

CONSENT CALENDAR

SUBJECT: JAYE STREET BRIDGE WIDENING PROJECT – VALLEY ELDERBERRY LONGHORN BEETLE MITIGATION

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: Staff has been working on plans for a number of years now to facilitate the widening of the Jaye Street Bridge over the Tule River. The project is funded through Federal Highway Administration (FHWA) bridge rehabilitation funds and a local match. The widening will expand the capacity of the bridge from two (2) to four (4) lanes matching roadway widths both north and south of the existing two (2) lane bridge. The City Council approved the mitigated negative declaration for the project in August 2012, at which time it was disclosed that the project will have an impact on the federally listed threatened species the Valley Elderberry Longhorn Beetle (VELB). The limits of the project construction area have been modified to reduce the impacts to the greatest extent possible; however, there is a remaining impact.

Five elderberry shrubs with one or more stems greater than one inch in diameter are located within the project footprint and would need to be removed. In addition, standard compensation plantings require that 111 elderberry seedlings/cuttings and 209 container stocks of associated native plants be planted in a conservation area. Since the City's mitigation site is near capacity and does not have remaining capacity to accommodate the requirements of the project mitigation, staff has worked with Caltrans and the United States Fish and Wildlife Service (USFWS) to identify alternative mitigation. It is anticipated the USFWS will approve the City to purchase credits in a VELB mitigation bank in the Sacramento area at the River Ranch VELB Conservation Bank (Bank). The Bank is owned and operated by Wildlands, Inc. (Wildlands), and was approved by the USFWS. Under this scenario, the City would purchase VELB habitat conservation credits at the Bank and would not have to construct an additional mitigation site beyond that already constructed along State Route 190. This site is virtually at capacity and cannot accommodate the mitigation requirements of the proposed bridge project.

Based on the compensation numbers above, the City would be required to purchase 42 credits in a Conservation Bank to mitigate the impacts to VELB. Wildlands has a standard purchase price per credit and has offered to sell the City 42 credits for a price of \$168,000 (\$4,000 per credit) and an additional \$10,750 to transplant the necessary shrubs to the mitigation bank. Staff is awaiting the final approval of the number of required credits from Caltrans and the USFWS. However, significant numbers of credits have been purchased by other governmental agencies over the past year reducing the number of available credits

DD MB APPROPRIATED/FUNDED MB CM J

ITEM NO. 9

in the only available bank. As such, staff is requesting approval to enter into an agreement with Wildlands to purchase approximately 42 credits and to transplant the required shrubs. Since the final approval has not been received from Caltrans and USFWS, staff is recommending that Council authorize staff to negotiate the terms within 10% of the above numbers and authorize the Community Development Director to sign the Agreement. The terms will only change based on changed mitigation requirements of USFWS. The funding source for the purchase of mitigation measures to accommodate the Jaye Street Bridge widening project is through the Jaye – Tule River Widening.

RECOMMENDATION: That the City Council:

1. Authorize staff to finalize the purchase agreement based on terms outlined above to provide a mitigation solution for Jaye Street Bridge Widening Project; and
2. Authorize the Community Development Director to sign all documents.

Attachments:

1. Draft Purchase Agreement
2. Locator map of elderberry shrubs

**AGREEMENT FOR SALE OF CONSERVATION CREDITS
RIVER RANCH VELB CONSERVATION BANK
SERVICE File No. _____**

This Agreement is entered into this _____ day of _____, 2013, by and between SACRAMENTO RIVER RANCH, LLC (Bank Owner) and the CITY OF PORTERVILLE (Project Applicant), jointly referred to as the "Parties," as follows:

RECITALS

A. The Bank Owner has developed the River Ranch VELB Conservation Bank (Bank) located in Yolo County, California; and

B. The Bank was approved by the United States Fish and Wildlife Service (Service) on June 9, 2005, and is currently in good standing with this agency; and

C. The Bank Owner has received approval from the Service to offer valley elderberry longhorn beetle conservation credits (Conservation Credits) for sale as compensation for the loss of the federally listed valley elderberry longhorn beetle's habitat as specified in the Conservation Bank Agreement through the River Ranch VELB Conservation Bank Agreement (Bank Agreement); and

D. Project Applicant is seeking to implement the project described on Exhibit "A" attached hereto (Project), which would unavoidably and adversely impact listed Valley Elderberry Longhorn Beetle habitat, and seeks to compensate for the loss of Valley Elderberry Longhorn Beetle habitat by purchasing Conservation Credits from Bank Owner; and

E. Project Applicant has been authorized by the Service under File No. _____, to purchase from the Bank Owner 42 Conservation Credits upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank Owner and Bank Owner desires to sell to Project Applicant 42 Conservation Credits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank Owner hereby agrees to sell to Project Applicant and Project Applicant hereby purchases from Bank Owner 42 Conservation Credits for the purchase price of \$168,000 (Purchase Price), in accordance with the terms hereof. The Purchase Price for the Conservation Credits shall be paid by wire transfer of funds or by check payable to "Sacramento River Ranch, LLC." Upon receipt of the Purchase Price, Bank Owner will deliver to Project Applicant an executed Bill of Sale in the form attached hereto as Exhibit "B".

2. The sale and transfer of the Conservation Credits described herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the

Conservation Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Conservation Credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank Owner shall monitor and make reports to the appropriate agency or agencies on the status of any Conservation Credits sold to Project Applicant. Bank Owner shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Conservation Credits by all state or federal jurisdictional agencies.

4. The Conservation Credits sold and transferred to Project Applicant shall be nontransferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant must deliver the Purchase Price to Bank Owner within 30 days of the date of this Agreement. After the 30 day period this Agreement be considered null and void and Bank Owner shall have no further obligations hereunder.

6. Upon purchase of the Conservation Credits specified above, Bank Owner shall complete the payment receipt form attached hereto as Exhibit "C", and shall submit the completed payment receipt to the Service.

7. In addition to the purchase of the Conservation Credits, Bank Owner shall perform the required transplantation of the five elderberry shrubs for an additional fee of \$10,750.

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

BANK OWNER:

PROJECT APPLICANT:

SACRAMENTO RIVER RANCH, LLC.

CITY OF PORTERVILLE

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPROVED

SERVICE:

This Agreement partially fulfills the conservation measure requiring the purchase of credits sufficient for ___ elderberry plantings and ___ associated native plantings on no less than 1.74 acres as specified under the Service Biological Opinion File No. _____ dated _____.

UNITED STATES DEPARTMENT OF THE INTERIOR FISH AND WILDLIFE SERVICE

By: _____

Title: _____

Dated: _____

DRAFT

Exhibit "A"

**DESCRIPTION OF PROJECT
TO BE MITIGATED**

The City of Porterville has proposed to widen the existing Jaye Street Bridge in Porterville, California. The Jaye Street Bridge crosses the Tule River and is located on Jaye Street between Date Street and Springville Street. The bridge will be widened from two lanes to four lanes, and the paved approaches to the bridge will be reconstructed.

DRAFT

Exhibit "B"

BILL OF SALE Contract # RRVCB-13-_____

Service File # _____

In consideration of \$168,000.00, receipt of which is hereby acknowledged, SACRAMENTO RIVER RANCH, LLC (Bank Owner) does hereby bargain, sell and transfer to the CITY OF PORTERVILLE 42 Conservation Credits in the River Ranch VELB Conservation Bank in Yolo County, California, developed, and approved by the U. S. Fish and Wildlife Service.

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

Bank Owner covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

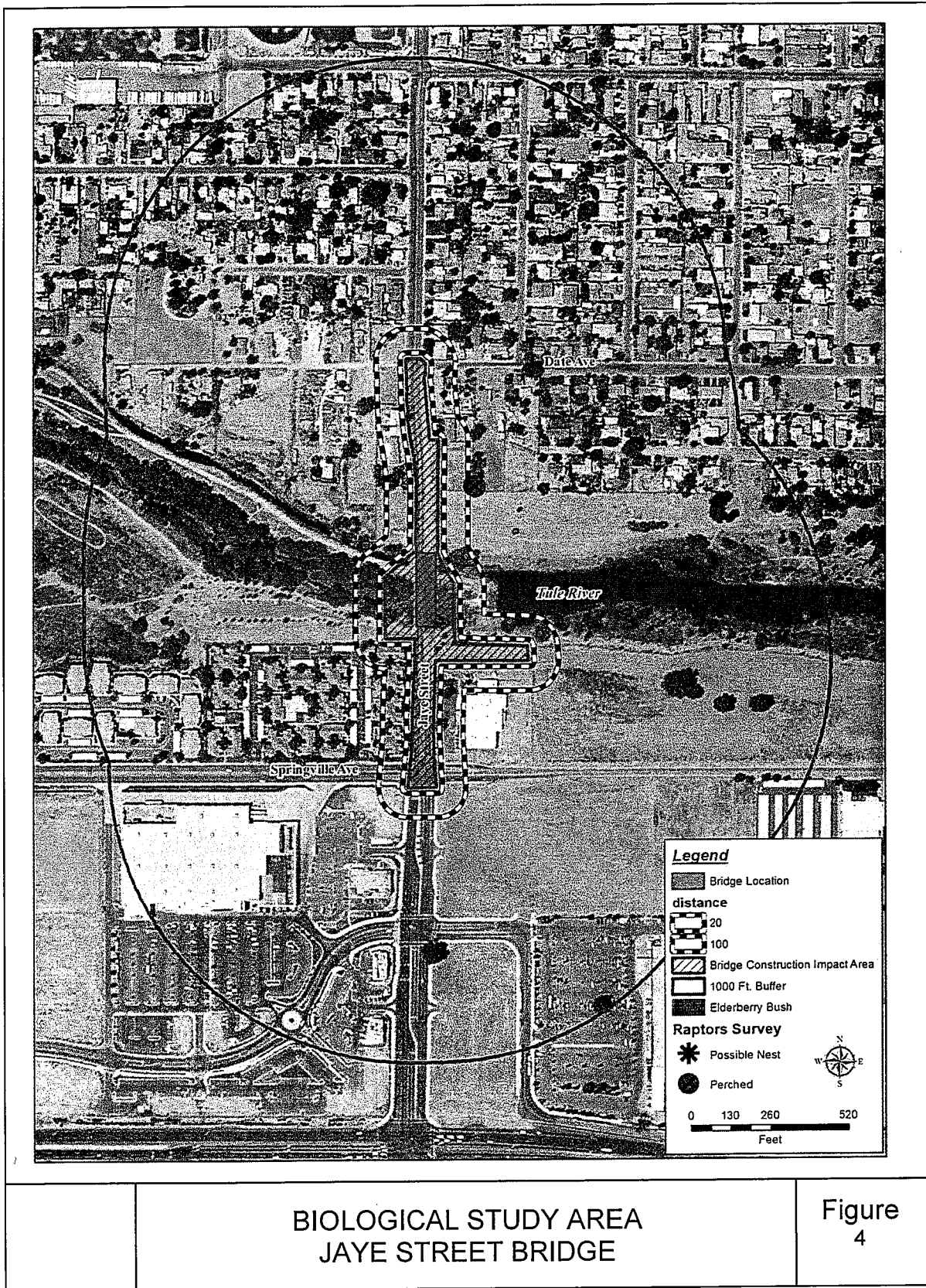
DATED: _____

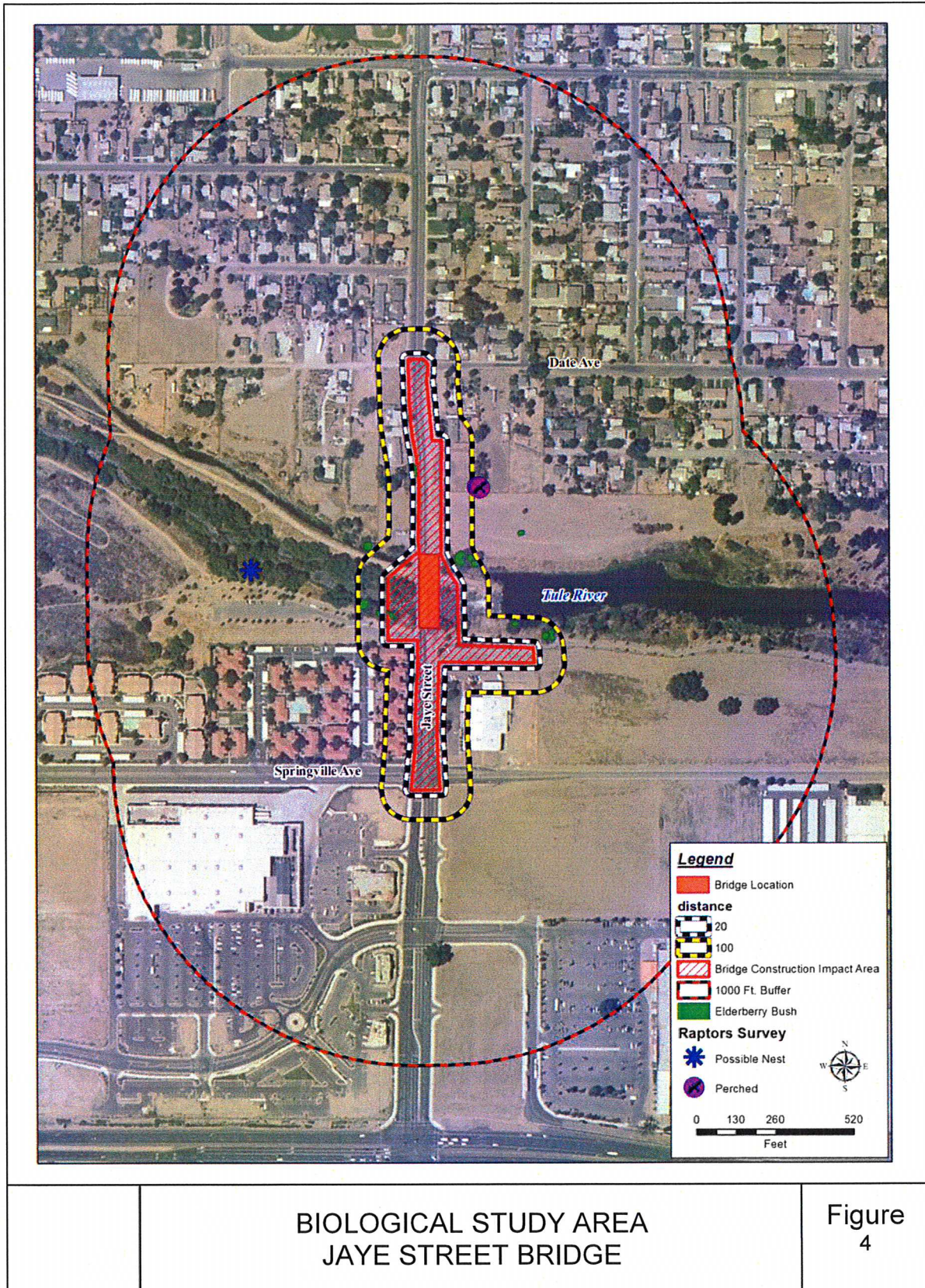
SACRAMENTO RIVER RANCH, LLC

By: _____

Title: _____

Dated: _____





BIOLOGICAL STUDY AREA
JAYE STREET BRIDGE

Figure
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