time of sale or taking. Said sum shall be paid from the net MITIGATION PROPERTY acquisition proceeds received by BCAG from any sale or taking of MITIGATION PROPERTY.

Term and Recording

6. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until revoked or amended pursuant to the provisions of this ADRC and shall be recorded in the office of the Recorder of Butte County.

Amendment

7. This ADRC may be amended by CALTRANS and BCAG, their successors or assigns, only by mutual written consent. Any such amendment shall be consistent with the CONSERVATION PURPOSES of this ADRC and shall not affect its perpetual duration except as otherwise noted herein this ADRC. Any such amendment shall be recorded in the office of the Recorder of Butte County. Any amount of compensation, which the parties may be entitled to, shall be calculated in the same manner as set forth in provision 5 above.

Extinguishment , Termination, and Transfer

8. If circumstances arise in the future that render it impossible to preserve and protect the CONSERVATION VALUES of MITIGATION PROPERTY, this ADRC can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

9. Notwithstanding provision 8 above, if circumstances arise in which CALTRANS requires said MITIGATION PROPERTY for transportation purposes, a judicial proceeding shall not be required and BCAG, their successors or assigns and CALTRANS shall enter into a written instrument revoking said restrictive covenants for MITIGATION PROPERTY, or portion thereof. BCAG, their successors or assigns shall then transfer said MITIGATION PROPERTY, or portion thereof, to CALTRANS upon CALTRANS' request without any compensation required.

10. With CALTRANS prior written approval, which approvals will not be unreasonably withheld, BCAG may transfer and/or assign the ownership, uses, management, and maintenance responsibilities in MITIGATION PROPERTY only to those entities and/or organizations described in Section 815.3 of the California Civil Code.

Enforcement

11. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Indemnification

12. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by BCAG under or in connection with any work, authority, or jurisdiction conferred upon BCAG or arising under this ADRC. It is understood and agreed that BCAG will fully defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by BCAG under this ADRC.

13. Neither BCAG nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or arising under this ADRC. It is understood and agreed that CALTRANS will fully defend, indemnify, and save harmless BCAG and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS under this ADRC.

Purpose of these Restrictive Covenants

14. The purpose of this ADRC is to protect, preserve and maintain the present and future use of MITIGATION PROPERTY to meet the CONSERVATION PURPOSES stated herein.

Severability

15. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Agreement by their duly authorized officers as of the set forth below and agree to be bound hereby:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BUTTE COUNTY ASSOCIATION OF
GOVERNMENTS

By: _____
(Signature)

By: _____
(Representative Signature)

(Name), District Right of Way Division Chief

(Name and Title)

(City, State, Zip)

(Phone no.)

(Space below for Notary Public jurats or acknowledgments)

EXHIBIT 1

Insert legal description of property

EXHIBIT 2

PROHIBITED USES OF THE MITIGATION PROPERTY

Though not an exhaustive list of prohibited uses, none of the uses described below shall be made of the MITIGATION PROPERTY. The following are set forth both to list specific prohibited activities and to provide guidance in determining whether other activities are inconsistent with the CONSERVATION PURPOSES of this Agreement:

1. Inconsistent or Adverse Actions: Any action or practice that is or becomes inconsistent with the CONSERVATION PURPOSES or that diminishes or impairs the CONSERVATION PURPOSES is strictly prohibited. Notwithstanding these prohibited uses, the CONSERVATION VALUES may be enhanced, restored or created on the MITIGATION PROPERTY.
2. No use or transfer of development rights: The exercise of any of the following development rights associated with the MITIGATION PROPERTY is prohibited, including, without limitation, the construction or placement of any commercial, residential or other buildings, bridges, camping accommodations, house-trailers, permanent tent facilities, Quonset huts or similar structures, golf courses, communication and/or cell towers, underground tanks, billboards, signs, or other advertising, and/or other structures or improvements. In addition, streetlights, utility structures or power lines, sewer systems or sewer line, water system or water lines are prohibited unless used solely for the benefit of the CONSERVATION PURPOSES.
3. Subdivision: The legal or de facto division, subdivision, or partitioning of the MITIGATION PROPERTY is prohibited. Notwithstanding the fact that, at the date the MITIGATION PROPERTY is conveyed to BCAG, the MITIGATION PROPERTY might be comprised of separate legal parcels, the terms and conditions of the Agreement shall apply to the MITIGATION PROPERTY as a whole, and that MITIGATION PROPERTY shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither BCAG, their representatives, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the MITIGATION PROPERTY that constitutes less than the entire MITIGATION PROPERTY. The existence of any separate legal parcels, if any, as of the effective date of the Agreement shall not be interpreted to permit any use or activity on an individual legal parcel that would not have been permitted on such individual legal parcel under the terms and conditions of the Agreement as applied to the MITIGATION PROPERTY as a whole.
4. Vehicles: The use of any motorized vehicles off designated roadways is prohibited, except for purposes to solely effectuate the CONSERVATION PURPOSES of these Restrictive Covenants. The use of motorized vehicles for recreational purposes is prohibited.
5. Hazardous Material: The use, dumping, storage, or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic or Hazardous Materials or agricultural chemical is prohibited.

6. Introduction of Grasses, Plants, Animal Species or Exotics: Except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants or as part of any planned restoration, creation and/or enhancement of native species and/or habitat, the deliberate introduction of seeds, plantings, grasses, clovers, other plant species, including exotic plants, or animal species is prohibited.

7. Destruction of Native Vegetation: The removal, cutting or destruction of native vegetation is prohibited except as required for (1) fire breaks, (2) prevention or treatment of disease, (3) to preserve or protect the Conservation Values or (4) as part of any planned restoration, creation and/or enhancement of native species and/or habitats.

8. Biocides The use of fertilizers, pesticides, herbicides, biocides or other agricultural chemicals (“Agricultural Chemicals”) is prohibited, except as necessary to 1) preserve, protect and/or enhance the Conservation Values of the Properties or 2) as part of any planned restoration, creation and/or enhancement of native species and/or habitats. Agricultural Chemicals shall then only be used in compliance with all applicable laws and regulations.

9. No Commercial Uses: The establishment of any commercial or industrial uses is prohibited.

10. No Natural Resource Development: Except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants, the filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting of minerals, oil, gas, coal and other hydrocarbons, soil, sands, gravels, rocks or any other material on or below the surface of the real MITIGATION PROPERTY is prohibited.

11. Agriculture: The growing of crops, including but not limited to commercial production of fruits, forage and timber, is prohibited.

12. Development of Water: Except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants or as part of any planned restoration, creation and/or enhancement of native species and/or habitats, the development or diversion of any water on the MITIGATION PROPERTY is prohibited.

13. Recreational Uses: Except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants, the use of the MITIGATION PROPERTY for hunting, trapping or fishing is prohibited.

14. No Alteration of Natural Water Courses; No Degradation of Water Quality: Except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants, or as part of any planned restoration, creation and/or enhancement of native species and/or habitats, the manipulation or alteration of any natural water feature, including, without limitation, any water course, wetland, stream bank, vernal pool, shoreline, ground water or body of water is prohibited. Any activities or uses that are detrimental to water quality, including, but not limited to, degradation, pollution of any surface or subsurface waters, placement of storm water drains or rip-rapping, are prohibited.

15. No Impairment of Water Rights: Severance, conveyance, or encumbrance of water or water rights appurtenant to the MITIGATION PROPERTY, separately from the underlying title to the MITIGATION PROPERTY, or any other action which diminishes or extinguishes such water rights, is prohibited. This ADRC shall not sever or impair any riparian water rights appurtenant to the MITIGATION PROPERTY.

16. Junk Yards: The storage or disassembly of inoperable automobiles, machinery, equipment and trucks for purposes of storage, sale, or rental of space for any such purpose is prohibited.

17. Alteration of Topography: Any change in the topography of the MITIGATION PROPERTY, including any manmade or mechanical disturbance of the MITIGATION PROPERTY, is prohibited except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants or as part of any planned restoration, creation and/or enhancement of native species, native habitats, riparian and/or wetlands.

18. Roads: The construction, reconstruction or replacement of any roadways is prohibited except to effectuate the CONSERVATION PURPOSES of these Restrictive Covenants.

19. Inconsistent or Adverse Activities: Any action or practice that is or becomes inconsistent with the CONSERVATION PURPOSES or that diminishes or impairs the CONSERVATION PURPOSES is strictly prohibited.