



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ADDENDUM TO AGENDA SEPTEMBER 6, 2005

Add the following to **ACTION ITEMS**:

- E. Wildlands: Consider letter of intent/contract with Wild lands to purchase environmental habitat and take action as appropriate. (No background material)

Background material provided 9/2/05 @3:345 p.m.

September 2, 2005

Three Rivers Levee Improvement Authority
Kent McLain

Re: Letter of Intent – Three Rivers Levee Program; Off-Site Mitigation

Dear Kent,

Thank you for the opportunity to work with Yuba County and the Three Rivers Levee Improvement Authority (the “**TRLIA**”). Wildlands is pleased to offer this Letter of Intent (“**Letter of Intent**”) to TRLIA and a mitigation solution for the Feather-Bear Rivers Levee Setback Project (“**Project**”). Wildlands currently owns, has the rights to or is in negotiation to acquire mitigation values (“**Mitigation Values**”) from one or more Vernal Pool Sites. The Vernal Pool Sites (“**Vernal Pool Sites**”) contain or will contain vernal pool wetlands (“**Vernal Pools**”).

Wildlands would be willing to pursue a formal contract based on the following terms:

1. Allocation of Mitigation Values. Upon payment to Wildlands, Wildlands will set aside the following Mitigation Values (collectively, the “**Allocated Mitigation**”):

<u>Site</u>	<u>Impacts Mitigated</u>	<u>Estimated Mitigation</u>	<u>Cost per Unit</u>	<u>Total Cost</u>
Yuba/Sutter County Site tbd	Vernal Pool Preservation	17.77 acres	\$150,000	\$2,665,500
Yuba/Sutter County Site tbd	Vernal Pool Restoration/Creation	9.14 acres	\$150,000	\$1,371,000
TOTAL				\$4,036,500

2. Purchase Price; Payment. The “**Purchase Price**” for the Allocated Mitigation shall be determined by multiplying the Estimated Mitigation by the per unit cost in accordance with Section 1. The Purchase Price shall be paid as follows:

2.1. Initial Deposit. The initial deposit (“**Initial Deposit**”) will be \$175,000 and shall be made on the later of the following to occur:

2.1.1. Agency Approval. Five (5) business days after TRLIA has received approval from the Applicable Agencies thereby approving Phase 2 of the Three Rivers Levee Improvement Authority Project.

2.1.2. September 24, 2005. September 24, 2005.

2.2. Acquisition Deposit. TRLIA will pay an additional 50% (“**Acquisition Deposit**”) of the Purchase Price within 5 days of the date which Wildlands sends notice and commercially reasonable evidence to TRLIA that Wildlands has the right to acquire the Site or Sites, or mitigation use rights at the Site or Sites, of which Wildlands may use so much of as is necessary to acquire the Site or Sites.

2.3. Submittal Deposit. TRLIA will pay an additional 40% (“**Submittal Deposit**”) of the Purchase Price within 5 days of the date which Wildlands submits the habitat mitigation and monitoring plans (“**HMMP**”) thereby establishing the Site or Sites as off-site mitigation for TRLIA.

2.4. Final Deposit. TRLIA will pay the balance (“**Final Deposit**”) of the Purchase Price within 5 days of the completion of construction of the Site or Sites.

3. Non-Refundable; Applicable. The Initial Deposit, Acquisition Deposit, Submittal Deposit and Final Deposit shall all become non-refundable on payment and will be credited to the Purchase Price. If TRLIA fails to make a deposit then Wildlands shall retain any deposits actually made, the agreement shall terminate and TRLIA shall have no right to any of the Site or Sites or any deposits.

4. TRLIA Obligations. TRLIA shall be obligated to pay the Purchase Price and to obtain the necessary approvals with regards to the Project and its impacts.

5. Wildlands Obligations. To the extent Wildlands has not already done so, Wildlands will cause the Sites to be developed in accordance with the applicable regulatory agencies (“**Applicable Agencies**”) standards. In that regard, Wildlands shall be responsible for:

5.1. Permits; Construction. Obtaining permits, performing surveys or studies, or preparation of other documents which are required for implementation of the Sites. Wildlands shall also be responsible for any construction or other work on the Sites as required by the Applicable Agencies.

5.2. Maintenance; Management. Wildlands shall provide for the long-term maintenance, monitoring and other management activities of the Sites comparable to such activities at other mitigation sites, as required by the Applicable Agencies. Wildlands shall monitor and make reports to the appropriate agency or agencies on the status of the Sites; and Wildlands shall be fully and completely responsible for satisfying any and all conditions and obligations placed on the Sites by the Applicable Agencies.

5.3. Conservation Easement. Wildlands shall be obligated to grant and commit a conservation easement in an amount equal to the acreage of the Allocated Mitigation. Wildlands shall use commercially reasonable efforts to obtain the approval by the Applicable Agencies.

6. Price Quote. Wildlands shall honor the Purchase Price quote for a term not to exceed 45 days from the date first set forth above.

7. Current Intentions. This Letter of Intent has no legal effect and it is the parties' intention that no binding contract shall exist between them until a final agreement is signed by both parties. The Letter of Intent is indicative of our current intention with respect to this matter and the terms set forth herein are subject to negotiation, execution and delivery of definitive agreements.

Very truly yours,

Greg DeYoung
Senior Vice President
Conservation Planning Director

Agreed and Accepted

By: _____

MITIGATION RIGHTS PURCHASE AGREEMENT

(Three Rivers Levee Improvement Authority)

By and Between

THREE RIVERS LEVEL IMPROVEMENT AUTHORITY

and

WILDLANDS, INC.

**MITIGATION RIGHTS
PURCHASE AGREEMENT
(Three Rivers Levee Improvement Authority)**

This Mitigation Rights Purchase Agreement ("**Agreement**") is made and entered into on the ___ day of _____, 2005, by and between THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("**TRLIA**") and WILDLANDS, INC., a California corporation ("**Wildlands**"), who agree as follows:

1. Background And Purpose.

1.1. Projects. From time to time, TRLIA undertakes projects (each, a "**Project**") which would unavoidably and adversely impact waters of the United States thereon and certain protected species. As a part of the approval process for these Projects, TRLIA must obtain approvals from, among other agencies, the United States Army Corps of Engineers ("**Corps**"), the United States Fish and Wildlife Service ("**USFWS**"), the State of California Department of Fish and Game ("**DFG**"), the United States Environmental Protection Agency ("**USEPA**"), and perhaps other agencies to compensate for such impacts by creating, enhancing and/or restoring wetlands or by purchasing sufficient suitable mitigation values to offset these identified impacts. The Corps, USFWS, DFG, and USEPA are collectively referred to as the "**Applicable Agencies**." The USFWS and the DFG are the lead agencies that will confirm and approve the acceptability of the mitigation that is the subject of this contract.

1.2. Wildlands' Business. Wildlands is the operator of compensatory mitigation banks for impacts to wetlands, protected species and/or protected habitat, and is in the business of locating properties suitable for mitigating such impacts.

1.3. The Mitigation Site. Wildlands has established or is in the process of establishing the *Tule Basin Mitigation Preserve* (the "**Mitigation Site**") for mitigating, among other things, impacts to wetlands and associated threatened or endangered species through both the preservation and creation/restoration of wetlands. The Mitigation Site is more particularly described in Exhibit A attached hereto and incorporated herein.

1.3.1. Habitat Restoration Activities. As of the date of this Agreement, Wildlands has undertaken substantial activities towards determining the feasibility of the development and restoration of the habitat values at the Mitigation Site. These include, for example, such activities as performing wildlife surveys and resource mapping, soils reconnaissance to explore habitat restoration potential, and other activities.

1.3.2. Development Narrative. Wildlands has prepared and submitted or will submit to the USFWS and the DFG a written description of the development objectives for the Mitigation Site (collectively, the "**Development Narrative**") which includes design goals and objectives, descriptions of targeted compensatory habitats, generalized mapping of habitats,

water management strategies and long-term vegetation management techniques and funding mechanisms.

A. Biological Opinion; 404 Permit. Based on the Development Narrative, the Mitigation Site is anticipated to yield at least the following types of mitigation and it may be applicable to the amounts necessary to comply with the terms and conditions of the USFWS Biological Opinion for the Three Rivers Levee Improvement Authority Project (Reference Number 1-1-05-F-0106), Yuba County, California (the "**Biological Opinion**"). which was prepared for the Corps as a formal consultation on the Three Rivers Levee Improvement Authority Project permit application under Section 404 (the "**404 Permit**") of the Clean Water Act (Corps File Number 200400685):

Giant Garter Snake (GGS) Habitat

B. Habitat Development Plan. Wildlands has submitted or will submit the Development Narrative for approval by the USFWS in order to allow development of the mitigation values for wetlands and threatened or endangered species habitat on the Mitigation Site. Upon execution of the Agreement, Wildlands will commence preparation of a habitat mitigation and monitoring plan ("**Habitat Development Plan**") to fulfill a portion of the requirements of the Biological Opinion, the 404 Permit and the Development Narrative. Wildlands will deliver the **Habitat Development Plan** to the USFWS and the DFG.

1.3.3. Conditions to Use Mitigation for Specific Projects. In order to use the Mitigation Site to mitigate the impact of a particular Project, however, the USFWS must specifically approve, among other things, the use of offsite mitigation within the Mitigation Site for that Project.

1.4. Three Rivers Levee Improvement Authority Project. TRLIA is undertaking a project (the "**Three Rivers Levee Improvement Authority Project**") for the Feather-Bear Rivers Levee Setback Project. The Mitigation Site contains, or will contain, some of the habitat which TRLIA expects to be impacted by the construction of the Three Rivers Levee Improvement Authority Project.

1.5. Advance Mitigation Rights. TRLIA desires to secure the right to provide for mitigation of the Three Rivers Levee Improvement Authority Project, in advance of construction, in whole or in part, through the purchase of mitigation values at the Mitigation Site.

1.6. Purpose. The purpose of this Agreement is to provide for the purchase and sale of mitigation values to be developed by Wildlands at the Mitigation Site.

1.7. Effective Date. The "Effective Date" for this Agreement is the date first set forth above.

2. Allocation of Mitigation Values. Upon payment to Wildlands as defined in Section 3, Wildlands shall set aside, for the exclusive use of TRLIA, the right to use mitigation values from the Mitigation Site equal to the following (collectively, the "**Allocated Mitigation**"):

Mitigation Site	Impacts Mitigated	Estimated Mitigation	Cost per Unit	Total Cost
Tule Basin GGS Mitigation Preserve	GGS	134.37 acres	\$35,000	\$4,702,950
TOTAL				\$4,702,950

3. Purchase Price; Payment. The purchase price ("**Purchase Price**") for the Allocated Mitigation shall be an amount equal to \$35,000 per acre multiplied by the gross GGS acreage. The gross GGS acreage is determined to be 134.37. Therefore, the Purchase Price shall be \$4,702,950, which shall be paid on or before the "Closing"

3.1. Closing. The Closing shall occur on the later of the following to occur:

3.1.1. Agency Approval. Five (5) business days after TRLIA has received approval from the Applicable Agencies thereby approving Phase 2 of the Three Rivers Levee Improvement Authority Project.

3.1.2. September 24, 2005. September 24, 2005.

3.2. Failure to Close. If TRLIA fails to pay Wildlands the balance of the Purchase Price on or before October 15, 2005, then:

3.2.1. Release of Wildlands' Obligation. Wildlands shall automatically be released from its obligation to sell the Allocated Mitigation to TRLIA, and TRLIA shall have no further right to any mitigation values in the Mitigation Site.

4. Services Provided by Wildlands.

4.1. Qualification, Continued Qualification of Site. Wildlands shall qualify and shall maintain the qualification of the Mitigation Site by performing the following services:

4.1.1. Analysis and Verification. To the extent they have not already done so, Wildlands' specialists will review, analyze and verify the biological attributes, soil types and conditions, hydrological resources and other factors to the degree required to submit the Mitigation Site to the USFWS and the DFG as a suitable location for the mitigation values described above.

4.1.2. Mitigation Documentation. To the extent not otherwise available or previously prepared and submitted with respect to the Mitigation Site, Wildlands will prepare and submit for approval the following documentation to the USFWS and the DFG:

- A. The Development Narrative.
- B. The Habitat Development Plan.

C. The various legal and administrative documents which are necessary to enable the Mitigation Site to be endorsed by the USFWS and the DFG, which shall include, by way of example, a conservation easement affecting the Mitigation Site.

D. All permits, surveys, evidence of an endowment funding arrangement, monitoring reports, or other documentation from time to time as may be required by the Applicable Agencies in order to approve the documents described above as it pertains to the Allocated Mitigation.

4.1.3. Development Arrangements. To the extent Wildlands has not already done so, Wildlands will enter into such arrangements as may be necessary or convenient to enable Wildlands to develop the Allocated Mitigation on the Mitigation Site. Except with respect to the Allocated Mitigation, these arrangements shall not include the acquisition by TRLIA of any interest in the Mitigation Site.

4.2. Development of Mitigation Site. To the extent Wildlands has not already done so, Wildlands will cause the Mitigation Site to be developed in the manner described in the Habitat Development Plan. In that regard, Wildlands shall be responsible for:

4.2.1. Permits, Etc. Obtaining permits, performing surveys or studies, or preparation of other documents which are required for implementation of the Habitat Development Plan.

4.2.2. Construction and Other Work. Any construction or other work on the Mitigation Site required by the Habitat Development Plan.

4.3. Maintenance of Mitigation Site. Wildlands shall provide for the long-term maintenance, monitoring and other management activities of the Mitigation Site comparable to such activities at other mitigation sites, as required by the Habitat Development Plan. Wildlands shall monitor and make reports to the appropriate agency or agencies on the status of the Mitigation Site; and Wildlands shall be fully and completely responsible for satisfying any and all conditions and obligations placed on the Mitigation Site by the USFWS and the DFG. Wildlands shall indemnify, defend, and hold TRLIA harmless from and against all such liabilities and obligations.

5. Limitation of Obligations; Rights of TRLIA.

5.1. Limitation of Obligations. TRLIA's obligations shall be limited to the payments described in Section 3 above. TRLIA shall have no obligation whatsoever by reason of the use of the Mitigation Site for the Allocated Mitigation, to support, pay for, monitor, report on, sustain, continue in perpetuity or otherwise be obligated or liable for the success or continued expense, monitoring, management or maintenance in perpetuity of the Mitigation Site. As set forth in Section 4 above; Wildlands shall be fully and completely responsible therefor and for satisfying any and all conditions placed on the Mitigation Site by the USFWS and the DFG.

5.2. Limitation of Rights to Mitigation Site. Nothing in this Agreement shall result in TRLIA having any right, title or interest in the Mitigation Site greater than that specifically granted by this Agreement. TRLIA's sole right shall be to have Wildlands'

obligations with respect to the Mitigation Site serve as the required mitigation for the Three Rivers Levee Improvement Authority Project if and when the Allocated Mitigation, or the appropriate portion thereof, is approved for sole use by the USFWS and the DFG.

5.3. Joint Use. At the time specified in Paragraph 2.1, Wildlands shall reserve the Allocated Mitigation for the sole use of TRLIA. This reservation shall in no way restrain Wildlands from selling to others additional mitigation values at the Mitigation Site in addition to the Allocated Mitigation ("**Additional Mitigation Values**"), so long as the Additional Mitigation Values have been authorized for sale by the USFWS and the DFG, and so long as the aggregate number of mitigation values sold to all parties, including TRLIA, does not exceed the aggregate number of mitigation values authorized for sale by the USFWS and the DFG nor would it compromise Wildlands' ability to satisfy the terms of this Agreement, the Biological Opinion and the Agency Approvals.

5.4. Project Approvals. Except as otherwise provided in this Agreement, TRLIA alone shall be responsible for obtaining the approval of the Applicable Agencies to mitigate the impacts of the Three Rivers Levee Improvement Authority Project with the Allocated Mitigation. In that regard, Wildlands has made and makes no representation, warranty or guaranty that the Applicable Agencies will approve the Mitigation Site as suitable mitigation for the Three Rivers Levee Improvement Authority Project. Notwithstanding the foregoing, Wildlands shall reasonably cooperate with TRLIA's efforts to obtain the USFWS's and the DFG's approval for use of the Allocated Mitigation in connection with by providing information required by the USFWS and the DFG and executing documents required by the USFWS and the DFG. Wildlands shall not be obligated to bear any cost greater than a nominal expense or incur any additional liability in connection with such cooperation, however.

5.5. Limitations on Assignment, Transfer. TRLIA acknowledges that Wildlands is not willing to sell mitigation values which could be resold in competition with the remaining mitigation values available for sale within the Reeds Creek Mitigation Site and accordingly any transfer or assignment of the Allocated Mitigation to another project or party shall be void.

5.6. Wildlands' Right To Create Mitigation Bank. Wildlands specifically reserves the right to create a mitigation bank on the Mitigation Site (as opposed to selling mitigation values without creating a formal mitigation bank) provided that the creation of a mitigation bank on the Mitigation Site would not compromise Wildlands' ability to satisfy the terms of this agreement. Should Wildlands elect to do so, in Wildlands' sole discretion: (a) the Allocated Mitigation shall be provided in the form of mitigation bank credits; (b) TRLIA shall have no obligations with respect to the mitigation bank; (c) TRLIA shall have no rights to any proceeds or excess credits of the mitigation bank.

7. Miscellaneous Provisions.

7.1. Ownership of Documents. All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by Wildlands in connection with its performance of services hereunder shall be, and shall remain after termination of this Agreement, the property of Wildlands and may be used by

Wildlands for any purpose whatsoever. Wildlands agrees to return to TRLIA upon termination of this Agreement all documents, drawings, photographs and other written or graphic material, however produced, received from TRLIA and used by Wildlands in the performance of its services hereunder.

7.2. Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received a return receipt signed by the party so notified, or has other written evidence of receipt and also provides a copy of the transmission via first class mail), and upon the second business day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

TRLIA: Charles K. McClain
TRLIA; Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901
Telephone: (530) 749-7575
Facsimile: (530) 749-7312

WILDLANDS: Mark Heintz
Wildlands, Inc.
3855 Atherton Road
Rocklin, CA 95765
Telephone: (916) 435-3555
Facsimile: (916) 435-3556

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

7.3. Modification. No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing.

7.4. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Yuba, California.

7.5. Interpretation; Entire Agreement. The headings or captions to the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part thereof. This Agreement sets forth the entire understanding between the parties as to the subject matter of the Agreement and merges all prior discussions, negotiations, letters of understanding or other promises, whether oral or in writing.

7.6. Resolution of Disputes; Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or

performance under the Agreement ("**Dispute**"), shall be resolved in the manner set forth in this Section 7.6, which shall be in lieu of litigation in any court, and the parties specifically waive any right to a jury trial of any Dispute between them.

7.6.1. Negotiation. The parties will attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the parties who have authority to settle the Dispute (each a "**Representative**").

7.6.2. Arbitration. In the event the Representatives are not able to resolve the Dispute within 30 days following the date one party first notifies the other party of the Dispute in writing, the Dispute shall be resolved by binding arbitration before a retired judge of the Superior Court, Appellate Court or Supreme Court of the State of California (the "**Arbitrator**") in accordance with the following provisions:

A. The parties stipulate and agree that any and all necessary parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all Disputes between themselves even if other parties refuse to participate. The parties specifically waive any objection to arbitration based on the failure or refusal of any other party to be joined.

B. The arbitration shall be initiated by written notice (the "**Arbitration Notice**") of a demand to arbitrate by registered or certified mail sent by one party to the other party. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. It shall attach the documents the party demanding arbitration relies upon and a detailed statement of the expected testimony of witnesses, including expert witnesses. Within 30 days after receipt of the Arbitration Notice, the responding party shall provide its own plain statement of the Dispute, together with documents it intends to rely upon and the expected testimony of witnesses, including expert witnesses. The parties shall each advance one-half of the Arbitrator's fee, as fixed and required by the Arbitrator in order to initiate the arbitration, although they shall ultimately bear responsibility for such fee as determined by the Arbitrator.

C. The parties shall attempt to agree on an Arbitrator. If they are unable to agree, either party may petition the presiding judge of the Superior Court for the County of Yuba to appoint the Arbitrator.

D. The Arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, reformation, cancellation, accounting and compensatory damages, except only that punitive damages shall not be awarded. The Arbitrator shall issue a binding decision within 30 days after the conclusion of the arbitration. The Arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Section 7.6.

E. The Arbitrator shall award reasonable attorneys' fees and costs, including the Arbitrator's fees and expert fees, to the "**Prevailing Party**." For purposes of this section, the "**Prevailing Party**" shall be the party which obtains a net monetary recovery,

exclusive of attorneys' fees and costs UNLESS the net monetary recovery is equal to or less than the amount of a written offer from the opposing party made after the negotiations described in Section 7.6.1. The Arbitrator shall have exclusive and binding authority to determine entitlement to attorneys' fees and costs, including Arbitrator's and experts' fees, under this section.

F. The arbitration shall be conducted in Yuba County, California. Any party may be represented by counsel or other authorized representative.

7.7. Attorneys' Fees. In the event any of the parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or Arbitrator. Without limiting the generality of the foregoing, the prevailing party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay).

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TRLIA:

Three Rivers Levee Improvement Authority

By: _____
Name:
Its:

AND

WILDLANDS:

Wildlands, Inc., a California corporation

By: _____
Name:
Its:

EXHIBIT A

DESCRIPTION OF REEDS CREEK MITIGATION SITE

Tule Basin Mitigation Preserve Site Description

The proposed Tule Basin Mitigation Preserve is a 150-acre site situated immediately adjacent to the Sutter Bypass approximately nine miles southwest of Yuba City in Sutter County, California. Specifically, the Tule Basin site occupies a portion of sections 5 and 8, Township 14 North, Range 2 East of the Tisdale Weir USGS 7.5 minute quadrangle. The site is located east of the Sacramento River and inside the Sacramento Valley Recovery Unit as it is defined in the U.S. Fish and Wildlife Service (Service) *Draft Recovery Plan for the Giant Garter Snake (Thamnophis gigas)* (1999).

The Tule Basin site is part of a larger 500-acre property. The western 150-acre portion of the property would be restored to a GGS Preserve; the remaining 350 acres comprising the eastern portion of the property would be preserved as wetlands. The portion of the property being preserved as wetlands will be placed into an easement following the guidelines of the federal waterfowl habitat easement program administered by the Service. A levee occurs immediately east of the overall property; the Sutter National Wildlife Refuge occurs on the other side of the levee.

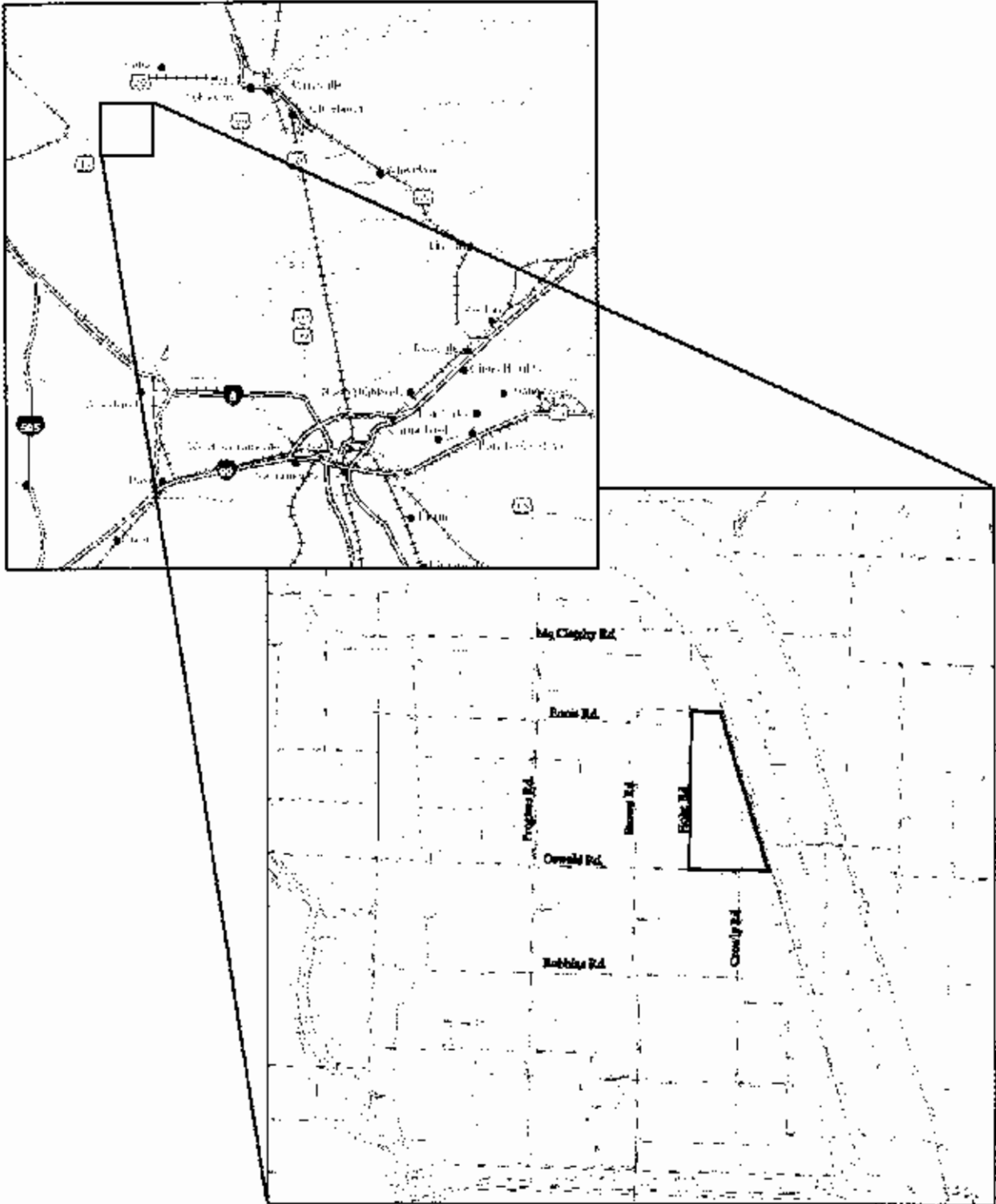
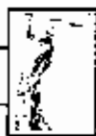


Figure 1



Wildlands, Inc.

Preserve Location

MITIGATION RIGHTS PURCHASE AGREEMENT

(Three Rivers Levee Improvement Authority)

By and Between

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

and

WILDLANDS, INC.

**MITIGATION RIGHTS
PURCHASE AGREEMENT
(Three Rivers Levee Improvement Authority)**

This Mitigation Rights Purchase Agreement ("**Agreement**") is made and entered into on the day of , 2005, by and between THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("**TRLIA**") and WILDLANDS, INC., a California corporation ("**Wildlands**"), who agree as follows:

1. Background And Purpose.

1.1. Projects. From time to time, TRLIA undertakes projects (each, a "**Project**") which would unavoidably and adversely impact waters of the United States thereon and certain protected species. As a part of the approval process for these Projects, TRLIA must obtain approvals from, among other agencies, the United States Army Corps of Engineers ("**Corps**"), the United States Fish and Wildlife Service ("**USFWS**"), the State of California Department of Fish and Game ("**DFG**"), the United States Environmental Protection Agency ("**USEPA**"), and perhaps other agencies to compensate for such impacts by creating, enhancing and/or restoring wetlands or by purchasing sufficient suitable mitigation values to offset these identified impacts. The Corps, USFWS, DFG, and USEPA are collectively referred to as the "**Applicable Agencies.**" The USFWS is the lead agency that will confirm and approve the acceptability of the mitigation that is the subject of this contract.

1.2. Wildlands' Business. Wildlands is the operator of compensatory mitigation banks and other mitigation projects for impacts to wetlands, protected species and/or protected habitat, and is in the business of locating properties suitable for mitigating such impacts.

1.3. The Mitigation Site. Wildlands is the owner of the *Reeds Creek Mitigation Preserve* (the "**Mitigation Site**"), and has qualified, or is in the process of qualifying, the Site for mitigating, among other things, impacts to wetlands and associated threatened or endangered species through the preservation of wetlands. The Mitigation Site is more particularly described in Exhibit A attached hereto and incorporated herein.

1.3.1. Habitat Conservation Activities. As of the date of this Agreement, Wildlands has undertaken substantial activities towards documenting the habitat values at the Mitigation Site. These include, for example, such activities as preparing a wetland delineation and obtaining Corps verification of that delineation, performing wildlife surveys and resource mapping, preparing an Operations and Management Plan, and other activities.

1.3.2. Conservation Narrative. Wildlands has prepared and submitted or will submit to the USFWS an Operations and Management Plan for the Mitigation Site (collectively, the "**Conservation Narrative**") which includes descriptions of targeted compensatory habitats, generalized mapping of habitats, conservation goals and objectives, long-term vegetation management techniques and funding mechanisms, and a conservation easement.

A. Biological Opinion; 404 Permit. Based on the Conservation Narrative, the Mitigation Site is anticipated to yield at least the following types of mitigation and it may be applicable to the amounts necessary to comply with the terms and conditions of the USFWS Biological Opinion for the Three Rivers Levee Improvement Authority Project (Reference Number 1-1-05-F-0106), Yuba County, California (the "**Biological Opinion**"), which was prepared for the Corps as a formal consultation on the Three Rivers Levee Improvement Authority Project permit application under Section 404 (the "**404 Permit**") of the Clean Water Act (Corps File Number 200400685):

Vernal Pool/Swale Preservation

B. O&M Plan. Wildlands has submitted or will submit the Conservation Narrative for approval by the USFWS in order to confirm the conservation approach to the vernal pool/swale habitat on the Mitigation Site. Upon execution of the Agreement, Wildlands will submit an Operations and Management Plan ("**O&M Plan**") to fulfill a portion of the requirements of the Biological Opinion, the 404 Permit and the Conservation Narrative. Wildlands will deliver the O&M Plan to the USFWS.

1.3.3. Conditions to Use Mitigation for Specific Projects. In order to use the Mitigation Site to mitigate the impact of a particular Project, however, the USFWS must specifically approve, among other things, the use of offsite mitigation within the Mitigation Site for that Project.

1.4. Three Rivers Levee Improvement Authority Project. TRLIA is undertaking a project (the "**Three Rivers Levee Improvement Authority Project**") for the Feather-Bear Rivers Levee Setback Project. The Mitigation Site contains some of the habitat which TRLIA expects to be impacted by the construction of the Three Rivers Levee Improvement Authority Project.

1.5. Advance Mitigation Rights. TRLIA desires to secure the right to provide for mitigation of the Three Rivers Levee Improvement Authority Project, in advance of construction, in whole or in part, through the purchase of mitigation values at the Mitigation Site.

1.6. Purpose. The purpose of this Agreement is to provide for the purchase and sale of mitigation values to be developed by Wildlands at the Mitigation Site.

1.7. Effective Date. The "Effective Date" for this Agreement is the date first set forth above.

2. Allocation of Mitigation Values. Upon payment to Wildlands as defined in Section 3, Wildlands shall set aside, for the exclusive use of TRLIA, the right to use mitigation

values from the Mitigation Site equal to the following (collectively, the "Allocated Mitigation"):

Mitigation Site	Impacts Mitigated	Estimated Mitigation	Cost per Unit	Total Cost
Reeds Creek Vernal Pool Preserve	Vernal Pool/Swale Preservation	9.65 acres	\$150,000	\$1,447,500
TOTAL				\$1,447,500

3. **Purchase Price; Payment.** The purchase price ("**Purchase Price**") for the Allocated Mitigation shall be an amount equal to \$150,000 per acre multiplied by the gross vernal pool acreage. The gross vernal pool acreage is determined to be 9.65. Therefore, the Purchase Price shall be \$1,447,500, which shall be paid on or before the "Closing"

3.1. **Closing.** The Closing shall occur on the later of the following to occur:

3.1.1. **Agency Approval.** Five (5) business days after TRLIA has received approval from the Applicable Agencies thereby approving Phase 2 of the Three Rivers Levee Improvement Authority Project.

3.1.2. **September 24, 2005.** September 24, 2005.

3.2. **Failure to Close.** If TRLIA fails to pay Wildlands the balance of the Purchase Price on or before October 15, 2005, then:

3.2.1. **Release of Wildlands' Obligation.** Wildlands shall automatically be released from its obligation to sell the Allocated Mitigation to TRLIA, and TRLIA shall have no further right to any mitigation values in the Mitigation Site.

4. **Services Provided by Wildlands.**

4.1. **Qualification, Continued Qualification of Site.** Wildlands shall qualify and shall maintain the qualification of the Mitigation Site by performing the following services:

4.1.1. **Analysis and Verification.** To the extent they have not already done so, Wildlands' specialists will review, analyze and verify the biological attributes, soil types and conditions, hydrological resources and other factors to the degree required to submit the Mitigation Site to the USFWS as a suitable location for the mitigation values described above.

4.1.2. **Mitigation Documentation.** To the extent not otherwise available or previously prepared and submitted with respect to the Mitigation Site, Wildlands will prepare and submit for approval the following documentation to the USFWS:

A. The Conservation Narrative.

B. The Operations and Management Plan.

C. The various legal and administrative documents which are necessary to enable the Mitigation Site to be endorsed by the USFWS, which shall include, by way of example, a conservation easement affecting the Mitigation Site.

D. All permits, surveys, evidence of an endowment funding arrangement, monitoring reports, or other documentation from time to time as may be required by the USFWS in order to approve the documents described above as it pertains to the Allocated Mitigation.

4.1.3. Development Arrangements. To the extent Wildlands has not already done so, Wildlands will enter into such arrangements as may be necessary or convenient to enable Wildlands to develop the Allocated Mitigation on the Mitigation Site. Except with respect to the Allocated Mitigation, these arrangements shall not include the acquisition by TRLIA of any interest in the Mitigation Site.

4.2. Development of Mitigation Site. To the extent Wildlands has not already done so, Wildlands will cause the Mitigation Site to be developed in the manner described in the O&M Plan. In that regard, Wildlands shall be responsible for:

4.2.1. Permits, Etc. Obtaining permits, performing surveys or studies, or preparation of other documents which are required for implementation of the O&M Plan.

4.2.2. Construction and Other Work. Any construction or other work on the Mitigation Site required by the O&M Plan.

4.3. Maintenance of Mitigation Site. Wildlands shall provide for the long-term maintenance, monitoring and other management activities of the Mitigation Site comparable to such activities at other mitigation sites, as required by the O&M Plan. Wildlands shall monitor and make reports to the appropriate agency or agencies on the status of the Mitigation Site; and Wildlands shall be fully and completely responsible for satisfying any and all conditions and obligations placed on the Mitigation Site by the USFWS. Wildlands shall indemnify, defend, and hold TRLIA harmless from and against all such liabilities and obligations.

5. Limitation of Obligations; Rights of TRLIA.

5.1. Limitation of Obligations. TRLIA's obligations shall be limited to the payments described in Section 3 above. TRLIA shall have no obligation whatsoever by reason of the use of the Mitigation Site for the Allocated Mitigation, to support, pay for, monitor, report on, sustain, continue in perpetuity or otherwise be obligated or liable for the success or continued expense, monitoring, management or maintenance in perpetuity of the Mitigation Site. As set forth in Section 4 above; Wildlands shall be fully and completely responsible therefore and for satisfying any and all conditions placed on the Mitigation Site by the USFWS.

5.2. Limitation of Rights to Mitigation Site. Nothing in this Agreement shall result in TRLIA having any right, title or interest in the Mitigation Site greater than that specifically granted by this Agreement. TRLIA's sole right shall be to have Wildlands'

obligations with respect to the Mitigation Site serve as the required mitigation for the Three Rivers Levee Improvement Authority Project if and when the Allocated Mitigation, or the appropriate portion thereof, is approved for sole use by the USFWS.

5.3. Joint Use. At the time specified in Paragraph 2.1, Wildlands shall reserve the Allocated Mitigation for the sole use of TRLIA. This reservation shall in no way restrain Wildlands from selling to others additional mitigation values at the Mitigation Site in addition to the Allocated Mitigation ("**Additional Mitigation Values**"), so long as the Additional Mitigation Values have been authorized for sale by the USFWS, and so long as the aggregate number of mitigation values sold to all parties, including TRLIA, does not exceed the aggregate number of mitigation values authorized for sale by the USFWS nor would it compromise Wildlands' ability to satisfy the terms of this Agreement, the Biological Opinion and the Agency Approvals.

5.4. Project Approvals. Except as otherwise provided in this Agreement, TRLIA alone shall be responsible for obtaining the approval of the Applicable Agencies to mitigate the impacts of the Three Rivers Levee Improvement Authority Project with the Allocated Mitigation. In that regard, Wildlands has made and makes no representation, warranty or guaranty that the USFWS will approve the Mitigation Site as suitable mitigation for the Three Rivers Levee Improvement Authority Project. Notwithstanding the foregoing, Wildlands shall reasonably cooperate with TRLIA's efforts to obtain the USFWS' approval for use of the Allocated Mitigation in connection with by providing information required by the USFWS and executing documents required by the USFWS. Wildlands shall not be obligated to bear any cost greater than a nominal expense or incur any additional liability in connection with such cooperation, however.

5.5. Limitations on Assignment, Transfer. TRLIA acknowledges that Wildlands is not willing to sell mitigation values which could be resold in competition with the remaining mitigation values available for sale within the Reeds Creek Mitigation Site and accordingly any transfer or assignment of the Allocated Mitigation to another project or party shall be void.

5.6. Wildlands' Right To Create Mitigation Bank. Wildlands specifically reserves the right to create a mitigation bank on the Mitigation Site (as opposed to selling mitigation values without creating a formal mitigation bank) provided that the creation of a mitigation bank on the Mitigation Site would not compromise Wildlands' ability to satisfy the terms of this agreement. Should Wildlands elect to do so, in Wildlands' sole discretion: (a) the Allocated Mitigation shall be provided in the form of mitigation bank credits; (b) TRLIA shall have no obligations with respect to the mitigation bank; (c) TRLIA shall have no rights to any proceeds or excess credits of the mitigation bank.

7. Miscellaneous Provisions.

7.1. Ownership of Documents. All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by Wildlands in connection with its performance of services hereunder shall be, and shall remain after termination of this Agreement, the property of Wildlands and may be used by

Wildlands for any purpose whatsoever. Wildlands agrees to return to TRLIA upon termination of this Agreement all documents, drawings, photographs and other written or graphic material, however produced, received from TRLIA and used by Wildlands in the performance of its services hereunder.

7.2. Notices. Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission has received a return receipt signed by the party so notified, or has other written evidence of receipt and also provides a copy of the transmission via first class mail), and upon the second business day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

TRLIA: Charles K. McClain
TRLIA; Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901
Telephone: (530) 749-7575
Facsimile: (530) 749-7312

WILDLANDS: Mark Heintz
Wildlands, Inc.
3855 Atherton Road
Rocklin, CA 95765
Telephone: (916) 435-3555
Facsimile: (916) 435-3556

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

7.3. Modification. No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing.

7.4. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Yuba, California.

7.5. Interpretation; Entire Agreement. The headings or captions to the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part thereof. This Agreement sets forth the entire understanding between the parties as to the subject matter of the Agreement and merges all prior discussions, negotiations, letters of understanding or other promises, whether oral or in writing.

7.6. Resolution of Disputes; Arbitration. Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or

performance under the Agreement ("**Dispute**"), shall be resolved in the manner set forth in this Section 7.6, which shall be in lieu of litigation in any court, and the parties specifically waive any right to a jury trial of any Dispute between them.

7.6.1. Negotiation. The parties will attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the parties who have authority to settle the Dispute (each a "**Representative**").

7.6.2. Arbitration. In the event the Representatives are not able to resolve the Dispute within 30 days following the date one party first notifies the other party of the Dispute in writing, the Dispute shall be resolved by binding arbitration before a retired judge of the Superior Court, Appellate Court or Supreme Court of the State of California (the "**Arbitrator**") in accordance with the following provisions:

A. The parties stipulate and agree that any and all necessary parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all Disputes between themselves even if other parties refuse to participate. The parties specifically waive any objection to arbitration based on the failure or refusal of any other party to be joined.

B. The arbitration shall be initiated by written notice (the "**Arbitration Notice**") of a demand to arbitrate by registered or certified mail sent by one party to the other party. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. It shall attach the documents the party demanding arbitration relies upon and a detailed statement of the expected testimony of witnesses, including expert witnesses. Within 30 days after receipt of the Arbitration Notice, the responding party shall provide its own plain statement of the Dispute, together with documents it intends to rely upon and the expected testimony of witnesses, including expert witnesses. The parties shall each advance one-half of the Arbitrator's fee, as fixed and required by the Arbitrator in order to initiate the arbitration, although they shall ultimately bear responsibility for such fee as determined by the Arbitrator.

C. The parties shall attempt to agree on an Arbitrator. If they are unable to agree, either party may petition the presiding judge of the Superior Court for the County of Yuba to appoint the Arbitrator.

D. The Arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, reformation, cancellation, accounting and compensatory damages, except only that punitive damages shall not be awarded. The Arbitrator shall issue a binding decision within 30 days after the conclusion of the arbitration. The Arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Section 7.6.

E. The Arbitrator shall award reasonable attorneys' fees and costs, including the Arbitrator's fees and expert fees, to the "**Prevailing Party**." For purposes of this section, the "**Prevailing Party**" shall be the party which obtains a net monetary recovery,

exclusive of attorneys' fees and costs UNLESS the net monetary recovery is equal to or less than the amount of a written offer from the opposing party made after the negotiations described in Section 7.6.1. The Arbitrator shall have exclusive and binding authority to determine entitlement to attorneys' fees and costs, including Arbitrator's and experts' fees, under this section.

F. The arbitration shall be conducted in Yuba County, California. Any party may be represented by counsel or other authorized representative.

7.7. Attorneys' Fees. In the event any of the parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or Arbitrator. Without limiting the generality of the foregoing, the prevailing party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay).

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TRIJA:

Three Rivers Levee Improvement Authority

By: _____

Name:

Its:

AND

WILDLANDS:

Wildlands, Inc., a California corporation

By: _____

Name:

Its:

EXHIBIT A

DESCRIPTION OF REEDS CREEK MITIGATION PRESERVE

Roods Creek Mitigation Preserve

Wildlands is sole owner in fee title of approximately 38 acres of real property, located in Yuba County, California (**Figure 1**). The Property is located east of the Town of Linda, northeast of the city of Olivehurst, at the southeast corner of the intersection of Griffith Avenue and Erle Road. It is located mainly in the northwest quarter section of Section 34, Township 15 North, Range 4 East on the Olivehurst, California USGS 7.5 minute quadrangle.

The Property offers an excellent opportunity for vernal pool and seasonal wetland preservation in Yuba County. A total of 16.65 acres of vernal pools along with 0.65 acres of seasonal wetland habitats have been mapped and will be preserved on the Property. The mapped wetlands onsite total 17.30 acres of the overall 38 acre site.

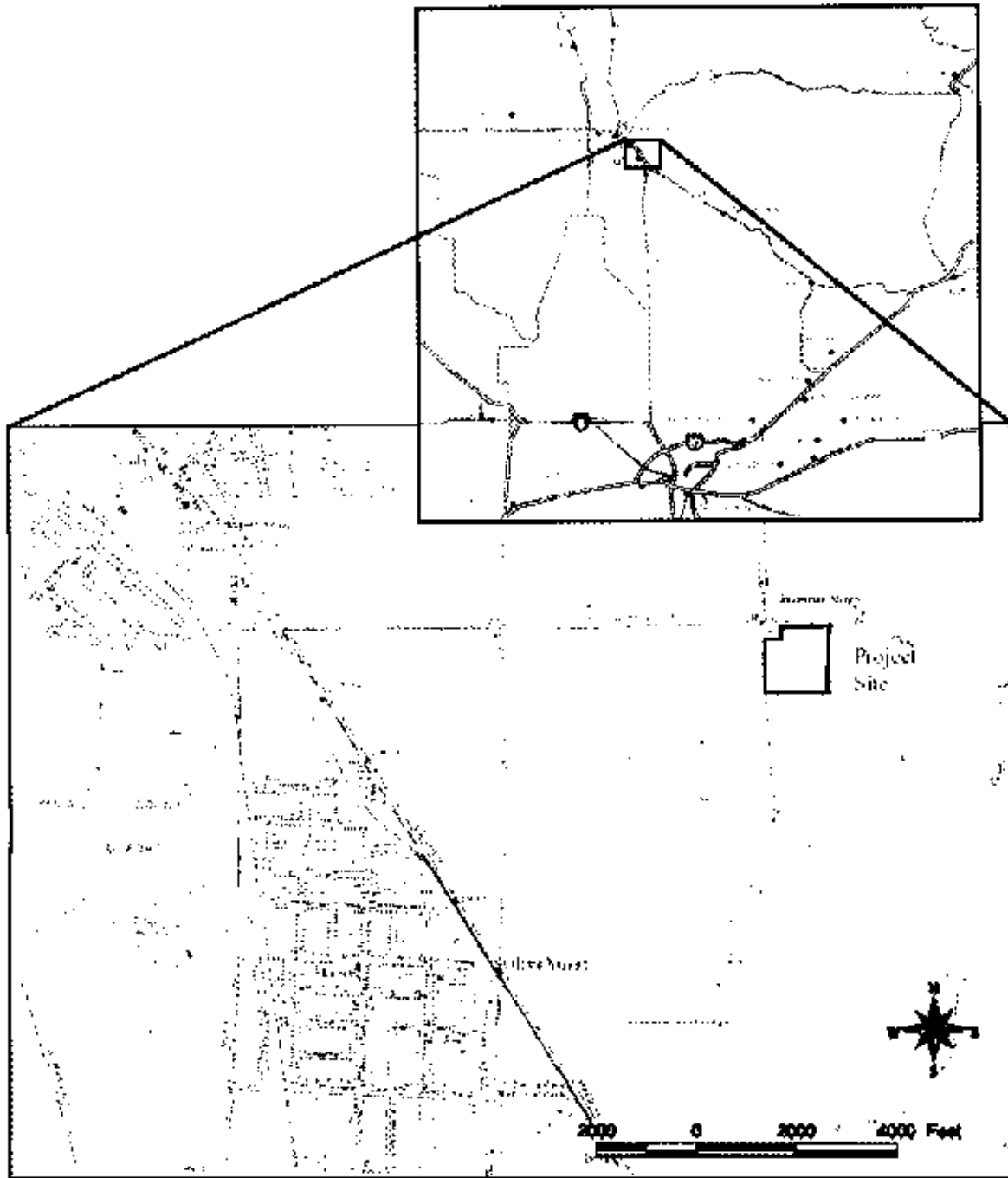


Figure 1.



Wildlands, Inc.
Reeds Creek Wetland Delineation

Study Area Vicinity and Location