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CONDITIONAL SETTLEMENT AGREEMENT BETWEEN  
THE UNITED STATES FISH AND WILDLIFE SERVICE  
AND  
THE COUNTY OF SANTA BARBARA, CALIFORNIA

WHEREAS, the County of Santa Barbara, California, is a political subdivision of the State of California;

WHEREAS, the Parties to this Agreement ("Parties"), the United States Fish and Wildlife Service of the Department of the Interior ("FWS" or "Service") and the County of Santa Barbara ("County"), have a dispute over alleged take of California tiger salamander (*Ambystoma californiense*) ("CTS") occurring on September 13, 2004, in which a dead CTS was found in a newly excavated ditch at the County Administration Building construction site near 548 West Foster Road in Santa Maria, and between July 2005 and December 2005, in which the County engaged in ground disturbing activities to install modular units south of the County's Administration and Animal Shelter sites also on Foster Road without an incidental take permit or Service concurrence that such activities would not affect CTS. Both sites are associated with Assessor's Parcel Number 111-231-004;

WHEREAS, the California tiger salamander, Santa Barbara Distinct Population Segment ("DPS") is a species of wildlife that was listed in 2000 as endangered (65 Fed. Reg. 57241 (September 21, 2000)). On August 4, 2004, this designation was changed to threatened status (69 Fed. Reg. 47212), and thus the Santa Barbara DPS was listed as a threatened species in September, 2004, when the dead CTS was found in the excavated ditch. The Santa Barbara DPS was returned to endangered status as a result of the August 18, 2005, decision in *Center for Biological Diversity, et al., v. FWS, et al.*, No. C-04-04324-WHA (N.D. California) and thus was listed as endangered at the time of the construction activities relating to the modular units. It is presently listed under Section 17.11, Title 50, Code of Federal Regulations, and designated as an endangered species. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531, et seq.), and its implementing regulations (50 C.F.R. Part 17), prohibit the taking, attempting to take, soliciting another to take or causing the taking of endangered and threatened species of wildlife (16 U.S.C. §§ 1538(a)(1)(B), 1538(a)(1)(G) and 1538(g), and 50 C.F.R. §§ 17.21(a), 17.21(c), and 17.31(a)); and

WHEREAS, the Parties, without any admission of liability by the County of Santa Barbara, its employees, agents, and/or contractors, enter into this Agreement as a complete and binding resolution of this matter in order to resolve this dispute without resort to further proceedings or litigation.

IN CONSIDERATION OF THE ABOVE RECITALS, which are hereby incorporated by reference and made a part of this Agreement, and in consideration of the mutual promises, covenants, terms and conditions set forth hereafter below:

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO BY THE PARTIES AS FOLLOWS:**

**A. If County:**

1. Within one hundred twenty (120) days of the Effective Date, protects and preserves approximately 6.49 acres of habitat for the CTS by acquisition, grant and recording of a perpetual Conservation Easement as defined by California Civil Code § 815.1 to the property consisting of Pond LOAL 49 and surrounding buffer area (Area D) as legally described in Exhibit A and depicted on a map in Exhibit B [attached hereto and incorporated by this reference] ("Easement Area"). The Conservation Easement deed shall provide as its primary purpose for the protection in perpetuity of the Easement Area as habitat for the CTS. The Conservation Easement deed shall be approved by the Service and shall contain restrictions against discing, seeding, and limitations on timing and frequency of mowing, harvesting and grazing within the Easement Area. The Conservation Easement shall be granted to a Service-approved third party ("the Grantee") that will hold the easement and manage the property in perpetuity as habitat for the CTS. Within 120 days, the County shall provide documentation to the Service of establishment of a separate, non-commingled endowment, funded in an amount approved by the Grantee and sufficient to provide for the management and perpetual easement monitoring of the property, in accordance with the March 18, 2010, Restoration, Management and Monitoring Plan approved by the Service [included herein as Exhibit C and hereby incorporated by this reference], or as it may be revised with the consent of the Service, County and Grantee, and with the Conservation Easement referenced herein.
2. Within one hundred twenty (120) days of the Effective Date, acquires, grants and records a Service-approved perpetual agricultural conservation easement pursuant to California Public Resources Code § 10211 to a Service-approved third party covering Areas A, B, and C, as legally described in Exhibit A and depicted on the map in Exhibit B [attached hereto and herein incorporated by reference] that will provide for restrictions on the use of the approximately 8.91 acres in the dispersal area leading from the Pond LOAL 49 drainage, and in the buffer areas in the vicinity of Pond LOAL 33, extending to the northern and western boundaries of the property, as may be appropriate to protect the migratory activities of the CTS in the easement and other habitat areas and excluding Pond LOAL 33 and existing roads. A copy of the recorded agricultural conservation easement (which may be part of the Conservation Easement described in Section A.1, above) and all documents required under this section shall be provided to the Service at the address listed in Section A.4 below.

3. Performs restoration activities in Area D and other duties as outlined in the Management Plan, attached and incorporated as Exhibit C to this Agreement.
4. Provides a copy of all Conservation Easement deeds and other documents required under this Agreement to the Service to the attention of Kerry O'Hara, Office of the Solicitor, 2800 Cottage Way, E-1712, Sacramento, CA 95825.
5. Waives the right to a hearing if no Notice of Violation is issued and so long as this Agreement remains in effect, and waives any potential counterclaims against the Service, its law enforcement agents, biologists, attorneys, or other staff.

B. Then, in consideration of the County's satisfactory fulfillment of the terms outlined above in Section A, the Service agrees that it will not impose a civil penalty by issuance of a Notice of Violation or seek to impose any criminal fine or penalty by reference to the United States Department of Justice against the County, its officers, employees, agents or contractors, or seek further action against or by the County with respect to the alleged take of California tiger salamander that allegedly occurred at the Foster Road construction sites in September 2004 and between July and December, 2005.

C. General Provisions

1. The Effective Date ("Effective Date") of this Agreement shall be the date of the last signature below.
2. If the County fails to perform any of the obligations of Section A of this Agreement, the Service may seek enforcement of the terms of this Agreement or may terminate the Agreement and seek to assess a civil penalty against the County for the violations of the Endangered Species Act as alleged herein. If the County fails to perform any of the obligations of Section D of this Agreement, the Service may seek enforcement of the terms of this Agreement. This Agreement incorporates herein by reference the September 11, 2009, Statute of Limitations Tolling Agreement [included herein as Exhibit D], the November 27, 2009, Extension of Statute of Limitations Tolling Agreement between the Parties [included herein as Exhibit E], the March 30, 2010, Second Extension of Statute of Limitations Tolling Agreement [included herein as Exhibit F], and the April 27, 2010, Third Extension of Statute of Limitations Tolling Agreement [included herein as Exhibit G], and shall further toll any statute of limitations for such civil penalty proceedings from the Effective Date until the date of any breach of this Agreement, as determined by the date of issuance of a Notice of Violation. In the event the Service institutes any proceeding by reason of breach of this Agreement or a Notice of Violation is issued based on the alleged violations referenced in this Agreement, the County shall be entitled to all required notices and opportunities for hearing. Should the Service seek to enforce the violations of the Endangered Species Act referenced herein, this Agreement shall not be used as evidence to

support or refute such allegations, although it may be used to document the tolling of the Statute of Limitations and to enforce compliance with its terms.

3. This Agreement does not authorize under federal law or permitting requirements any take of listed species on County property, and any unauthorized taking outside of the scope of the allegations herein may be subject to enforcement under the Endangered Species Act.
4. The provisions of this Agreement shall apply to and be binding upon the Parties hereto and their respective successors and assigns. The undersigned representatives represent that they are fully authorized to enter into this Agreement and to bind their respective Parties thereto.
5. Each Party shall bear its own costs, including but not limited to those incurred in the negotiations and execution of this Agreement, and attorneys' fees.
6. This Agreement (and the documents incorporated by reference herein) constitutes the final and sole agreement between the Parties. Any modifications of this Agreement shall be in writing and duly executed by the Parties. The time frames in this Agreement may be altered by written agreement of the Parties.
7. If any provision of this Agreement is held for any reason to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision herein.

D. Independent of the commitments in Section A of this Agreement, the County further agrees:

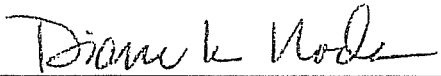
1. to the following resolution of any disputes regarding Service requests to perform protocol level surveys or to submit an Incidental Take Permit (ITP) application for new County projects in the following situations: where suitable upland or breeding habitat occurs within 1.25 miles of the project site and where there are no substantial obstacles between the project site and the upland or breeding habitat, which obstacles would in the Service's view preclude CTS from normally traversing the habitat components to complete their life cycle and sustain the population. Where discussions between the County and the Service provide no resolution of the issues, the County will defer to the Service determination regarding the need to perform protocol level surveys as requested by the Service or the County will submit an ITP application.

2. Within 60 days of the Effective Date, County Planning and Development Department Leadership will begin discussions with the Ventura Fish and Wildlife Office Management relating to the County's conditioning and enforcement of conditions in County permits that affect species listed under the ESA as threatened or endangered.

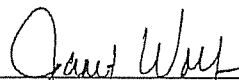
IT IS SO STIPULATED AND AGREED.

FOR THE FISH AND WILDLIFE SERVICE

FOR THE COUNTY OF SANTA  
BARBARA



Name: Diane K. Noda  
Title: Field Supervisor  
Ventura Fish and Wildlife Office  
Date: 6/29/10



Name: Janet Wolf  
Title: Chair  
Board of Supervisors  
Date: 6/28/10

# **EXHIBIT A**

## Legal Description

Being all that portion of the North one-half of the Southeast one-quarter of Section 9, Township 7 North, Range 33 West, San Bernardino Meridian, in the County of Santa Barbara, State of California, according to the official plat thereof, more particularly described as follows:

### Area A

Commencing at the southeast corner of the Northwest one-quarter of the Southeast one-quarter of said Section 9, said corner being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" on the map filed in Book 147 of Records of Survey, Page 37, in the office of said County Recorder; thence N88°31'30"W, along the North line of Southwest one-quarter of the Southeast one-quarter of said Section 9, 1307.59 feet to a point in the West line of the North one-half of the Southeast one-quarter of said Section 9, said point being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" as denoted on said map; thence N00°03'15"E, along said West line of the North one-half of the Southeast one-quarter of Section 9, 1330.18 feet to the Northwest corner of said North one-half of the Southeast one-quarter of Section 9; thence S88°34'32"E, along the North line of said North one-half of the Southeast one-quarter of Section 9, 209.26 feet to the TRUE POINT OF BEGINNING; thence,

- |          |   |
|----------|---|
| First    | S88°34'32"E continuing along said North line of the North one-half of the Southeast one-quarter of Section 9, 1258.01' to a point in the center of an existing dirt road running in a northwesterly/southeasterly direction along the spine of an existing ridgeline; thence, |
| Second   | S05°22'04"E, along the center of said dirt road and said ridgeline, 34.87 feet to an angle point therein; thence,   |
| Third    | S10°28'23"E, continuing along said dirt road and ridgeline, 71.83 feet to an angle point therein; thence,   |
| Fourth   | S12°07'42"E, continuing along said dirt road and ridgeline, 115.60 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 300.00 feet, the radial center of which bears S24°38'48"W; thence,   |
| Fifth    | Departing said dirt road and ridgeline, westerly, southwesterly, and southerly along the arc of said curve a distance of 606.36 feet, through a central angle of 115°48'24"; thence,  |
| Sixth    | Departing said curve N60°18'12"W, 520.50 feet to an angle point; thence,  |
| Seventh  | N43°57'50"W, 247.19 feet to an angle point; thence,   |
| Eighth   | N75°58'03"W, 246.23 feet to an angle point; thence,   |
| Ninth    | S03°07'06"W, 278.28 feet to an angle point; thence,   |
| Tenth    | S05°45'31"W, 280.80 feet to an angle point; thence,   |
| Eleventh | N77°21'26"W, 160.12 feet to a point in the existing barbed wire fence; thence,  |
| Twelfth  | N18°48'06"E along said barbed wire fence and its northeasterly prolongation, 586.40 feet to the True Point of Beginning.  |

Containing 8.45 acres more or less

### Area B

Commencing at the southeast corner of the Northwest one-quarter of the Southeast one-quarter of said Section 9, said corner being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" on the map filed in Book 147 of Records of Survey, Page 37, in the office of said County Recorder; thence N88°31'30"W, along the North line of Southwest one-quarter of the Southeast one-quarter of said Section 9, 1307.59 feet to a point in the West line of the North one-half of the Southeast one-quarter of said Section 9, said point being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" as denoted on said map; thence N00°03'15"E, along the West line of the North one-half of the Southeast one-quarter of said Section 9, 1330.18 feet to the Northwest corner of said North one-half of the Southeast one-quarter of Section 9 and the **TRUE POINT OF BEGINNING**; thence,

- First S88°34'32"E along the north line of said North one-half of the Southeast one-quarter of Section 9, 159.66 feet to an angle point; thence,
- Second S43°33'28"W, parallel with and 20.00 feet northwesterly of the centerline of an existing dirt road, 231.86 feet to a point in said West line of said North one-half of the Southeast one-quarter of Section 9; thence,
- Third N00°03'15"E, along said West line of said North one-half of the Southeast one-quarter of Section 9, 171.99 feet to the Point of Beginning.

Containing 0.32 acres more or less

### Area C

Commencing at the southeast corner of the Northwest one-quarter of the Southeast one-quarter of said Section 9, said corner being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" on the map filed in Book 147 of Records of Survey, Page 37, in the office of said County Recorder; thence N88°31'30"W, along the North line of Southwest one-quarter of the Southeast one-quarter of said Section 9, 1307.59 feet to a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" as denoted on said map; thence, N00°03'15"E along said West line of the North one-half of the Southeast one-quarter of Section 9, 833.25 feet to the True Point of Beginning; thence,

- First N00°03'15"E, along said West line of the North one-half of the Southeast one-quarter of Section 9, 266.84 feet to an angle point; thence,
- Second N43°33'28"E, parallel with and 20.00 feet southeasterly of the centerline of an existing dirt road, 204.80 feet to an angle point; thence,
- Third S18°48'06"W parallel with and 40.00 feet northwesterly of an existing barbed wire fence, 438.65 feet to the True Point of Beginning.

Containing 0.43 acres more or less

### Area D

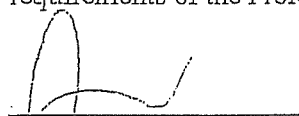
Commencing at the southeast corner of the Northwest one-quarter of the Southeast one-quarter of said Section 9, said corner being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" on the map filed in Book 147 of Records of Survey, Page 37, in the office of said County Recorder; thence N88°31'30"W, along the North line of Southwest one-quarter of the Southeast one-quarter of said Section 9, 1307.59 feet to a point in the West line of the North one-half of the Southeast one-quarter of said Section 9, said point being denoted as a set  $\frac{3}{4}$ " iron pipe with tag "LS 3146" as denoted on said map; thence N00°03'15"E, along said West line of the North one-half of the Southeast one-quarter of Section 9, 1330.18 feet to the Northwest corner of said North one-half of the Southeast one-quarter of Section 9; thence S88°34'32"E, along the North line of said North one-half of the Southeast one-quarter of Section 9, 1467.27 feet to a point in the center of an existing dirt road running in a northwesterly/southeasterly direction along the spine of an existing ridgeline; thence, departing said north line S05°22'04"E, along the center of said dirt road and said ridgeline, 34.87 feet to an angle point therein; thence, S10°28'23"E, continuing along said dirt road and ridgeline, 71.83 feet to an angle point therein; thence, S12°07'42"E, continuing along said dirt road and ridgeline, 115.60 feet to the beginning of a non-tangent circular curve having a radius of 300.00 feet, the radial center of which bears S24°38'48"W, and being the **TRUE POINT OF BEGINNING**; thence, along the arc of said curve through a central angle of 360°00'00" for a length of 1884.96' feet to the True Point of Beginning.

Containing 6.48 acres more or less

### End of Descriptions

A visual depiction of the afore described areas is shown on the "Exhibit Sketch" attached hereto and by reference incorporate herein.

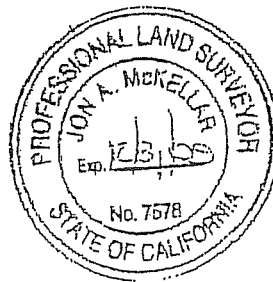
This description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyor's Act this 13<sup>th</sup> day of October, 2009.



Jon McKellar

PLS 7578

License Expiration Date: 31 December 2009



# **EXHIBIT B**

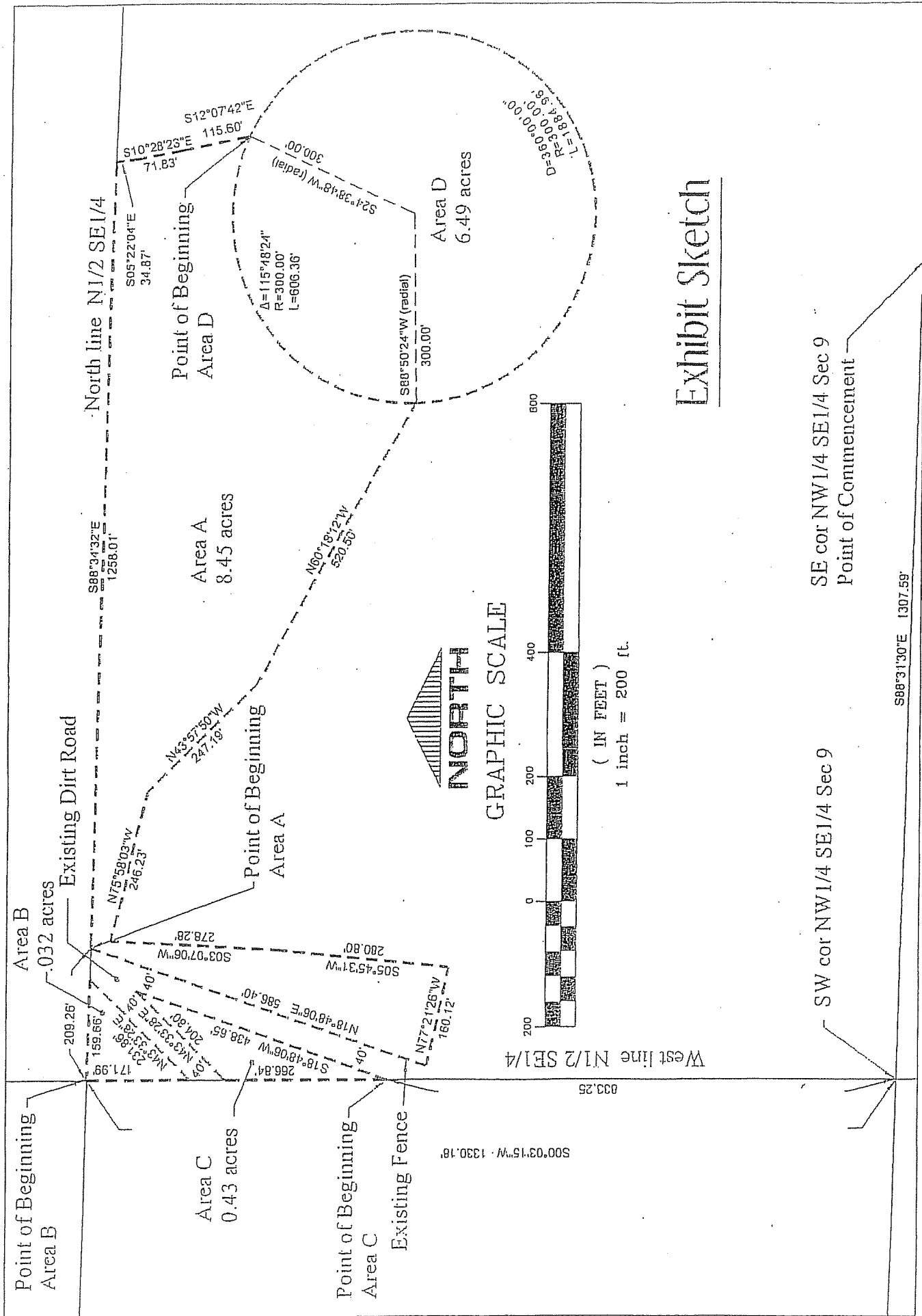


Exhibit Sketch

# EXHIBIT C

Santa Barbara County  
California Tiger Salamander  
Restoration/Management/Monitoring Plan  
Anderson Property

Draft Final Version  
March 18, 2010

I. INTRODUCTION

Santa Barbara County (County) has developed this Restoration/Management/Monitoring Plan in cooperation with the US Fish and Wildlife Service (FWS) with approval from the Land Trust for Santa Barbara County (Land Trust). The project relates to settlement discussions between Santa Barbara County and FWS, Department of the Interior (DOI) regarding an alleged violation of the Endangered Species Act (ESA) at the County's facilities at Foster Road near Santa Maria, California.

II. EASEMENT AREA DESCRIPTION

The easement boundary is defined per the legal description determined through field inspection and land survey. The legal description is provided in Exhibit "B" and illustrated on Exhibit "C", ("Conservation Easement Map") as attached to the Conservation Easement document. The easement and management plan does not include Pond 33.

The easement area is delineated into Areas A, B, C, and D. Area D is Pond 49 and associated 300-ft buffer as suggested by FWS staff. Areas A, B, and C are habitat corridors or linkages to Pond 33, excluding roadway and easements held by neighboring property owners.

Area A:	8.45 acre
Area B:	0.03 acre
Area C:	0.43 acre
Area D:	6.49 acre
Total:	15.40 acre

Area A:

The conservation area would extend up from Pond 49 through the canyon to the northern property line, connecting with another watershed with two known CTS breeding sites (Ponds LOAL 34 and 35) 400 feet across the property line. This proximity would increase the odds of Pond 49 being colonized after the notch is regraded to hold water.

A corridor from the Pond 49 drainage leading through grassland habitat was selected as a dispersal pathway to/from Pond 33. The dispersal corridor accounts for field topography and bare/steep rock. As requested by FWS, Area A includes a wedge of habitat along the eastern flank of Pond 33.

Areas B and C:

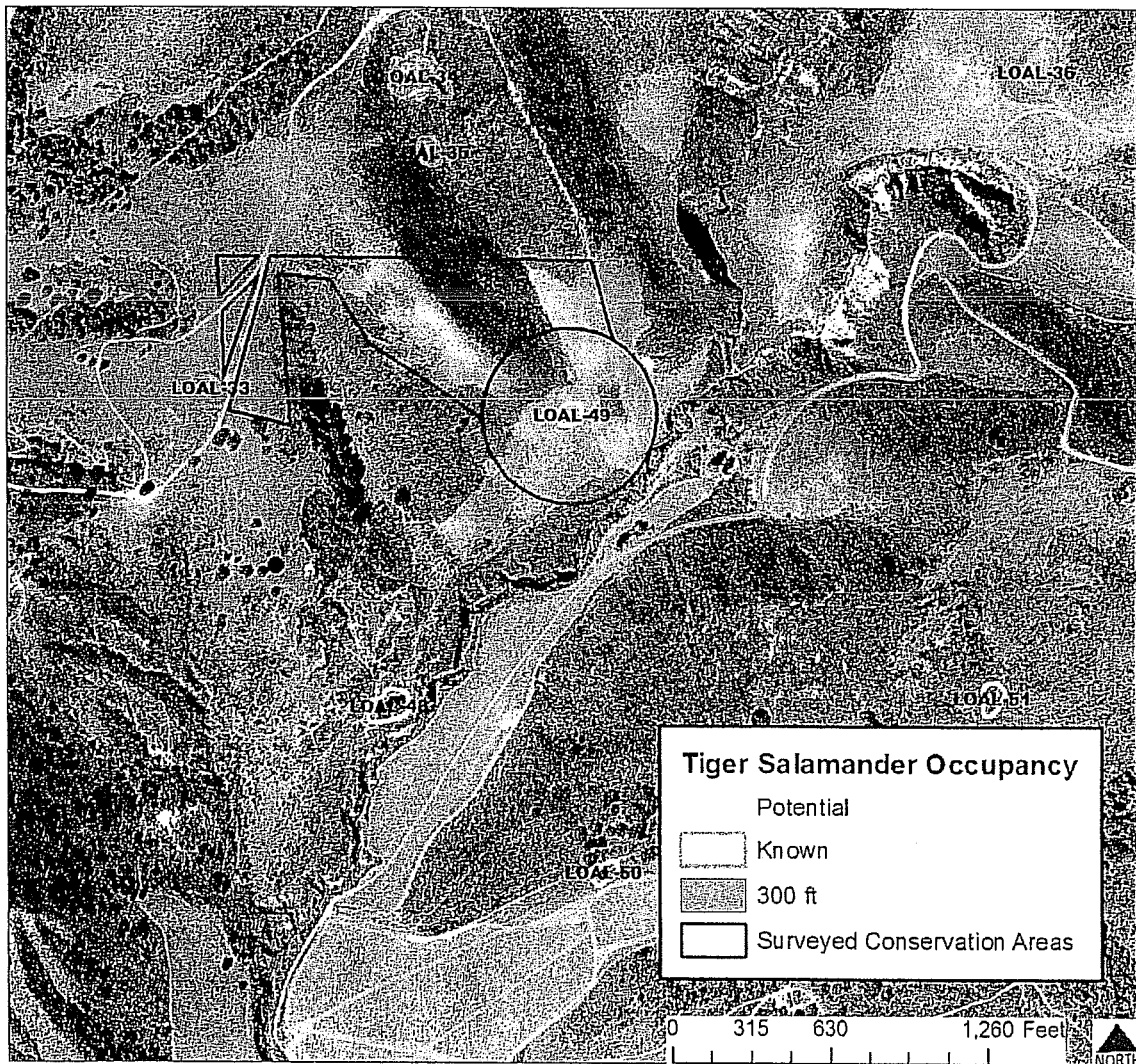
These conservation areas are grassland habitat near Pond 33. Land ownership factors regarding Pond 33 present challenges to conservation easement/agreement. The County and FWS recognize the habitat

value of Pond 33, and have attempted to capture some of the value while presenting workable ideas to the landowner. Areas B and C represent wedges of grassland habitat at Pond 33 that are outside the existing roadway and access easements held by adjacent property owners, thus minimizing conflict with neighboring properties while protecting habitat adjacent to Pond 33.

#### Area D:

Pond 49 is currently dry and the berm holding the pond has a notch eroded through it. A buffer surrounding Pond 49 was delineated starting with a 300-foot radius suggested by FWS staff. From the 300-foot radius, the buffer was modified to target grasslands and open woodland with less than 50% slope.

The notch eroded through the berm has been identified for repair and stabilization, and the landowner is receptive to this effort, as part of the Restoration/Management/Monitoring Plan. Restoration of Pond 49 also includes revegetation as necessary, removing two large pipes currently stored near the site, and vegetation/soil maintenance to establish appropriate water-holding capacity. Predator control, monitoring, and inspections are further described in the remaining sections of this Plan.



*Map of Anderson Property and surveyed conservation boundary*

### III. LEGAL INSTRUMENTS

#### Land Restrictions and Legal Instruments Framework

The County proposes that it would purchase a perpetual conservation easement of the conservation area described above. (See Civil Code §§ 815-816; Government Code § 65870). Areas A, B, and C would be placed under an agricultural easement, while Area D (the pond and 300-foot buffer) would be placed in a conservation easement. The land use restrictions and management measures applied to the areas would be equivalent, but with additional restoration and monitoring in Area D. These areas are shown on Exhibit B on the attached Legal Description of the project area on the Anderson property prepared by a registered surveyor.

The County's payment to the landowner includes an agreement that conditions and restrictions would be recorded upon the deed by the landowner through the conservation easement document. These land-use restrictions would apply to the entire easement area, including the dispersal corridor and the relevant area near Ponds 49 and 33. The recommended land use and management practices below have been developed in reviewing previous similar County efforts and in discussions between County Biologist Andrew Raaf and FWS staff Roger Root. The land restrictions and management practices would apply to the easement areas, not to the remaining area of the landowner's property. These restoration/management/monitoring requirements, as set out in this Plan, would be incorporated by reference into the recorded easement document.

In regard to who would hold title to conservation easements, FWS has recommended that the County engage a third party land trust. The Land Trust for Santa Barbara County was recruited and has expressed interest in accepting the conservation easement and associated monitoring/management program. The conservation easement, while arranged by the County, represents a contractual agreement between the Landowner and the Land Trust. The conservation easement and settlement agreement document describe in more detail the legal arrangements among the four-parties (County, FWS, Land Trust, and landowner).

Efforts have been made to make the contractual agreement between the County, landowner, and Land Trust as uniform and clear as possible so that there is little discretion for the landowner to deviate from the terms of the agreement.

Enforcement of the easement and Restoration/Management/Monitoring plan will be carried out through site inspections and reporting by the County and Land Trust. Reporting will be both internal and to the FWS. The County and/or Land Trust would visit the site as described below in the **Monitoring** section to ensure that the project area is being used according to the agreed conditions. If Land Trust determines that the landowner is not complying with the agreement, the Land Trust notify the property owner of this possible breach. If the County determines that management is out of compliance with the agreement, the County's role will be to provide notice to the Land Trust so that the Land Trust can correspond directly with the landowner. If the County determines that an issue remains unresolved, the County may engage FWS for further resolution. After discussions with all parties, the County and/or Land Trust would pursue appropriate legal remedies available to cure any breach of contract. The conservation easement document describes in more detail the enforcement provisions of the agreement, and covers enforcement remedies available to Land Trust and FWS.

### IV. **RESTORATION, MANAGEMENT, AND MONITORING PLAN**

This section of the proposal serves as the restoration, management, and monitoring plan, with input from several conversations and a field visit with FWS staff. In the context of this plan, **Restoration** describes

the earthwork and planting necessary to rehabilitate Pond 49, **Management** describes land-operation requirements with more detail and adaptive programs than described in the easement document, and **Monitoring** describes ongoing site visits and information gathering. Monitoring is addressed in three subsections: Monitoring of the pond-restoration site, aquatic sampling, and monitoring of the overall easement conditions.

This plan exists separately from the easement document in recognition that the Restoration, Management, and Monitoring must allow some flexibility and adaptation throughout the course of the project in order to make a good faith effort toward meeting the project objectives for all parties.

### Existing Conditions.

The Anderson property currently has one house and associated outbuildings, all outside of the proposed conservation areas. An area of disking for hay in the central area of the parcel is not part of the conservation area. No other disking or intensive agriculture is practiced. Current uses of the conservation area are:

- Recreational horseback riding.
- Utility easements.
- Mowing/haying (approx. every other year in some patches).
- Light-moderate cattle grazing.
- Light dirt road use for ranching operations and maintenance (no paved roads).

### Restoration Elements

Within eighteen months of the recording of the Conservation Easement to the Property, the County will complete the Restoration Elements of this Plan. Portions of the construction work involved in restoration of Pond 49 will likely be contracted to an environmental or engineering consultant, while County Public Works staff may also perform the earthwork. The County is exploring options and seeking cost estimates from consultants and landscapers. The selected contractor or County staff will prepare a final restoration proposal and plan for earthwork, grading, and implementation within 4 months of recording of the Conservation Easement. The final restoration plan must be approved by the FWS prior to implementation, and will include the following elements developed by the County and FWS:

1. Repair the eroded berm through soil import (if necessary) and regrading.
2. Remove large metal pipes currently within Pond 49. The Restoration contractor's work order will include removal and appropriate disposal or relocation of the pipes off of the subject property.
3. Clear coyote brush scrub vegetation in the basin of the pond.
4. Compact soil in pond if necessary to establish an aquitard layer.
5. Propagate and install appropriate plant species native to the area as necessary.
6. Establish irrigation system via tanks and dripline and/or watering truck or well water.
7. Photomonitoring and recordkeeping throughout the project. A site map will be created with established photo-points to be recorded at each site visit.

Earthwork would take place during the dry season. Regrading the berm and basin will aim to establish a pond with large surface area and maximum depth of approximately 1.5 meters. The hydrologic design will favor surface area over depth to maximize CTS habitat. The planting palate will include grassland plants and seasonal wetland species in the basin, along the regraded berm, and adjacent to the pond. Seed mix and container plants may both be used. Nearby ponds will be used as reference sites during a field visit with the environmental consultant to characterize seasonal hydroperiod and success/productivity

criteria for the pond restoration efforts. Planting would occur in the fall, a few weeks prior to the rainy season, to take advantage of winter rains and the associated growing season.

Based on conversations with FWS through February 12, 2010, FWS asserts the restoration activities can be designed and implemented with protective measures such that Endangered Species Act consultation and permitting would not be required. The site does not currently hold water and no CTS were detected in the basin during previous investigations by third party researchers. The earth work would be limited to the dry season. Pre-construction inspection will include field investigation for small mammal burrows or other indicators that may trigger FWS review, but otherwise take authorization under the ESA is not being pursued for the restoration components.

FWS suggested in February 2010 that the revegetation effort need not emphasize vernal pool flora or establishing 100% native cover at the site. It was noted that CTS have been observed breeding successfully in cattle ponds with little to no vegetation. The revegetation component of the restoration effort will be designed in coordination with the FWS and evaluated accordingly. Revegetation may focus more on erosion control using non-invasive species, seeding, and managing natural colonization rather than extensive container planting and irrigation.

### **Management Elements**

Based upon conversations with FWS, previous County permit requirements, Environmental Impact Reports and mitigation measures, and suggestions from the Land Trust, the following practices are proposed as land management within the easement boundary. These land management restrictions and practices apply to the landowner, under guidance and review by the County, FWS, and Land Trust. Active management practices will be performed by the County, Land Trust, landowner or agent thereof.

#### ***Land Restrictions***

- No subdivision or residential development.
- No disk, row crop, vineyard, plow, grading, or till.
- No mining.
- No disposal/dumping.
- No long-term (longer than 4 consecutive months) storage of excess material (pipes, lumber, disabled vehicles, ranch equipment, etc) in the easement area.
- No feedlots or livestock pens.
- Mowing/Haying during summer/dry season only (generally May-October with modification for field conditions coordinated with the FWS).
- Minor maintenance, repair to structures, and incidental soil disturbance associated with agricultural operations and maintenance (fence installation/repair, culvert repair, erosion control) shall be restricted to the dry season unless coordinated in advance with FWS.
- Soil grading, excavation, construction of outbuildings or appurtenant structures (i.e. hay shelters) will not occur without prior written concurrence from the FWS.
- Limit use of existing roads for ranch operations, maintenance, and emergency only.
- Keep any salt licks or other cattle attractants 300 feet from Pond 49 and out of areas with concentrations of small mammal burrows.
- No poisoning of small mammals.
- Restrictions on pesticides, herbicides, and fertilizers. Use of these chemicals would be avoided within the topographic watershed of Pond 49 (this watershed is the northern portion of Area D and the canyon draining into the pond from the north) and of Pond 33 (north and east of Pond 33 along the dirt roadways). Discretion to use chemicals in the remaining easement area would be applied only per the current EPA and County

guidelines. Deviations from these restrictions would be subject to review and approval by FWS. *(No chemical herbicides or fertilizers are currently in use on the Pond 49 location—this item provides flexibility in the event of a future weed or pest infestation).*

#### *Management Practices*

- Erosion management near ponds with advance coordination with the FWS.
- Periodically excavate Pond 49 during the dry season to preserve its capacity to hold water with advance coordination with the FWS.
- Predator (bullfrog) inspection (in association with CTS aquatic surveys) and control if deemed necessary by FWS.
- Allow access for survey, monitoring, and aquatic sampling procedure approved by the FWS.

#### Monitoring Elements

The Monitoring Element addresses three distinct phases of the project: 1) habitat restoration at Pond 49, 2) aquatic sampling, and 3) the long-term oversight of the conservation easement. Monitoring shall be the responsibility of the County and the Land Trust, depending on the phase of the project.

#### *Pond 49 Restoration Monitoring*

While the overall goal of the project is to establish a CTS breeding site at Pond 49, this goal may not be achieved immediately and can be difficult to measure. The monitoring scheme therefore must evaluate other objectives that are more clearly identifiable in the field and can illustrate trends through time.

Measureable objectives include:

1. Establish pond conditions suitable to CTS breeding.
2. Maintain favorable CTS conditions in habitat corridors connecting to regional CTS ponds.
3. Validate that the terms of the agreement are being followed.

Based on County and FWS discussions, habitat criteria that will be inspected during monitoring visits include:

*Depth and duration of ponded water.*  
*Presence and density of small mammal burrows.*  
*Vegetation types and distribution on the landscape.*  
*Growth and development of planted vegetation.*  
*Weed infestations.*  
*Aquatic insect food sources.*  
*Predators (bullfrogs).*  
*Erosion problems.*  
*Evidence of cattle usage.*  
*Violation of management requirements or easement conditions.*

Pond 49 Monitoring would be performed once per quarter during the first 2 years after the easement is dedicated and continuing once per quarter for the first 2 years after Pond 49 is rehabilitated. Thereafter, monitoring would be reduced to twice per year (once per season--wet season and dry season visits). Pond 49 monitoring would continue for 5 years after the pond is rehabilitated. If habitat monitoring indicates a need for a change in management to meet the measurable objectives described above, monitoring may be continued beyond the 5-year period as agreed by the Land Trust and FWS.

County and Land Trust staff (or consultant) will participate in the first 1-3 years of Pond 49 monitoring, after which County staff would transfer monitoring responsibility to the Land Trust. The County will continue to act in good faith to provide guidance and review, while the Land Trust would perform subsequent field monitoring. Monitoring reports would be delivered to FWS and the County. The County, Land Trust, and/or consultant would practice adaptive management in coordination with the FWS, using monitoring results to adjust, as necessary, restoration plantings, watering regime, cattle access, and erosion control.

After the 5-year period of detailed habitat restoration monitoring, the Land Trust staff would incorporate qualitative habitat inspections of the Pond 49 site into ongoing annual easement monitoring visits.

### *Aquatic Sampling*

Based on research and experience thus far, the County and FWS propose a cost-effective sampling procedure below:

Aquatic sampling would be performed twice per year starting the first wet season after pond restoration. All aquatic sampling will occur between March 1 and May 31, with at least 10 days between surveys. These surveys would be combined with the other site inspections as feasible, provided the timing and staffing of sampling efforts remain consistent with the commitments outlined herein.

The first step would be to visually inspect the pond margins for larval CTS and/or residual egg masses during this time frame. Then staff would perform dip netting (<1/8" mesh) at the pond margins, avoiding any potential egg masses. Dip netting would continue for 10 dips at separate areas of the pond margin, or 30 consecutive minutes of dipping, whichever comes first. Once CTS are confirmed in the pond, all aquatic sampling will cease for the remainder of that season.

In the event that the pond contains little or no water, the level of effort in dip netting would be reduced. All observed species would be recorded, along with size and life stage for any CTS. Unless otherwise stated herein, sampling would follow the CTS survey guidance developed by FWS and CDFG, and the Declining Amphibian Task Force Fieldwork Code of Practice.

Aquatic sampling would be continued for a 10-year period after pond rehabilitation. For the first 3 years, sampling would be performed each year. If CTS are found to be breeding in the pond, aquatic sampling would be reduced to every other year. If no CTS are detected by Year 3, the sampling schedule will be reduced to every other year, such that no sampling will be performed in Year 4, 6, or 8 but sampling will occur in Years 5, 7 and 9. A final survey in Year 10 or 11 will represent the final session of aquatic sampling under this monitoring program.

After Year 10, the inspection of Pond 49 will not include detailed habitat assessment or aquatic sampling, but overall easement monitoring will qualitatively assess the conservation values of the site and determine if the conditions of the easement and management plan are being met. In Year 10 and beyond, maintenance of the pond may include periodic dredging performed by the landowner (or agent), subject to coordination with the FWS and the guidelines provided in this Management Plan.

Aquatic sampling will be performed by an ESA Section 10(a)(1)(A) permitted biologist, acting as a contractor to the Land Trust (or by Land Trust or County staff if permitted staff is available). Aquatic sampling monitoring results will be submitted to FWS within 60 days of the final survey event of the year. The monitoring report will include photographs of the pool condition, vegetation, survey methods, species observed, actions taken during the monitoring period, management recommendations, and copies

of the field data sheet attached to this plan. Monitoring results will also be submitted to the County for review.

The aquatic sampling would be conducted for data collection only; the presence or absence of CTS would not be construed as a performance measure or a success criterion in resolving the settlement agreement.

If FWS desires to perform protocol surveys or more in-depth analysis outside the scope of this monitoring scheme, the County and/or Land Trust agree to work in good faith to allow access for such surveys by FWS, but cannot agree to provide funding. The terms of the easement are being written to ensure FWS access to the site for aquatic sampling in the future with proper notice to the landowner and Land Trust.

#### *Monitoring of Easement Conditions*

A separate component of **Monitoring** is the overall inspection of the easement area to determine if the conditions of the land management agreement are being met. This type of monitoring is routinely conducted by Land Trust staff, which may make recommendations to the landowner if it appears that conditions are not being adequately met.

Items to be assessed during easement monitoring include:

1. Compliance with the terms of the easement agreement.
2. Weed infestations,
3. Erosion problems,
4. Land uses incompatible with the conservation values established through the easement.
5. Pond 49 habitat values and water storage viability.

Easement monitoring will be performed twice per year (once during the dry season and once during the wet season) during the first 5 years after the easement is recorded, after which easement monitoring will be continued once per year. Annual reports will be provided to the FWS by July 31 each year. Annual monitoring after Year 5 will include qualitative assessments of the restoration site at Pond 49, and reporting on compliance with the listed items above.

In establishing the easement between the Land Trust and the landowner, the County is deferring the majority of the monitoring and enforcement roles to the Land Trust, as FWS staff suggested at early stages of the project. The County will be involved in restoration of the pond site, revegetation/irrigation, and the first year or two of monitoring to assist the Land Trust in absorbing the project. After the Land Trust assumes monitoring responsibilities, the County would act as a reviewer of monitoring reports and an advisor for overall project maintenance, and would make a good faith effort to participate with the Land Trust in the long term success of the project, while Land Trust will take over monitoring and enforcement authority.

A monitoring and implementation timeline is provided below, describing the different monitoring provisions and the responsible parties.

### Monitoring and Implementation Schedule

	Watering, maintenance, pest control	Pond Restoration, Habitat Monitoring	Aquatic Sampling*	Easement Monitoring
Construction Phase	County Contractor	During construction. County, Land Trust.	n/a	n/a
Year 1	County Contractor	Quarterly. County and Land Trust	2x per year, Land Trust Contractor	Annual, County and Land Trust staff
Year 2	County Contractor	Quarterly. County and Land Trust	2x per year, Land Trust Contractor	Annual, County and Land Trust staff
Year 3	County Contractor	2x per year. Land Trust staff or Contractor	2x per year, Land Trust Contractor	Annual, Land Trust staff
Year 4	As needed, County Contractor	2x per year. Land Trust staff or Contractor	n/a	Annual, Land Trust staff
Year 5	As needed, County Contractor	2x per year. Land Trust staff or Contractor	2x per year, Land Trust Contractor	Annual, Land Trust staff
Year 6	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	n/a	Annual, Land Trust staff
Year 7	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	2x per year, Land Trust Contractor	Annual, Land Trust staff
Year 8	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	n/a	Annual, Land Trust staff
Year 9	n/a	Annual. Qualitative with easement monitoring. Land Trust staff..	2x per year, Land Trust Contractor	Annual, Land Trust staff
Year 10	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	n/a	Annual, Land Trust staff
Year 11	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	2x per year, Land Trust Contractor	Annual, Land Trust staff
Thereafter	n/a	Annual. Qualitative with easement monitoring. Land Trust staff.	n/a	Annual, Land Trust staff

*\* If CTS are detected in the first survey of the year, the second survey will not be performed. If CTS are detected breeding in the pond, sampling will be reduced to every other year.*

## V. PROPERTY ANALYSIS

The County relied on consultant estimates, land appraisals, County labor rates, and a sample Property Analysis Record from an open space conservation area in Carlsbad, California, to derive the following cost estimate:<sup>1</sup>.

### Initial and Capital Tasks and Costs:

Purchase of easement: TBD

<sup>1</sup> Property Analysis Record for Emerald Pointe, City of Carlsbad, 20 February 2006.

Preliminary title report, land survey, appraisal reporting fees: \$7,000 (Spent)

Restoration of Pond (including soil, planning, contractor): \$28,000

Removal and transport of pipes: \$6,000

Irrigation (years 1-5 as needed): \$ 11,000

Revegetation and maintenance (years 1-5 as needed): \$20,000

Restoration and maintenance costs at project inception and through years 1-5 are considered *initial* costs for the purposes of this estimate. These costs are associated with the initial establishment of habitat and these costs will terminate around year 55 and will not recur indefinitely as *annual costs*.

### Annual Tasks and Costs:

Inspections and monitoring: 6 hours each visit at \$103/hr County environmental specialist labor rate, with travel and supplies.

(Years 1-2 quarterly): \$2,800 per year

(Years 3-5 biannually): \$1,400 per year

(Years 6+ annually and as needed): \$700 per year

Aquatic sampling: 6 hours each visit plus travel and supplies

(Years 1-10, twice per year between March and May):

\$3,000 per year, Annual then moving to every other year at Year 4

Annual report writing: \$200 per year.

### Total annual costs:

Years 1-2: \$6,000 per year

Years 3-5: \$1,600 – \$4,600 per year

Years 6-10: \$700 – \$3,700 per year

Years 11 and beyond: \$900 per year

The estimates above apply to the environmental contractor and County labor rates. If performed by County staff, labor would be performed by staff members of Public Works, General Services, and/or Planning & Development. Funding in this manner is approved at the Board of Supervisors level, rather than dedication of an endowment fund.

The County proposes to fund the activities on the property, by: 1) utilizing in-house County staff for earthwork and restoration planning; 2) Contracting with private contractors for landscaping, watering, and maintenance (including subsequent work, such as maintaining irrigation in the early years); and 3) transferring the property to the Land Trust and paying for an endowment for management and monitoring.

Staff: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A:**  
**DATA TO BE COLLECTED ON SITE 1 of 2**

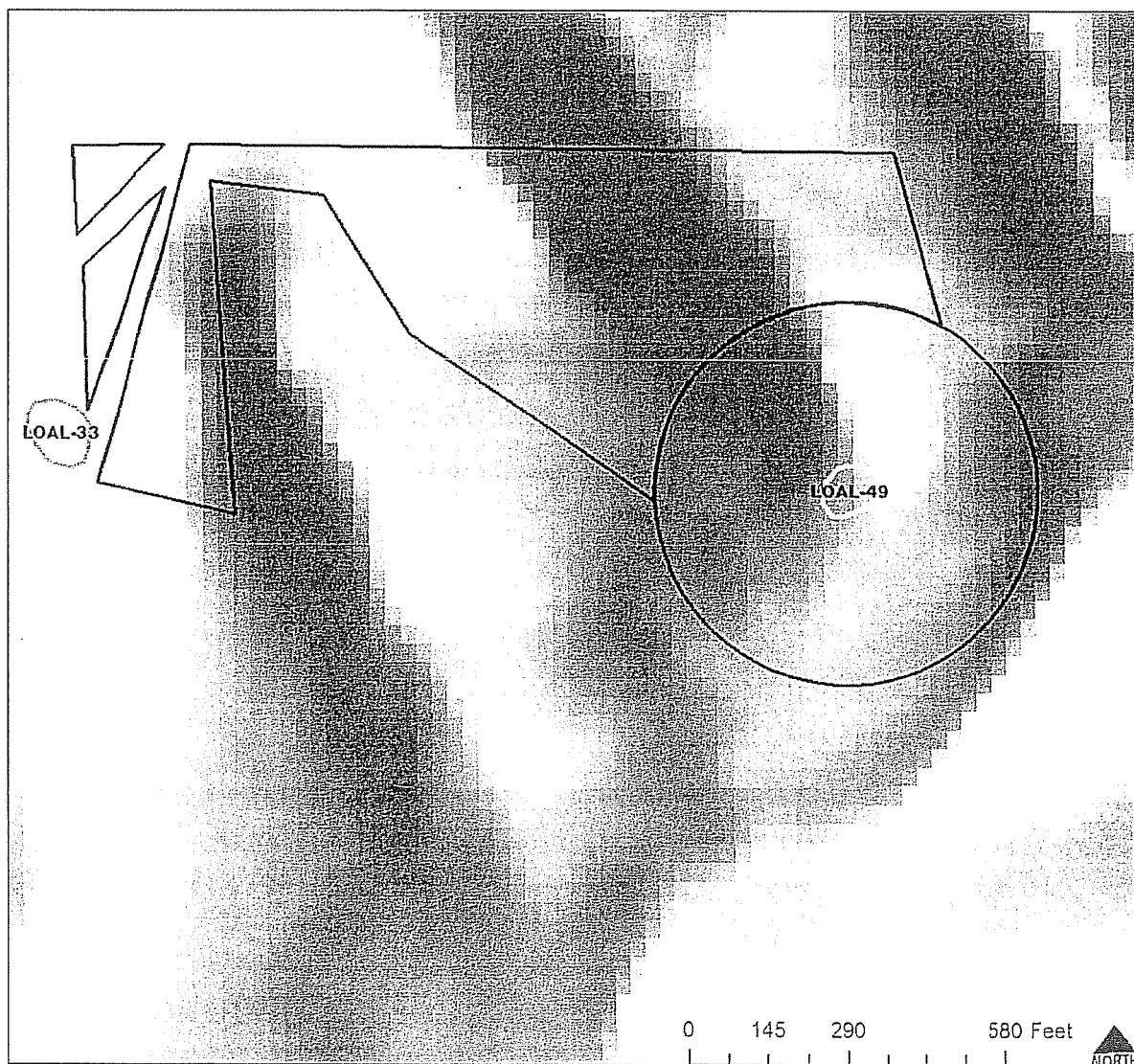
The schedule is tentative and can be modified to allow for adaptive management of the project:

- Year 1: Site visit during and after construction,  
Assessment every 3 months.  
Aquatic sampling twice, 3/1 to 5/31
- Year 2: Assessment every 3 months.  
Aquatic sampling twice, 3/1 to 5/31
- Year 3-5: Site visit once per season (wet/dry).  
Aquatic sampling twice, 3/1 to 5/31 (omit Yr 4)
- Year 6-10: Annual site visit, qualitative habitat inspection  
. Aquatic sampling twice, 3/1 to 5/31 (odd Yrs)
- Year 10+: Annual site visit, qualitative habitat inspection  
Yr 10 or 11: Final aquatic sampling if needed

**Field gear recommended:**

Camera  
Dip net  
Rubber boots  
Site map  
Field guides  
Yard/meter stick  
Binoculars  
Decontaminant

**Sketch of vegetation clusters/polygons and  
photo points:**



Staff: \_\_\_\_\_

Date: \_\_\_\_\_

**DATA TO BE COLLECTED ON SITE 2 of 2**

**Pond conditions:**

Current Weather: \_\_\_\_\_

Wetted Pond surface area (approx): \_\_\_\_\_

Pond depth at center (approx): \_\_\_\_\_

Pond depth at 2 feet in from wetted edge (Measure 4 times at cardinal directions)

N \_\_\_\_\_

E \_\_\_\_\_

S \_\_\_\_\_

W \_\_\_\_\_

Turbidity: \_\_\_\_\_

Last significant rainfall: \_\_\_\_\_

Erosion problems? \_\_\_\_\_

**Vegetation:**

% Cover at pond margin to 30 ft: \_\_\_\_\_

% Weeds at pond margin to 30 ft: \_\_\_\_\_

Dominant species:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Restoration planting notes: \_\_\_\_\_

Irrigation notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Wildlife:**

Mammal burrows: Y / N

Approx # burrows per 100 ft<sup>2</sup>:

Evidence of Cattle (trails, tracks, droppings, etc):

\_\_\_\_\_

Cattle trail accessible? \_\_\_\_\_

Bullfrogs? \_\_\_\_\_

Aquatic invertebrates? \_\_\_\_\_

Dip Netting: Y / N. CTS\*<sup>2</sup>: Y / N

Number of sweeps: \_\_\_\_\_, Time Spent: \_\_\_\_\_

Aquatic species observed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inspect terms of easement for evidence of:

Row crop ?  
Disking/Plowing ?  
Excavation ?  
Construction ?  
Heavy off-road vehicle usage ?  
Pesticide application ?  
New roads ?  
Dumping/disposal ?  
New fencing ?  
Weed outbreaks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Recommended actions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*<sup>2</sup> If Yes, collect size and age class information for each CTS.

# EXHIBIT D

STATUTE OF LIMITATIONS TOLLING AGREEMENT  
FOR ENDANGERED SPECIES ACT ACTION

THIS AGREEMENT is made and entered into by and between the United States Fish and Wildlife Service ("Service" or "FWS") and the County of Santa Barbara ("County"). The Parties shall be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise.

RECITALS

A. Based upon review, investigation and discussions, the Service and the County have agreed to seek mutually beneficial means by which the Santa Barbara population of the California tiger salamander, a species listed as endangered by the Fish and Wildlife Service pursuant to section 4 of the Endangered Species Act (ESA), and its habitat may be protected and preserved. The Parties are reviewing the impact of construction activities undertaken by the County at Foster Road in Santa Maria during the years 2004-5. The Service does not wish to waive any claims it may have based on those actions due to a failure to bring such claims within the applicable statute of limitations. The Service, however, does not want to be forced to file any claims it may have for violations of the Endangered Species Act simply in order to preserve those claims.

B. Accordingly, the Parties wish to enter into this Agreement to avoid the filing of actions driven in part by concern over the possibility that the statute of limitations will expire between now and the conclusion of negotiations in this matter.


NOW, THEREFORE, THE PARTIES agree, as to the County construction activities in 2004-5 at Foster Road in Santa Maria that are described above, as follows:

1. Tolling of Statute of Limitations. Except to the extent that such statute of limitations has expired as of the Effective Date of this Agreement, any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims for enforcement of civil penalties for violation of the Endangered Species Act, are hereby tolled in their entirety until the termination of this Agreement as provided below, at which point the time remaining under the statute shall be the time remaining as of the Effective Date of this Agreement. The County hereby waives any defense against a civil penalty action under the ESA relating to any statute of limitations, laches, or timeliness accruing or running during the term of this Agreement.
2. Term of the Agreement. If final resolution is not reached, this Agreement shall remain in effect until December 1, 2009 or until ten business days following receipt by a Party of the final determination of the other Party to terminate this Tolling Agreement. Prior to its expiration, and upon agreement of the Parties, this Agreement may be extended for a further period.
3. Parties Bound. This Agreement shall apply to and be binding upon the signatory Parties, and their agents, successors, and assigns. Each Party represents and warrants that it has obtained all necessary authorizations and approvals for this Agreement, and that this Agreement constitutes a valid, legal, and binding obligation of the Party, enforceable in accordance with its terms.

4. No Admission of Liability. Except with respect to the tolling of any applicable statute of limitations as set forth in Section 1, this Agreement shall not be construed as an admission of liability or of any fact and shall not waive or diminish any claims or defenses either Party may have with regard to the County construction activities in 2004-5 at Foster Road in Santa Maria.
5. Reservation of Rights against Third Parties. Nothing in this Agreement is intended as a release or covenant not to sue for any claims or cause of action which any Party may have against any person, firm, corporation, or other entity not a Party to this Agreement.
6. Counterparts. This Agreement may be executed in one or more counterparts or by telefaxed signature, all of which shall be considered the original document.
7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California and controlling federal law.
8. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement may be modified only in writing executed by each of the Parties.
9. Effective Date. The Effective Date of this Agreement shall be the date of the last signature below.

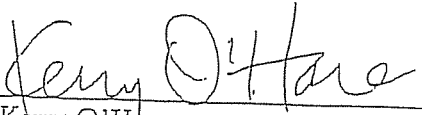
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

County of Santa Barbara

By:   
Joe Centeno,  
Chair, Board of Supervisors

Date: 9-1-09

United States Fish and Wildlife Service

By:   
Kerry O'Hara  
Assistant Regional Solicitor  
Department of the Interior

Date: 9-11-09

# **EXHIBIT E**

EXTENSION OF STATUTE OF LIMITATIONS TOLLING AGREEMENT  
FOR ENDANGERED SPECIES ACT ACTION

THIS AGREEMENT is made and entered into by and between the United States Fish and Wildlife Service ("Service" or "FWS") and the County of Santa Barbara ("County"). The Parties shall be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise.

RECITALS

A. Based upon review, investigation and discussions, the Service and the County have agreed to seek mutually beneficial means by which the Santa Barbara population of the California tiger salamander, a species listed as endangered by the Fish and Wildlife Service pursuant to section 4 of the Endangered Species Act ("ESA"), and its habitat may be protected and preserved. The Parties are reviewing the impact of construction activities undertaken by the County at Foster Road in Santa Maria during the years 2004-5. The Service does not wish to waive any claims it may have based on those actions due to a failure to bring such claims within the applicable statute of limitations. The Service, however, does not want to be forced to file any claims it may have for violations of the Endangered Species Act simply in order to preserve those claims.

B. On September 11, 2009, the Parties entered into a Statute of Limitations Tolling Agreement ("Tolling Agreement"), by which they agreed to toll any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims in their entirety until December 1, 2009. Under the terms of the Tolling Agreement, the Parties may agree to an extension of the term of that Agreement.

C. Accordingly, the Parties wish to enter into this Extension of Statute of Limitations Tolling Agreement to avoid the filing of actions driven in part by concern over the possibility that the statute of limitations will expire between now and the conclusion of negotiations in this matter.

NOW, THEREFORE, THE PARTIES agree, as to the County construction activities in 2004-5 at Foster Road in Santa Maria that are described above, as follows.

1. Tolling of Statute of Limitations. Except to the extent that such statute of limitations has expired as of the Effective Date of the original Tolling Agreement (September 11, 2009), any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims for enforcement of civil penalties for violation of the Endangered Species Act, are hereby further tolled in their entirety until the termination of the Agreement as provided below, at which point the time remaining under the statute shall be the time remaining as of the Effective Date of the original Tolling Agreement. The County hereby waives any defense against a civil penalty action under the ESA relating to any statute of limitations, laches, or timeliness accruing or running during the term of this Agreement.

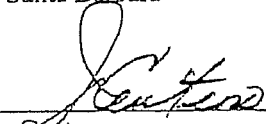
2. Term of the Agreement. If final resolution is not reached, this Agreement shall remain in effect until April 1, 2010, or until ten business days following receipt by a Party of the final determination of the other Party to terminate this Tolling Agreement. Prior to its expiration, and upon agreement of the Parties, this Agreement may be extended for a further period.

3. Parties Bound. This Agreement shall apply to and be binding upon the signatory Parties, and their agents, successors, and assigns. Each Party represents and warrants that it has obtained all necessary authorizations and approvals for this Agreement, and that this Agreement constitutes a valid, legal, and binding obligation of the Party, enforceable in accordance with its terms.
4. No Admission of Liability. Except with respect to the tolling of any applicable statute of limitations as set forth in Section 1, this Agreement shall not be construed as an admission of liability or of any fact and shall not waive or diminish any claims or defenses either Party may have with regard to the County construction activities in 2004-5 at Foster Road in Santa Maria.
5. Reservation of Rights against Third Parties. Nothing in this Agreement is intended as a release or covenant not to sue for any claims or cause of action which any Party may have against any person, firm, corporation, or other entity not a Party to this Agreement.
6. Counterparts. This Agreement may be executed in one or more counterparts or by telefaxed signature, all of which shall be considered the original document.
7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California and controlling Federal law.
8. Entire Agreement. This Agreement, along with the original Tolling Agreement, constitute the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement may be modified only in writing executed by each of the Parties.
9. Effective Date. The Effective Date of this Agreement shall be the date of the last signature below.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

County of Santa Barbara

By:

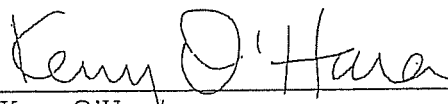
  
Joe Centeno  
Chair, Board of Supervisors

Date:

November 10, 2009

United States Fish and Wildlife Service

By:

  
Kerry O'Hara  
Assistant Regional Solicitor  
Department of the Interior

Date:

November 27, 2009

# EXHIBIT F

SECOND EXTENSION OF STATUTE OF LIMITATIONS TOLLING AGREEMENT  
FOR ENDANGERED SPECIES ACT ACTION

THIS AGREEMENT is made and entered into by and between the United States Fish and Wildlife Service ("Service" or "FWS") and the County of Santa Barbara ("County"). The Parties shall be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise.

RECITALS

A. Based upon review, investigation and discussions, the Service and the County have agreed to seek mutually beneficial means by which the Santa Barbara population of the California tiger salamander, a species listed as endangered by the Fish and Wildlife Service pursuant to section 4 of the Endangered Species Act ("ESA"), and its habitat may be protected and preserved. The Parties are reviewing the impact of construction activities undertaken by the County at Foster Road in Santa Maria during the years 2004-5. The Service does not wish to waive any claims it may have based on those actions due to a failure to bring such claims within the applicable statute of limitations. The Service, however, does not want to be forced to file any claims it may have for violations of the Endangered Species Act simply in order to preserve those claims.

B. On September 11, 2009, the Parties entered into a Statute of Limitations Tolling Agreement ("Tolling Agreement"), by which they agreed to toll any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims in their entirety until December 1, 2009. On November 27, 2009, and as provided for in the Tolling Agreement, the Parties entered into an Extension of Statute of Limitations Tolling Agreement ("First Extension of Tolling Agreement") by which they agreed to further toll any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims in their entirety until April 1, 2010. Under the terms of the First Extension of Tolling Agreement, the Parties may agree to a further extension of the term of the original Tolling Agreement.

C. Accordingly, the Parties wish to enter into this Second Extension of Statute of Limitations Tolling Agreement to avoid the filing of actions driven in part by concern over the possibility that the statute of limitations will expire between now and the conclusion of negotiations in this matter.

NOW, THEREFORE, THE PARTIES agree, as to the County construction activities in 2004-5 at Foster Road in Santa Maria that are described above, as follows.

1. Tolling of Statute of Limitations. Except to the extent that such statute of limitations has expired as of the Effective Date of the original Tolling Agreement (September 11, 2009), any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims for enforcement of civil penalties for violation of the Endangered Species Act, are hereby further tolled in their entirety until the termination of the Agreement as provided below, at which point the time remaining under the statute shall be the time remaining as of the Effective Date of the original Tolling Agreement. The County hereby waives any defense against a civil penalty action under the ESA relating to any statute of limitations, laches, or timeliness accruing or running during the term of this Agreement.

2. Term of the Agreement. If final resolution is not reached, this Agreement shall remain in effect until May 3, 2010, or until ten business days following receipt by a Party of the final determination of the other Party to terminate this Tolling Agreement. Prior to its expiration, and upon agreement of the Parties, this

Agreement may be extended for a further period.

3. Parties Bound. This Agreement shall apply to and be binding upon the signatory Parties, and their agents, successors, and assigns. Each Party represents and warrants that it has obtained all necessary authorizations and approvals for this Agreement, and that this Agreement constitutes a valid, legal, and binding obligation of the Party, enforceable in accordance with its terms.
4. No Admission of Liability. Except with respect to the tolling of any applicable statute of limitations as set forth in Section 1, this Agreement shall not be construed as an admission of liability or of any fact and shall not waive or diminish any claims or defenses either Party may have with regard to the County construction activities in 2004-5 at Foster Road in Santa Maria.
5. Reservation of Rights against Third Parties. Nothing in this Agreement is intended as a release or covenant not to sue for any claims or cause of action which any Party may have against any person, firm, corporation, or other entity not a Party to this Agreement.
6. Counterparts. This Agreement may be executed in one or more counterparts or by telefaxed signature, all of which shall be considered the original document.
7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California and controlling Federal law.
8. Entire Agreement. This Agreement, along with the original Tolling Agreement and First Extension of Tolling Agreement, constitute the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement may be modified only in writing executed by each of the Parties.
9. Effective Date. The Effective Date of this Agreement shall be the date of the last signature below:

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

County of Santa Barbara

By: Janet Wolf Date: 3/29/10  
Janet Wolf  
Chair, Board of Supervisors

United States Fish and Wildlife Service

By: Kerry O'Hara Date: 3/30/10  
Kerry O'Hara  
Assistant Regional Solicitor  
Department of the Interior

# **EXHIBIT G**

THIRD EXTENSION OF STATUTE OF LIMITATIONS TOLLING AGREEMENT  
FOR ENDANGERED SPECIES ACT ACTION

THIS AGREEMENT is made and entered into by and between the United States Fish and Wildlife Service ("Service" or "FWS") and the County of Santa Barbara ("County"). The Parties shall be collectively referred to herein as the "Parties" and individually as a "Party," unless specifically identified otherwise.

RECITALS

A. Based upon review, investigation and discussions, the Service and the County have agreed to seek mutually beneficial means by which the Santa Barbara population of the California tiger salamander, a species listed as endangered by the Fish and Wildlife Service pursuant to section 4 of the Endangered Species Act ("ESA"), and its habitat may be protected and preserved. The Parties are reviewing the impact of construction activities undertaken by the County at Foster Road in Santa Maria during the years 2004-5. The Service does not wish to waive any claims it may have based on those actions due to a failure to bring such claims within the applicable statute of limitations. The Service, however, does not want to be forced to file any claims it may have for violations of the Endangered Species Act simply in order to preserve those claims.

B. On September 11, 2009, the Parties entered into a Statute of Limitations Tolling Agreement ("Tolling Agreement"), by which they agreed to toll any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims in their entirety until December 1, 2009. On November 27, 2009, and March 30, 2010, and as provided in the Tolling Agreement, the Parties entered into an Extension and Second Extension of Statute of Limitations Tolling Agreement, by which they agreed to further toll any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims in their entirety until April 1, 2010, and May 3, 2010, respectively. Under the terms of the Second Extension of Tolling Agreement, the Parties may agree to a further extension of the term of the original Tolling Agreement.

C. Accordingly, the Parties wish to enter into this Third Extension of Statute of Limitations Tolling Agreement to avoid the filing of actions driven in part by concern over the possibility that the statute of limitations will expire between now and the conclusion of negotiations in this matter.

NOW, THEREFORE, THE PARTIES agree, as to the County construction activities in 2004-5 at Foster Road in Santa Maria that are described above, as follows.

1. Tolling of Statute of Limitations. Except to the extent that such statute of limitations has expired as of the Effective Date of the original Tolling Agreement (September 11, 2009), any time limitations set forth in 28 U.S.C. § 2462 applicable to the Service's claims for enforcement of civil penalties for violation of the Endangered Species Act, are hereby further tolled in their entirety until the termination of the Agreement as provided below, at which point the time remaining under the statute shall be the time remaining as of the Effective Date of the original Tolling Agreement. The County hereby waives any defense against a civil penalty action under

the ESA relating to any statute of limitations, laches, or timeliness accruing or running during the term of this Agreement.

2. Term of the Agreement. If final resolution is not reached, this Agreement shall remain in effect until June 30, 2010, or until ten business days following receipt by a Party of the final determination of the other Party to terminate this Tolling Agreement. Prior to its expiration, and upon agreement of the Parties, this Agreement may be extended for a further period.

3. Parties Bound. This Agreement shall apply to and be binding upon the signatory Parties, and their agents, successors, and assigns. Each Party represents and warrants that it has obtained all necessary authorizations and approvals for this Agreement, and that this Agreement constitutes a valid, legal, and binding obligation of the Party, enforceable in accordance with its terms.

4. No Admission of Liability. Except with respect to the tolling of any applicable statute of limitations as set forth in Section 1, this Agreement shall not be construed as an admission of liability or of any fact and shall not waive or diminish any claims or defenses either Party may have with regard to the County construction activities in 2004-5 at Foster Road in Santa Maria.

5. Reservation of Rights against Third Parties. Nothing in this Agreement is intended as a release or covenant not to sue for any claims or cause of action which any Party may have against any person, firm, corporation, or other entity not a Party to this Agreement.

6. Counterparts. This Agreement may be executed in one or more counterparts or by telefaxed signature, all of which shall be considered the original document.

7. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California and controlling federal law.

8. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement may be modified only in writing executed by each of the Parties.

9. Effective Date. The Effective Date of this Agreement shall be the date of the last signature below.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

County of Santa Barbara

By:

Janet Wolf  
Chair, Board of Supervisors

Date:

4.23.10

United States Fish and Wildlife Service

By:

Kerry O'Hara  
Kerry O'Hara  
Assistant Regional Solicitor  
Department of the Interior

Date:

April 27, 2010

