

RESOLUTION NO. 16-33

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LANCASTER, CALIFORNIA, AUTHORIZING
THE APPROPRIATION AND USE OF BIOLOGICAL
IMPACT FEE FUNDS FOR THE ACQUISITION OF
236.91 ACRES OF CONSERVATION PROPERTY

WHEREAS, the City Council adopted Ordinance 848 establishing Chapter 15.66 of the Lancaster Municipal Code, Biological Impact Fee, on October 28, 2005 to address cumulative impacts and incremental loss of desert habitat, and established a biological impact fee of \$770 per acre; and

WHEREAS, the funds collected as a result of this fee can only be utilized for specific purposes as identified in the Ordinance; and

WHEREAS, pursuant to Section 15.66.070.A of the Lancaster Municipal Code, an allowable use of biological impact fees is the acquisition of mitigation land; and

WHEREAS, Wildlands is a habitat development and land management company that establishes mitigation banks and conservation banks throughout the western United States; and

WHEREAS, Wildlands has identified a 236.91-acre parcel of habitat to the west of Lancaster, between the Arthur B. Ripley Desert Woodland State Park and the Angeles National Forest, with high biological value with respect to a variety of sensitive plant and animal species and dry washes; and

WHEREAS, acquisition of the site would not only meet the conservation objectives envisioned by Ordinance No. 848, but is required to meet the mitigation requirements of a Streambed Alteration Agreement (SAA No. 1600-2015-0231-R5) issued for two commercial solar facilities; and

WHEREAS, this property would be held as conservation habitat in perpetuity;

NOW, THEREFORE, BE IT RESOLVED:

The City Council hereby authorizes the funding for the purchase of 236.91 acres of conservation property by Wildlands and appropriates \$1,160,859.00 from the Biological Impact Fee fund balance to Account No. 224-4520-912, Property Acquisitions.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF RESOLUTION
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Resolution No. 16-33, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)



**CONSERVATION ANALYSIS
FOR THE
CITY OF LANCASTER'S
LONG CANYON RANCH PRESERVE
&
NORTH EDWARDS
PRESERVES**

**KERN COUNTY APN: 233-374-24
LOS ANGELES COUNTY APNs: 3240-001-008 & 3240-001-009**

Prepared by:

Wildlands
3855 Atherton Road
Rocklin, CA 95765
Tel: (916) 435-3555
Fax: (916) 435-3556
Website: www.wildlandsinc.com

January 2016

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Background Information

The Mojave Desert is the smallest of the four North American deserts. It is located in southeastern California, and includes portions of Nevada, Utah, and Arizona south of the Great Basin, north of the Sonoran Desert, west of the Colorado River, and east of the Sierra Nevada Mountains. The Mojave has a typical mountain-and-basin topography with sparse vegetation, sand and gravel basins that drain to central salt flats and dry lake beds. The Mojave Desert hosts approximately 200 endemic plant species as well as a wide array of special status wildlife species.

In order to address cumulative impacts and incremental loss of biological resources, including loss of habitat, the City of Lancaster adopted Ordinance No. 848, establishing Chapter 15.66 of the Lancaster Municipal Code, Biological Impact Fee, on October 28, 2005 for the purpose of mitigating biological impacts on a regional basis. Consistent with Section 15.66.070.A of the Lancaster Municipal Code, an allowable use of the biological impact fee is the acquisition of mitigation land.

The approximately 236.91-acre Long Canyon Ranch Preserve (“LCRP”) is located in the County of Los Angeles. The LCRP property is approximately 5 miles west of the City of Fairmont and is bisected on its northern end by 215th Street West just west of its intersection with 213th Street West (**Figure 1**). The 80-acre North Edwards Desert Preserve (“NEDP”) is located in the County of Kern approximately two miles north of Edwards Airforce Base west of Claymine Road and south of Mission Ave (**Figure 1**). LCRP is comprised of two parcels, Los Angeles County Assessor’s Parcel Nos. 3240-001-008 and 3240-001-009; and the NEDP is comprised of one parcel Kern County Assessor’s Parcel Number 233-374-24. Collectively LCRP and NEDP will be referred to as the “Preserves”. LCRP is located in the Burnt Peak United States Geological Survey (“USGS”) 7.5-minute Quadrangle (**Figure 2**) and NEDP is located in the North Edwards USGS 7.5-minute Quadrangle (**Figure 3**).

The properties that make up the Preserves were specifically chosen for their ability to protect and preserve biologically sensitive open space habitat as compensatory lands for the City of Lancaster consistent with Section 15.66.070.A of the Municipal Code.

Geographic and Continuity Analysis

Wildlands used various geographically based filters to determine the potential suitability of conservation lands. In order to mitigate for impacts of the City of Lancaster, Wildlands attempted to find suitable open space habitat within areas identified as having ecological value and/or having occurrences of sensitive habitats and species. Wildlands also used the California Natural Diversity Database (“CNDDDB”) to identify areas with known species occurrences, as well as a USGS model that utilizes statistical probability to map potential desert tortoise habitat (Nussear et al. 2009). Wildlands utilized all available geographic data, interviews with species and habitat experts, and guidance from regulatory agencies to specifically target high priority areas for conservation.

Lands having connectivity to larger blocks of lands that are already protected or planned for protection were prioritized. Lands adjacent in close proximity to publically or privately protected lands were specifically targeted. Contributing to this connectivity is essential due to the fractured nature of private

land ownership in the area. The conservation value of the Preserves is enhanced by its connectivity to other high quality habitats and its contributory value as a linkage corridor to similarly protected sites.

Both Preserves are located within the United States Fish and Wildlife Service designated desert tortoise Western Mojave Recovery Unit (**Figure 4**). LCRP is located within Los Angeles County's San Andreas Significant Ecological Area and is in close proximity to the Castaic Range Area of High Ecological Significance, Neenach Wildlife Preserve, Antelope Valley California Poppy Reserve, Arthur B Ripley Desert State Park, and the Portal Ridge Wildlife Area operated by Transition Habitat Conservancy (**Figures 5 & 6**). The California Natural Diversity Data Base ("CNDDDB") shows sensitive habitats and species within close proximity to both Preserves (**Figure 7 & 8**). Additionally, NEDP has a USGS desert tortoise habitat potential index value of 0.8 (**Figure 9**) and its proximity to Edward's Air Force Base makes it desirable as buffer lands. Establishment of these Preserves will protect potentially developable private in-holdings from future development.

Biological Analysis

LCRP is located within Los Angeles County's San Andreas Significant Ecological Area (SEA). SEAs are officially designated areas within the County identified for their biological value. These areas warrant special management because they contain biotic resources that are considered to be rare or unique; are critical to the maintenance of wildlife; represent relatively undisturbed areas of County habitat types; or serve as linkages (Los Angeles County Dept. of Regional Planning). The site is also in close proximity to the USDA's designated Castaic Range Area of High Ecological Significance (Stephenson et al. 1999). This geographic position between the San Gabriel Mountains to the east, the Tehachapi Mountains to the north and the Los Padres ranges to the west, make it a key wildland linkage and wildlife corridor. Habitats on the Preserve can be characterized as desert montane landscape and are dominated by scrub oak-buckwheat chaparral and annual grasslands. Located throughout the LCRP are occurrences of junipers (*Juniperus* sp.), pines (*Pinus* sp.), Joshua trees (*Yucca brevifolia*), and poppies (*Arctomecon* sp.), which make this property a very unique ecotone between conifer forest and the desert floor. Multiple dry washes dissect the LCRP, flowing mostly from south to north. These washes range in size from approximately three feet wide to as much as sixty-five feet wide and range from mostly un-vegetated to having a willow (*Salix* sp.) dominated canopy. Annual grasslands and conifers on site provide suitable breeding and foraging habitat for Swainson's hawk (*Buteo swainsoni*) and evidence of large mammals including black bear (*Ursus americanus*) and mule deer (*Odocoileus hemionus*) have been found onsite. Representative photos of the habitat found onsite are shown in **Figures 10a – 10c**.

NEDP is dominated Mojave creosote bush white bur-sage scrub (MCBWBS). This habitat is dominated by creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*), and is characterized by widely spaced, tall shrubs, usually separated by bare ground. This plant community occurs on well-drained, secondary soils with very low available water holding capacity on slopes, fans and valleys. Following wet winters, there may be colorful displays of ephemeral annual species in late March and April in the intervening openings between shrubs. Biological soil crusts (cryptobiotic soils) comprise a specialized community within MCBWBS. They form over long periods of time by weaving soil components together to stabilize desert surfaces, which protects the topsoil from water and wind erosion. They are comprised of cyanobacteria, lichen, and moss, which create a fertile layer in which plants are able to grow in arid climates. The NEDP provides suitable habitats for Agassiz's desert tortoise (*Gopherus*

agassizii) and Mohave ground squirrel (*Xerospermophilus mohavensis*). Representative photos of the habitats found on site can be found in Figures 11a – 11b.

Conclusion/Summary

The approximate 236.91-acre LCRP and the 80-acre NEDP contain diverse intact open space habitats appropriate for conservation. Based upon the results of the biological field surveys and regional analyses, both Preserves provide high quality intact open space habitats. Protection of these lands will contribute to protecting essential sensitive communities as well as providing important wildlife linkage and wildlife corridor habitats.

References

Nussear, K.E., Esque, T.C., Inman, R.D., Gass, Leila, Thomas, K.A., Wallace, C.S.A., Blainey, J.B., Miller, D.M., and Webb, R.H., 2009, Modeling habitat of the desert tortoise (*Gopherus agassizii*) in the Mojave and parts of the Sonoran Deserts of California, Nevada, Utah, and Arizona: U.S. Geological Survey Open-File Report 2009-1102, 18 p

Los Angeles County Department of Regional Planning, SEA Program, <http://planning.lacounty.gov/sea>

Stephenson, John R.; Calcarone, Gena M. 1999. Southern California mountains and foothills assessment: habitat and species conservation issues. General Technical Report GTR-PSW-175. Albany, CA: Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture; 402 p.

Figures

Long Canyon Ranch Preserve and North Edward Desert Preserve

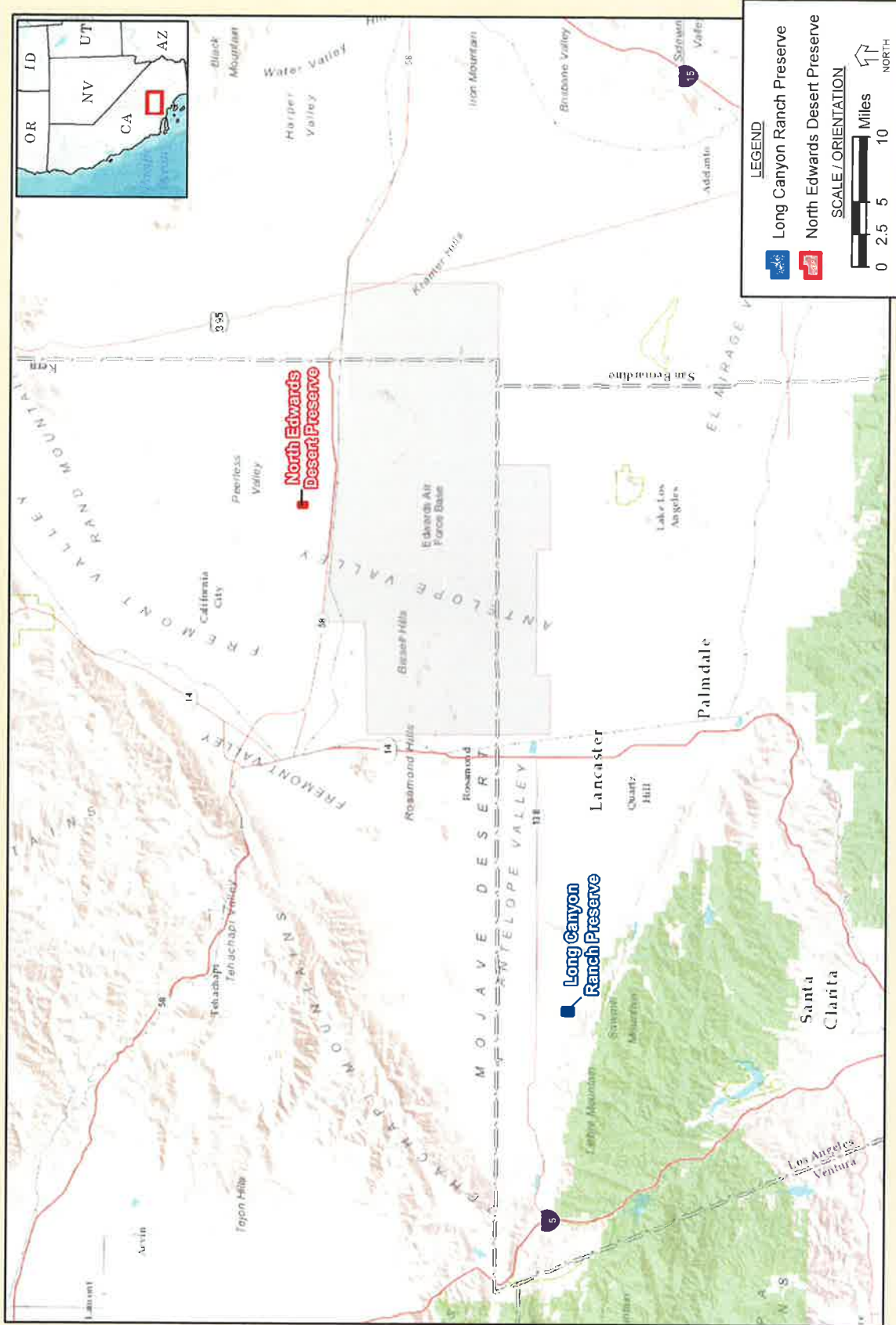


Figure 1 - Location
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

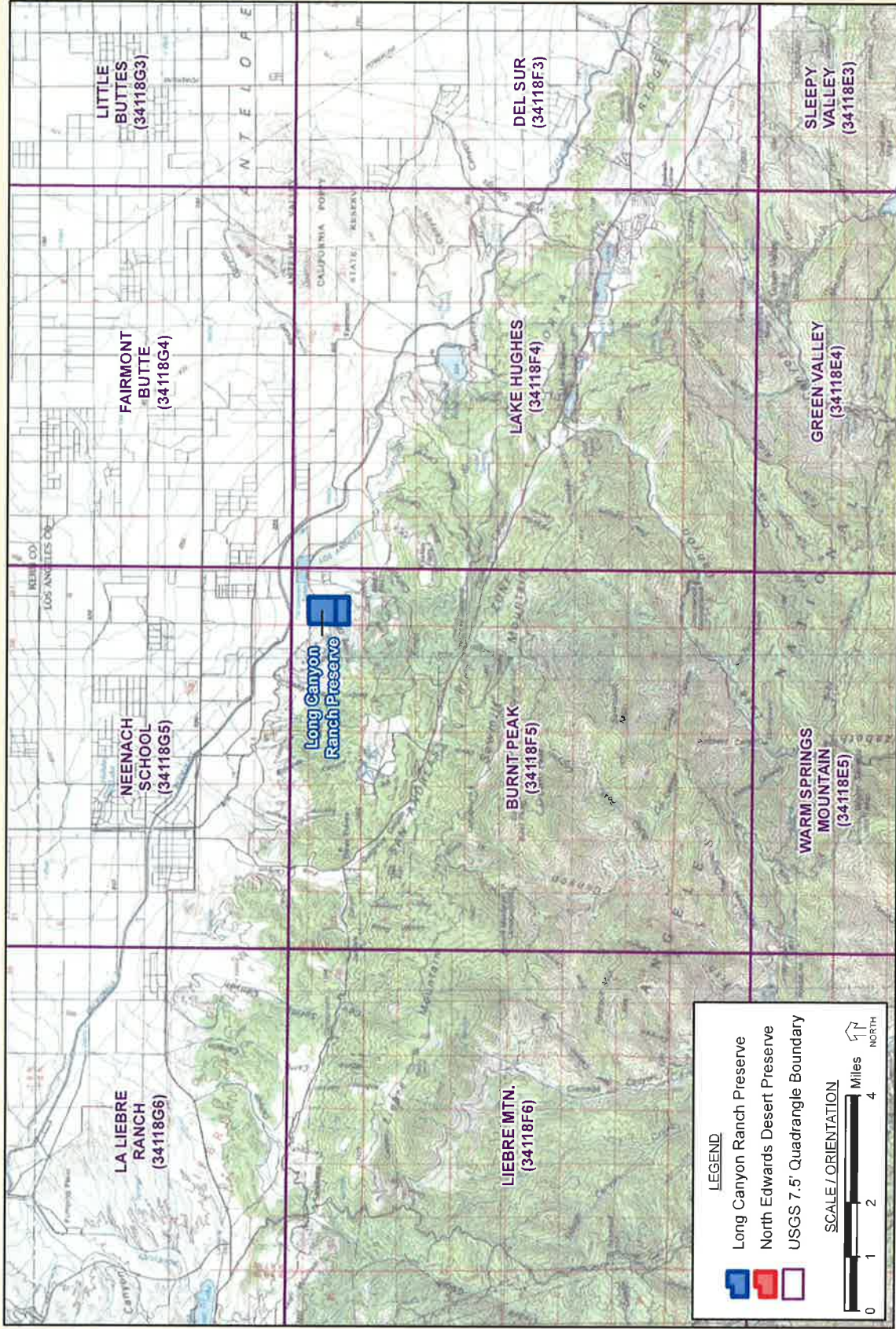


Figure 2 - USGS 7.5' Quadrangle - Long Canyon Ranch Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

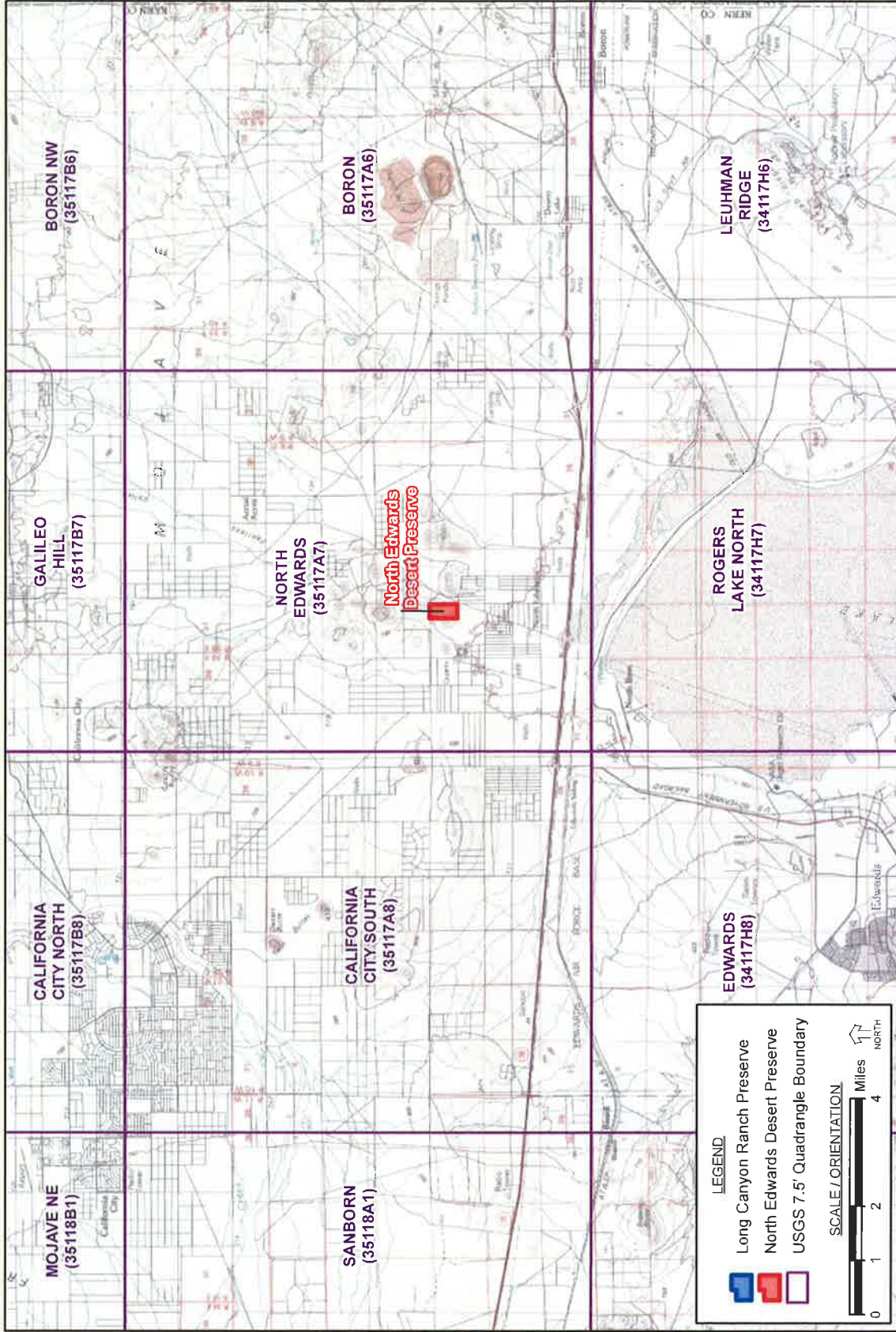


Figure 3 - USGS 7.5' Quadrangle - North Edwards Desert Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

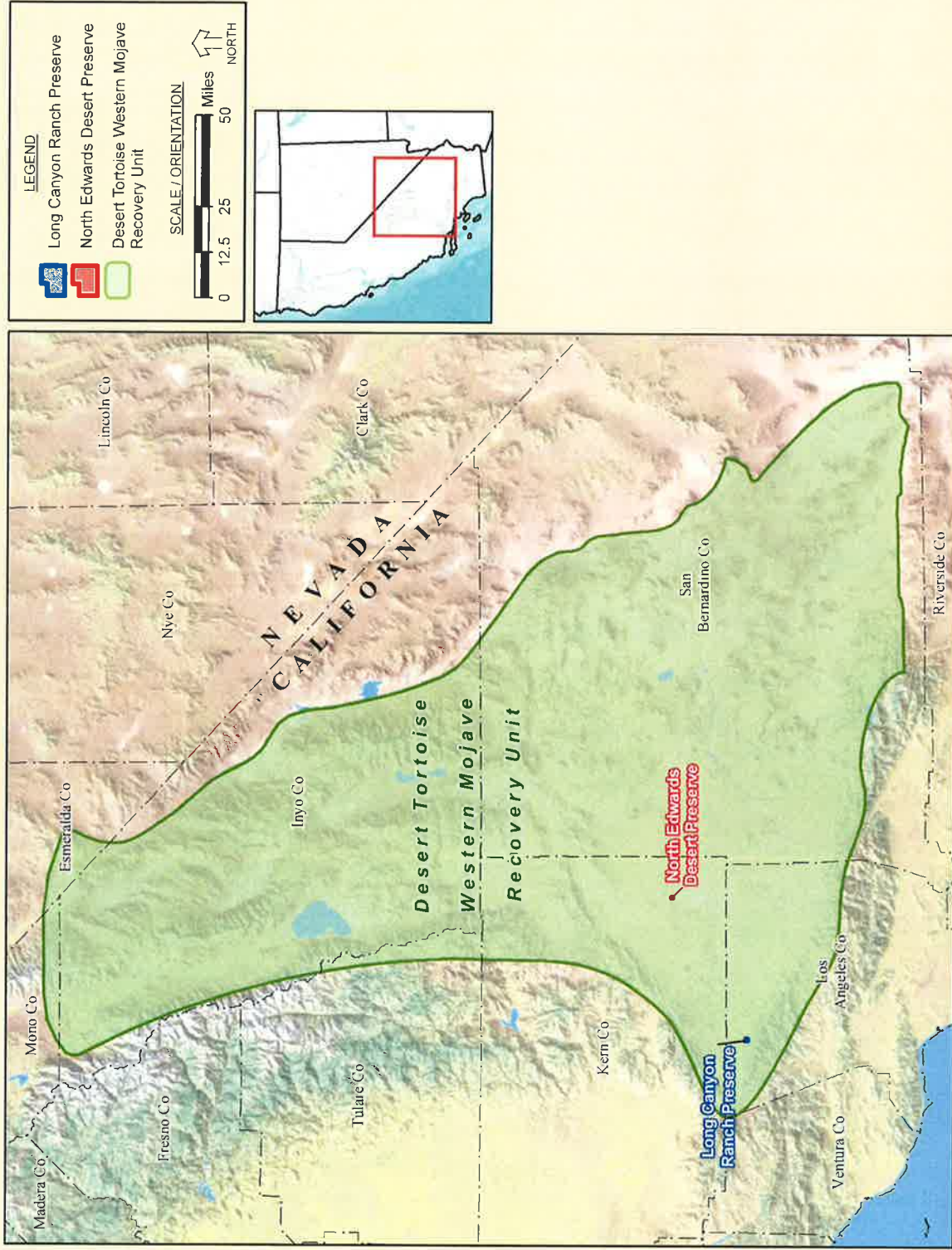


Figure 4 - Desert Tortoise Recovery Unit
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

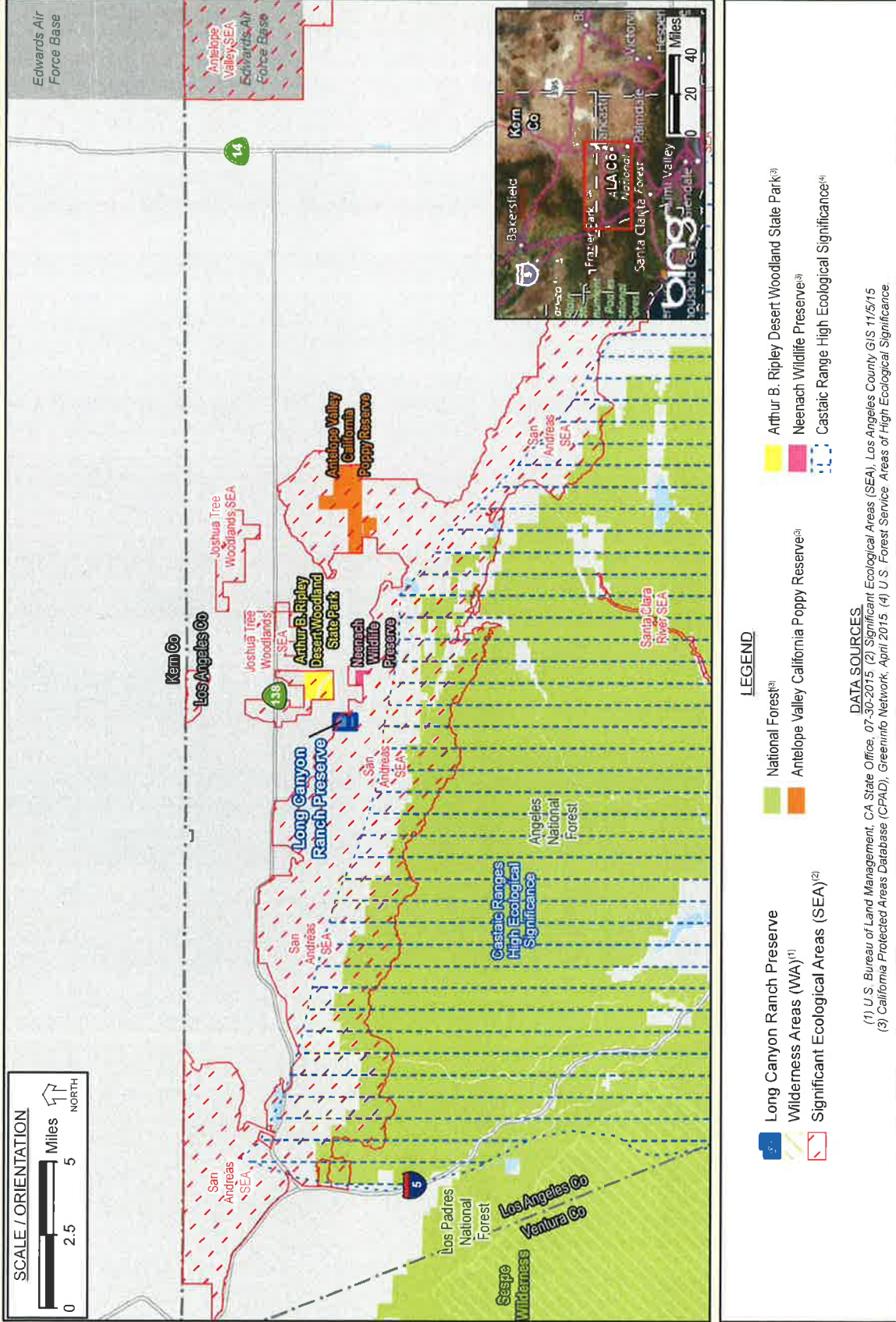


Figure 5 - Regional Conservation Analysis - Long Canyon Ranch Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

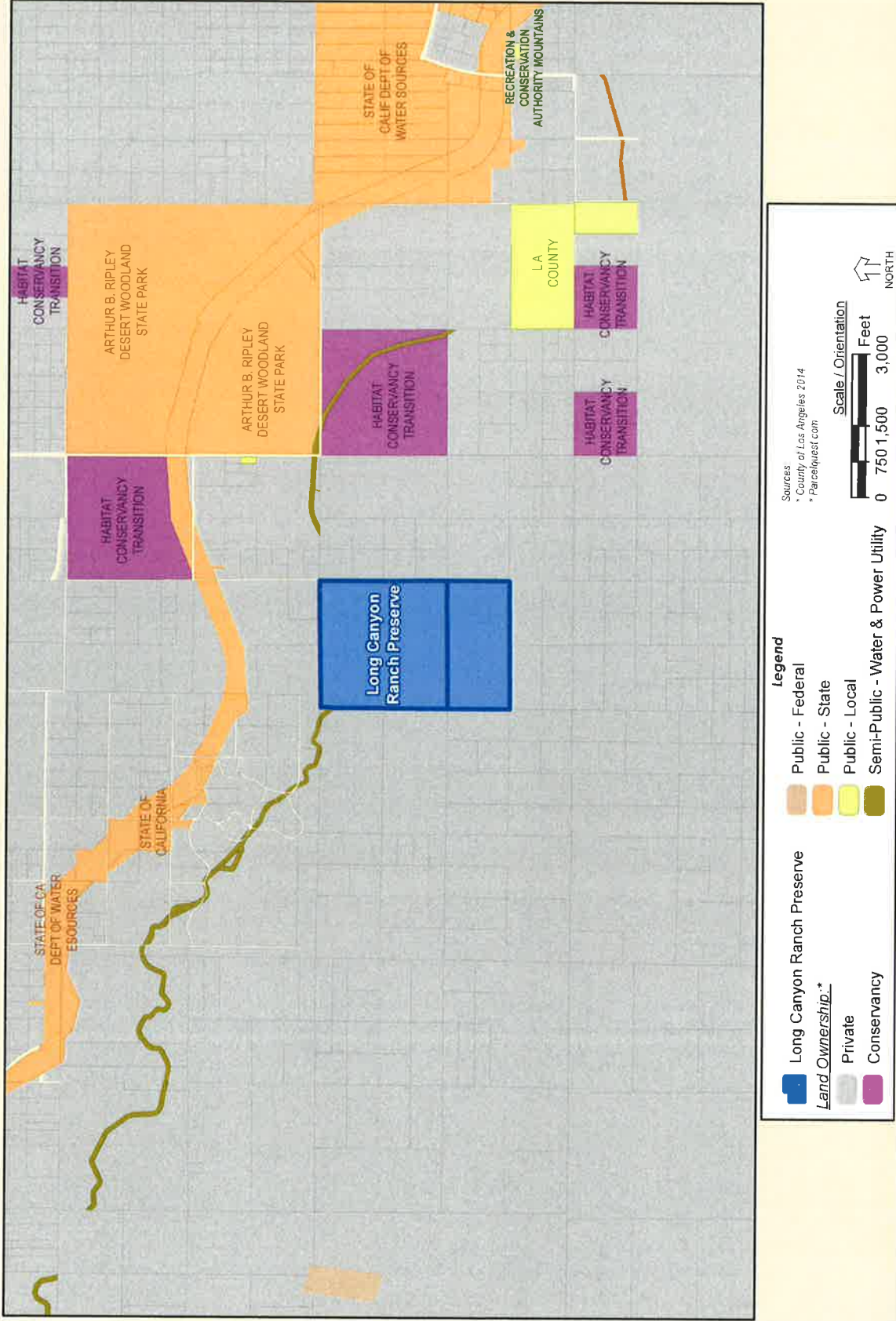


Figure 6 - Adjacent Conserved Lands - Long Canyon Ranch Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

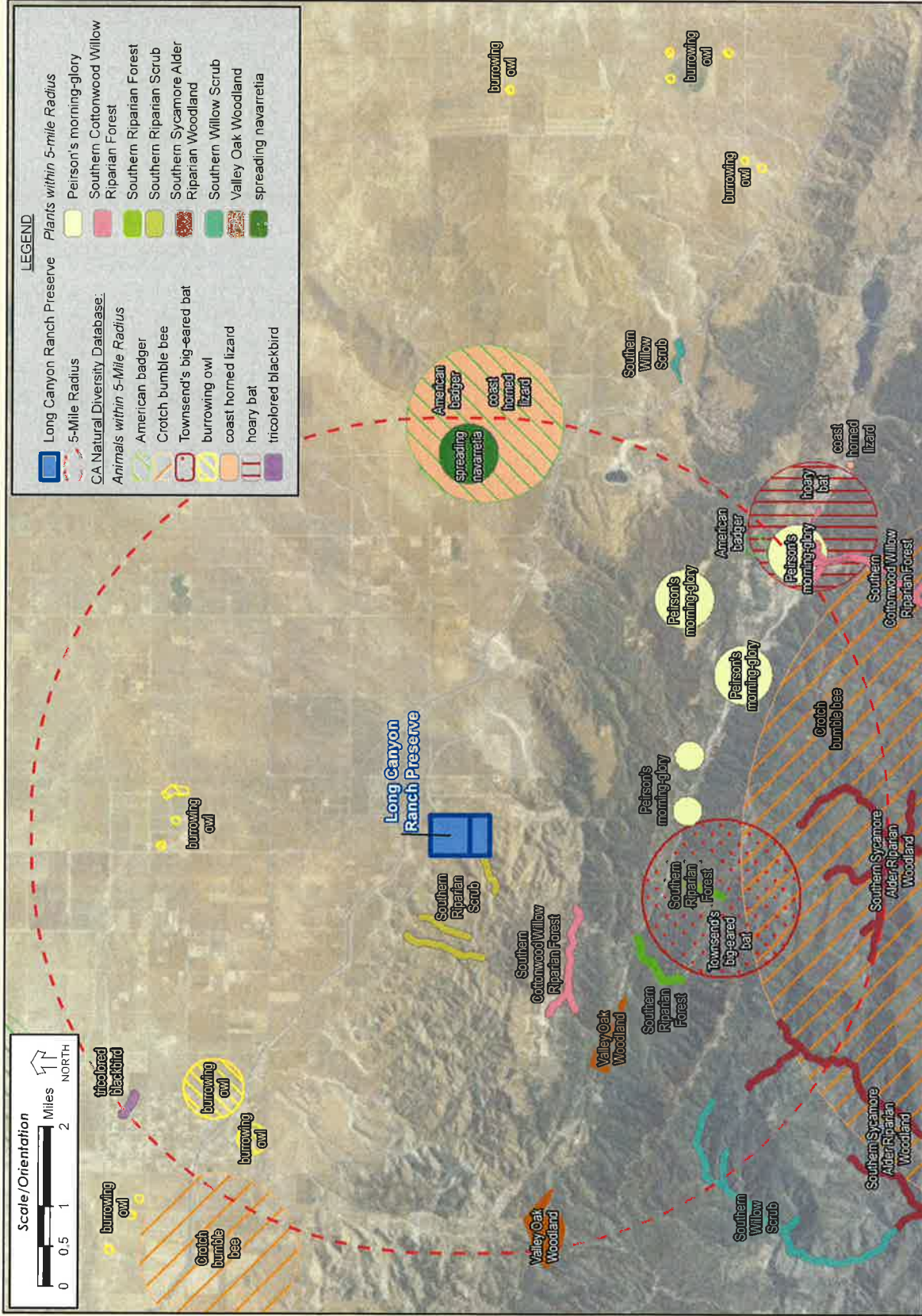


Figure 7 - CNDDDB Occurrences - Long Canyon Ranch Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

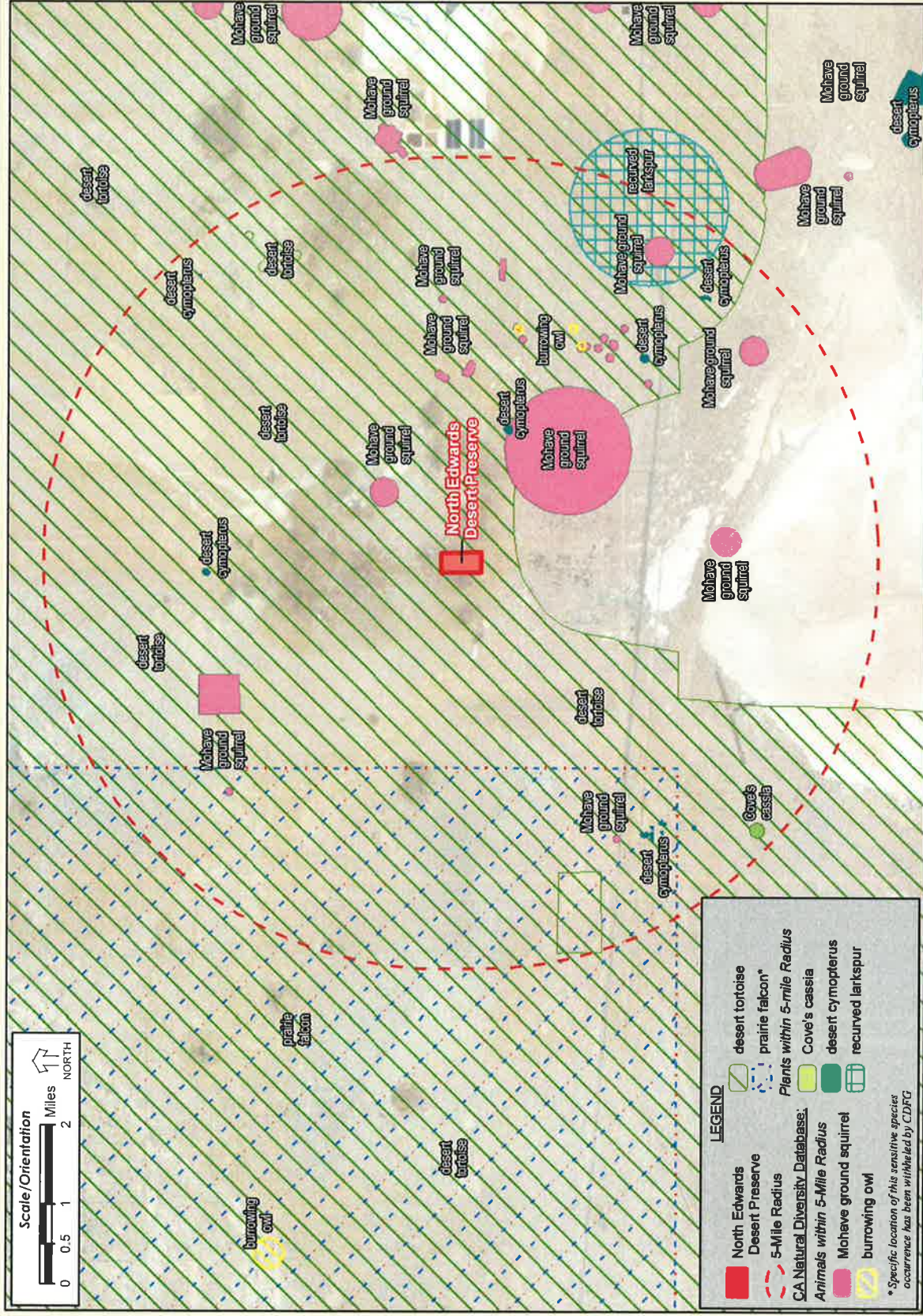
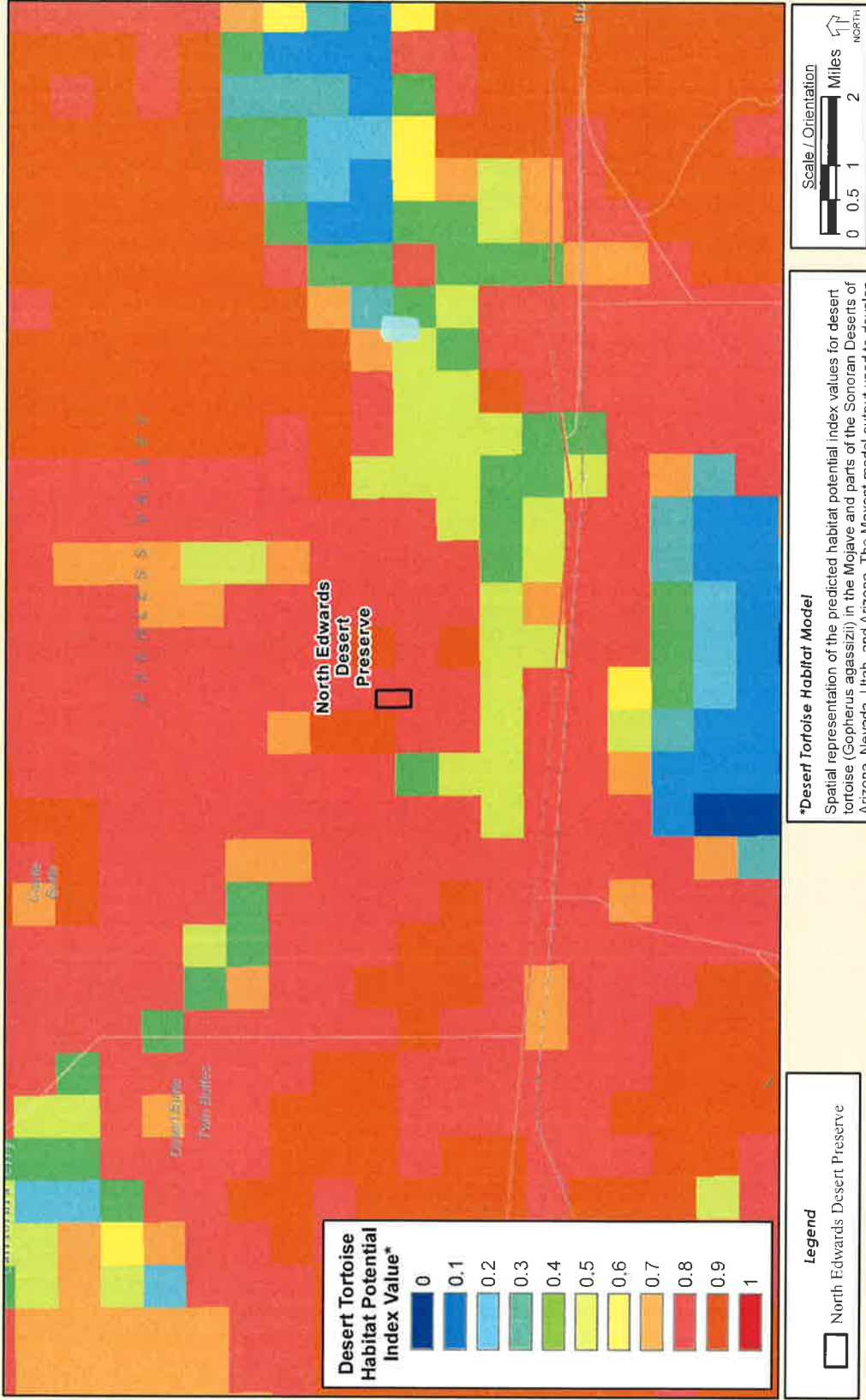


Figure 8 - CNDDDB Occurrences - North Edward Desert Preserve Long Canyon Ranch Preserve and North Edward Desert Preserve Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve



***Desert Tortoise Habitat Model**
 Spatial representation of the predicted habitat potential index values for desert tortoise (*Gopherus agassizii*) in the Mojave and parts of the Sonoran Deserts of Arizona, Nevada, Utah, and Arizona. The Maxent model output used to develop this figure available as an ESRI ASCII GRID file at <http://pubs.usgs.gov/of/2009/1102/>.
 Model originally presented in USGS' Modeling Habitat of the Desert Tortoise (*Gopherus agassizii*) in the Mojave and Parts of the Sonoran Deserts of California, Nevada, Utah, and Arizona. Open-File Report 2009-1102.

Figure 9 - USGS Desert Tortoise Model - North Edwards Desert Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016



Long Canyon Ranch Preserve and North Edward Desert Preserve

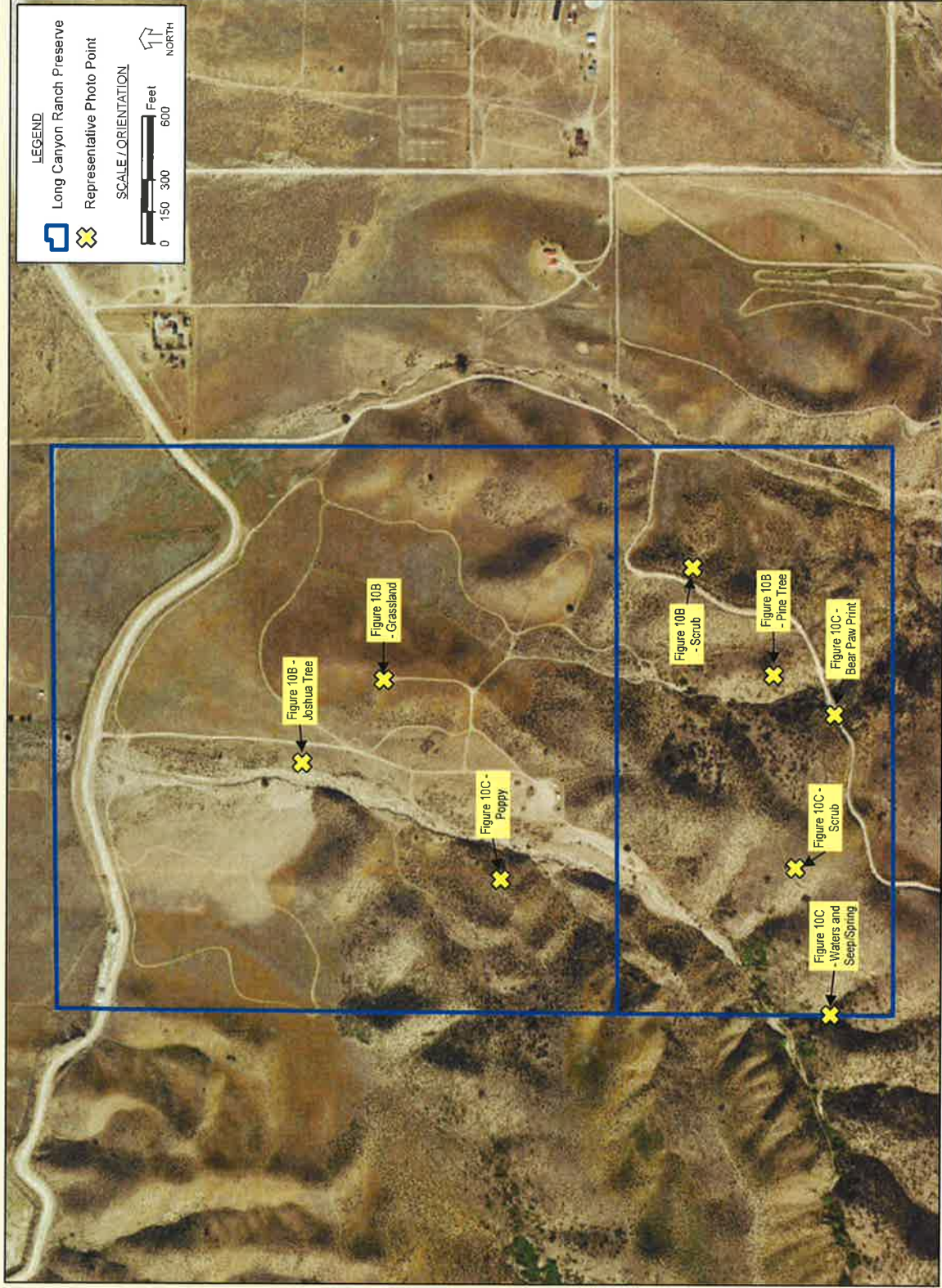


Figure 10a - Representative Photo Points Map - Long Canyon Ranch Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve



Joshua Tree



Pine Tree



Grassland



Scrub

Figure 10b - Representative Photo - Long Canyon Ranch Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve



Scrub



Waters and Seep/Spring



Poppy



Bear Paw Print

Figure 10c - Representative Photos - Long Canyon Ranch Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

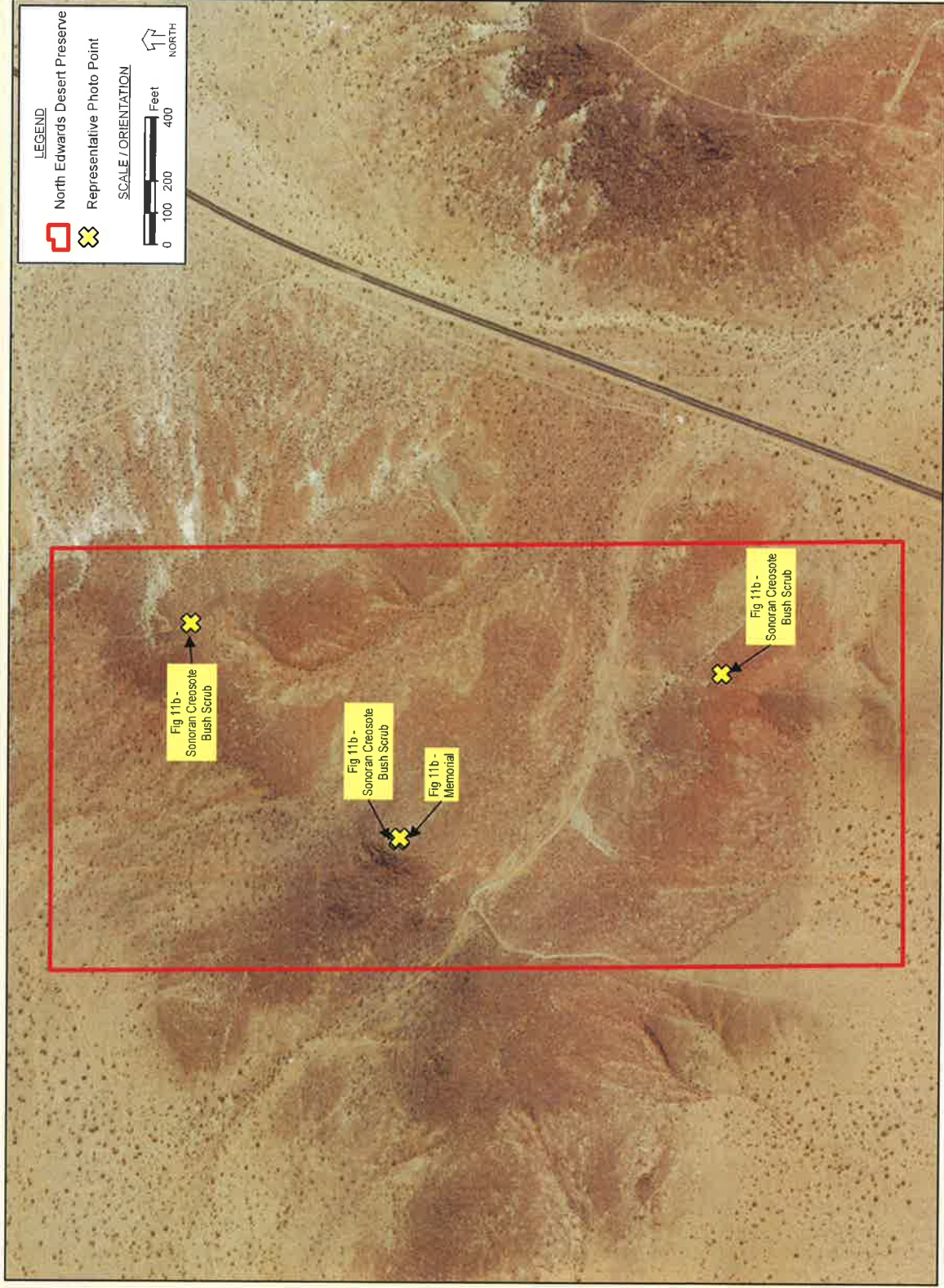


Figure 11a - Representative Photo Points Map - North Edwards Desert Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve



Sonoran Creosote Bush Scrub



Sonoran Creosote Bush Scrub



Sonoran Creosote Bush Scrub



Memorial

Figure 11b - Representative Photos - North Edwards Desert Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

**MITIGATION VALUES PURCHASE AND SALE AGREEMENT
(Long Canyon Ranch Preserve)**

This Mitigation Values Purchase and Sale Agreement (“**Agreement**”), dated for reference purposes only as May __, 2016, is entered into by and between **WCP INVESTMENTS, LLC**, a Delaware limited liability company (“**Wildlands**”), and the **CITY OF LANCASTER**, a municipal corporation (“**City**”). Wildlands and City are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties.**”

Recitals

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

B. Wildlands has the contractual right to acquire certain real property, consisting of approximately 241 acres, and commonly known as Los Angeles County Assessor Parcel Numbers 3240-001-008 and 3240-001-009 (the “**Mitigation Site**”). The Mitigation Site is suitable habitat for desert tortoise and Mojave ground squirrel mitigation (“**Mojave Desert Habitat**”). The location of the Mitigation Site is shown on the site plan attached hereto as Exhibit A and incorporated herein by this reference.

C. City desires to purchase 236.91 Mojave Desert Habitat mitigation acre values (“**Mitigation Values**”) associated with a conservation easement affecting the Mitigation Site.

D. The purpose of this Agreement is to provide for the purchase and sale of the Mitigation Values.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants contained herein, the Parties agree as follows:

Agreement

1. Effective Date. For purposes of this Agreement, the date on which the last Party executes this Agreement and delivers it to the other Party shall be referred to as the “**Effective Date.**”

2. Purchase and Sale of Mitigation Values. Pursuant to the terms and conditions of this Agreement, Wildlands agrees to sell to City and set aside for the exclusive use of City, and City agrees to purchase from Wildlands, the following-described Mitigation Values:

<u>Mitigation Site</u>	<u>Habitat Type</u>	<u>Acres</u>	<u>Price Per Mitigation Value Acre</u>	<u>Total Cost</u>
Los Angeles County APN Nos. 3240-001-008 and 3240-001-009	Mojave Desert Habitat	236.91	\$4,900.00	\$1,160,859.00

3. Purchase Price. The purchase price (“**Purchase Price**”) for the Mitigation Values shall be One Million One Hundred Sixty Thousand Eight Hundred Fifty-Nine Thousand and No/100ths Dollars (\$1,160,859. 00), which was determined by multiplying the amount of the Mitigation Values by the cost per Mitigation Value in accordance with Section 2 above.

4. Payment. The Purchase Price shall be paid by City to Wildlands by June 13, 2016. If City fails to pay the Purchase Price by such date, then Wildlands shall automatically be released from its obligation to sell the Mitigation Values to City, and City’s right to purchase the Mitigation Values shall automatically terminate.

5. Closing. For purposes of this Agreement, “**Closing**” shall be defined as the date on which Wildlands delivers to City a Bill of Sale evidencing the transfer of the Mitigation Values to City. The Bill of Sale shall be in the form attached hereto as Exhibit B and incorporated herein by this reference. The Bill of Sale shall be delivered by Wildlands to City within two (2) business days after the City’s payment of the Purchase Price. The Closing shall occur by June 15, 2016 (the “**Closing Date**”).

6. Wildlands Obligations. Wildlands shall be responsible for encumbering the Mitigation Site with a conservation easement as soon as reasonably practicable after the Closing Date.

7. Limitation of City’s Rights and Obligations.

(a) Limitation of Rights to Mitigation Site. Nothing in this Agreement shall result in City having any right, title or interest in the Mitigation Site greater than that specifically granted by this Agreement. City’s obligations shall be limited to the payments expressly described in this Agreement. City shall have no obligation whatsoever by reason of the use of the Mitigation Values 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.

(b) Joint Use. Upon City’s timely delivery of the Purchase Price to Wildlands, Wildlands shall reserve the Mitigation Values for the sole use of City.

(c) Project Approvals. City shall be solely responsible to utilize the Mitigation Values. In that regard, Wildlands has made and makes no representation, warranty or guaranty that any regulatory agencies (collectively, the “**Resource Agencies**”) will accept the Mitigation Site as suitable mitigation or that the Mitigation Values will be sufficient to fully mitigate the impacts of the City.

8. Transfer of Mitigation Values. City acknowledges that Wildlands is not willing to sell Mitigation Values that could be resold in competition with the remaining Mitigation Values available for sale from the Mitigation Site. Accordingly, City shall be prohibited from transferring or assigning any Mitigation Values to a third party without the prior written consent and approval of Wildlands, which Wildlands may withhold in its sole and absolute discretion.

9. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in

accordance with the provisions of this Section, shall be addressed to the Parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending Party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile prior to 5:00 p.m. of a given Business Day (otherwise such receipt is deemed as of the following Business Day) to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending Party's machine provides written confirmation of successful delivery thereof); (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) Business Day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending Party receives a confirmation of actual delivery from the courier). The addresses of the Parties to receive notices are as follows:

To Wildlands: WCP Investments, LLC
 3855 Atherton Road
 Rocklin, California 95667
 Attention: Sherrie Aland, Corporate Counsel
 Telephone: (916) 435-3555
 Facsimile: (916) 435-3556

To City: City of Lancaster
 44933 Fern Avenue
 Lancaster, California 93534
 Attention: Brian Ludicke, Planning Director
 Telephone: (661) 723-6000
 Facsimile: (661) 723-5926

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.

10. Miscellaneous Provisions.

(a) 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 City upon termination of this Agreement all documents, drawings, photographs and other written or graphic material, however produced, received from City and used by Wildlands in the performance of its services hereunder.

(b) Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

(c) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving Party, which shall be extended by a period of time equal to the period of the delay.

(d) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties hereto.

(e) 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. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the Parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

(f) Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the Parties hereto and lawful assignees.

(g) Time of Essence. Wildlands and City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision under this Agreement and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non curable (but waivable) default under this Agreement by the Party so failing to perform.

(h) Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties to create the relationship of principal and agent, a partnership, joint venture or any other association between City and Wildlands, except as provided in this Agreement.

(i) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

(j) Recitals/Exhibits. The Recitals set forth in this Agreement and the exhibits referenced herein are incorporated herein by this reference.

(k) 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 Placer, California.

(l) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(m) Representation by Counsel. Notwithstanding any rule or maxim of construction to the contrary, any ambiguity or uncertainty shall not be construed against either City or Wildlands based upon authorship of any of the provisions hereof. City and Wildlands each hereby warrant, represent and certify to the other as follows: (i) that the contents of this Agreement have been completely and carefully read by the representing Party and counsel for the representing Party; (ii) that the representing Party has been separately represented by counsel and the representing Party is satisfied with such representation; (iii) that the representing Party's counsel has advised the representing Party of, and the representing Party fully understands, the legal consequences of this Agreement; and (iv) that no other person (whether a party to this Agreement or not) has made any threats, promises or representations of any kind whatsoever to induce the execution hereof, other than the performance of the terms and provisions hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates set forth below.

WCP INVESTMENTS, LLC, a Delaware limited liability company

CITY OF LANCASTER, a charter city and a California municipal corporation

By: _____

By: _____

Its: _____

Mark V. Bozigian
City Manager

Date: _____

Date: _____

ATTEST:

B, CMC
City Clerk

APPROVED AS TO FORM:

Allison E. Burns, Esq.
City Attorney

EXHIBIT A
Map of Mitigation Site

Long Canyon Ranch Preserve and North Edward Desert Preserve

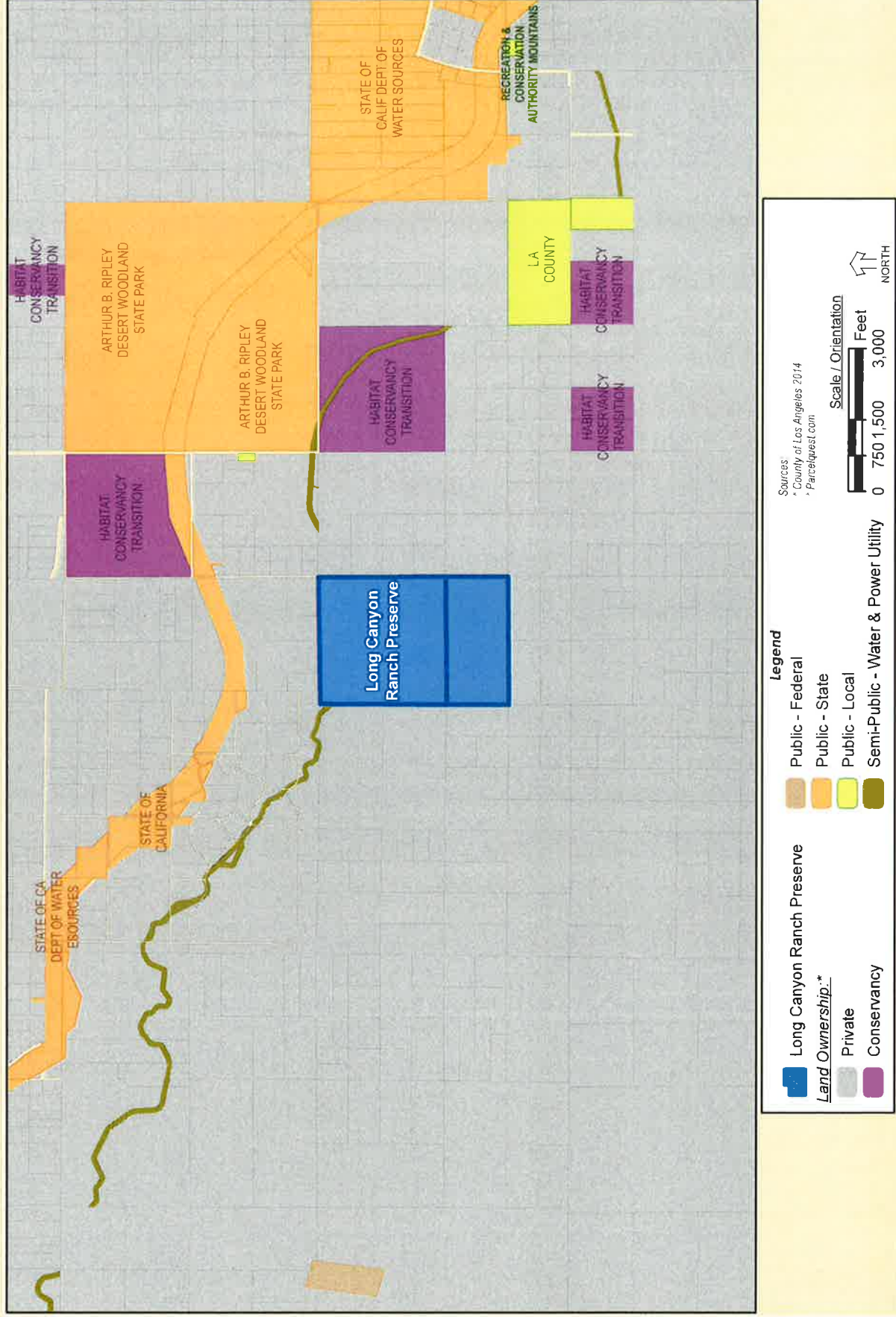


Figure 6 - Adjacent Conserved Lands - Long Canyon Ranch Preserve
 Long Canyon Ranch Preserve and North Edward Desert Preserve
 Conservation Analysis - January 2016

Long Canyon Ranch Preserve and North Edward Desert Preserve

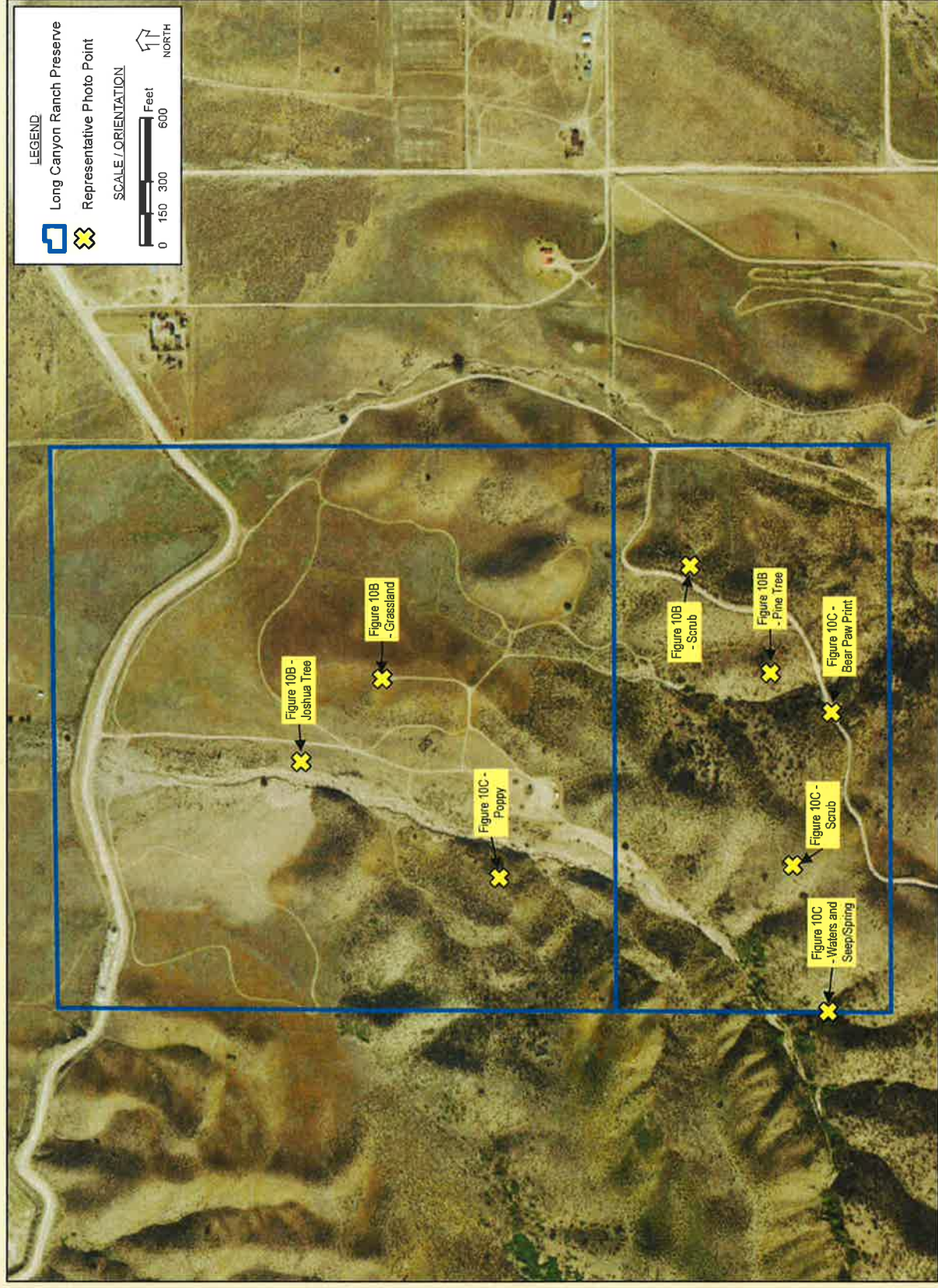


Figure 10a - Representative Photo Points Map - Long Canyon Ranch Preserve
Long Canyon Ranch Preserve and North Edward Desert Preserve
Conservation Analysis - January 2016

EXHIBIT B

BILL OF SALE

In consideration of One Million One Hundred Sixty Thousand Eight Hundred Fifty-Nine Thousand and No/100ths Dollars (\$1,160,859. 00), **WCP INVESTMENTS, LLC**, a Delaware limited liability company ("**Wildlands**"), does hereby bargain, sell and transfer to **CITY OF LANCASTER**, a municipal corporation ("City"), the following Mitigation Values from Los Angeles County Assessor Parcel Numbers 3240-001-008 and 3240-001-009 (the "**Mitigation Values**"):

<u>Mitigation Site</u>	<u>Habitat Type</u>	<u>Acres</u>	<u>Price Per Acre/Credit</u>	<u>Total Cost</u>
Los Angeles County APN Nos. 3240-001-008 and 3240-001-009	Mojave Desert Habitat	236.91	\$4,900.00	\$1,160,859.00

Wildlands represents and warrants that it has good title to the Mitigation Values, has good right to sell the same, and they are free and clear of all claims, liens, or encumbrances.

Wildlands covenants and agrees with City to warrant and defend the sale of the Mitigation Values against all and every person and persons whomsoever lawfully claiming or to claim the same.

WCP INVESTMENTS, LLC,
a Delaware limited liability company

By: _____

Its: _____

Date: _____

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

Wildlife Heritage Foundation
563 Second Street, Suite 120
Lincoln, CA 95648
Attn: Executive Director

Space Above Line for Recorder's Use Only

**CONSERVATION EASEMENT DEED
Long Canyon Ranch Preserve**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by WCP Investments,, LLC ("Grantor"), in favor of the Wildlife Heritage Foundation ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 236.91 acres, located in the County of Los Angeles, State of California, and designated Assessor's Parcel Number (s) 3240-001-008 & 3240-001-009 (the " Property"). The Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Property will provide high quality natural open space habitat including waters of the state. These habitat values comprise the "Conservation Values" of the Property.

C. The California Department of Fish and Wildlife ("CDFW") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Wildlife Code Section 1802. CDFW is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as

defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

E. This Conservation Easement is granted pursuant to Chapter 15.66 of City of Lancaster Municipal Code (“Municipal Code”) which establishes the adoption, collection, administration, and use of a biological impact fee to mitigate the long-term incremental impact of additional new development by acquiring, or paying a third party for the acquisition of, land for the permanent conservation of habitat or species.

F. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in its natural condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native habitats.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Property.

(b) To enter the Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property

adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

- (a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement except for invasive species management .
- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except for management, maintenance, and monitoring purposes.
- (c) Agricultural activity of any kind except grazing for vegetation management.
- (d) Commercial, industrial, residential, or institutional uses.
- (e) Any legal or de facto division, subdivision or partitioning of the Property.
- (f) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind except for boundary signage.
- (g) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
- (h) Planting, introduction or dispersal of non-native or exotic plant or animal species.
- (i) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material.
- (j) Removing, destroying, harvesting or cutting of trees, timber, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except for invasive species management.
- (k) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.
- (l) Engaging in any use or activity that may violate, or may fail to comply

with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to Grantor on an annual basis.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. Notwithstanding the foregoing Grantor shall have the right to repair and replace structures, fences, corrals, roads or ditches to the extent they exist as of the date of this Conservation Easement or are reasonably necessary for habitat purposes.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices

of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

8. Access.

This Conservation Easement does not convey a general right of access to the public. If ownership of the Property is transferred to a public entity, public access shall be granted only for dispersed low impact activities that are consistent with the terms of the Conservation Easement and consistent with the purpose of the transfer.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of

any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

Grantee shall give Grantor at least sixty (60) days prior written notice of any proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to Grantor. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor and Grantee otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: Wildlands
3855 Atherton Road
Rocklin, CA 95765
Attn: General Counsel

To Grantee: Wildlife Heritage Foundation
563 Second Street
Suite 120
Lincoln, CA 95648
Attn: Director

or to such other address a party shall designate by written notice to Grantor or Grantee. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document including its exhibits sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the

Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party.

(3) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(4) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant

to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(5) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Property.

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any air, or water right or any water associated with the Property, without first obtaining the written consent of Grantee. Such consent may be withheld if Grantee determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 10.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the CDFW (the "Third-Party Beneficiary") is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor's obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR

WCP Investments, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

GRANTEE

Wildlife Heritage Foundation

BY: _____

NAME: _____

TITLE: _____

DATE: _____