

Mitigation Land Dedication Checklist

Usual conditions

The Natomas Basin Conservancy

Version: October 6, 2021

All items in italics are checklist items the Conservancy must initiate and complete rather than the mitigation land dedication proponent.

Introduction. This Mitigation Land Dedication Checklist is intended to serve as a checklist of items the Conservancy requires in accepting mitigation land pursuant to either the Natomas Basin Habitat Conservation Plan (NBHCP) or the Metro Air Park Habitat Conservation Plan (MAPHCP).¹ This list is intended to be as comprehensive as possible based on the Conservancy's acquisition experience to date.²

Conservancy staff and legal counsel should be consulted, preferably at an early stage, on each proposed dedication of land for mitigation purposes. Following the steps in this checklist guideline and communicating early with Conservancy staff on mitigation land dedication proposals provides more certainty that a developer's mitigation obligation has been satisfied.³ It may also result in acquisition of property at lower cost, since HCP fee payers are generally more skillful at land acquisition.

General statement on property attributes and rights. In accepting mitigation land, the Conservancy must make sure that the property it acquires meets the requirements of the HCP. Without this, the land has little value to the Conservancy. Moreover, when water rights, water control structures, emission reduction credits, eligibility for participation in federal farm programs, development rights, mineral rights and other rights are stripped from the property being conveyed, the value of the property to the Conservancy is dramatically reduced, as would be the case for any other landowner. **It is essential that those wishing to convey mitigation land to the Conservancy be aware that these property rights must remain in the bundle of property rights that are customary in farmland acquisition.**⁴ Existing Williamson Act designations are generally acceptable to the Conservancy.

¹ Other entities, such as the City of Sacramento, the County of Sutter, the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service may have additional requirements.

² While the checklist attempts to be as comprehensive as possible, it is not exhaustive. Some proposed mitigation land dedications may require other actions or conditions that cannot be anticipated in a generalized guidelines statement.

³ The mitigation land dedication process serves the purpose of satisfying the Land Acquisition portion of the HCP fee. All other portions of the fee must be paid before mitigation land dedication can be finally accepted.

⁴ The Conservancy is generally unable to meet the requirements of the HCP through conservation easements.

Land dedication checklist

•Documentation

1. The Conservancy must receive a current preliminary title report early in the mitigation land dedication process so basic due diligence can be completed in a timely manner. Copies of all title exceptions (or electronic links to the recorded documents) must be included.
2. A clean Phase One Environmental Report must be provided, and must be completed by a consultant of the Conservancy's choosing. The Phase One report must conform to United States Environmental Protection Agency (U.S. EPA) "All Appropriate Inquiries" standards placed into effect November 1, 2006.
3. The Conservancy requires American Land Title Agency (ALTA) extended coverage title insurance on the subject property. The mitigation land dedication proponent must insure title to the proposed mitigation land with a title insurance policy, and Conservancy must be named as insured on that policy. The issuance will be made by an insurance carrier acceptable to the Conservancy. The amount of the policy should be the then-current per acre land acquisition amount (as approved by the Conservancy's Board of Directors for the year that the property is dedicated to the Conservancy for mitigation purposes) times the number of acres tendered for mitigation or the land purchase price, whichever is greater. Exceptions can be made to the insured amount only with written approval from the Conservancy.
4. Surveyed property boundaries must be staked (lathe stakes) and corners marked ("t" posts) according to a completed ALTA survey. ALTA/NSPS Survey shall include, but not be limited to the following ALTA Table A items (1, 2, 3, 4, 6ab, 7ab, 8, 9, 10ab, 11, 12, 13, 14, 15, 16, 17.) If property requires destroyed or lost property monuments to be replaced a record of survey may be required to be filed with County Surveyor per State law. The Conservancy will be provided two (2) copies of the print version of the survey and a copy submitted electronically in a form acceptable to the Conservancy (e.g., Adobe Acrobat PDF)
5. Prior to the Conservancy's efforts to seek acceptance approvals (see below) and as soon as possible in the mitigation land dedication process, the Conservancy and its legal counsel must be given an opportunity to review and approve the draft transfer instrument (e.g., "acceptance agreement") that will convey the property to the Conservancy.

•Approvals

6. *Land dedication acceptance approval must be obtained. This approval must be either from the NBHCP Technical Advisory Committee by a unanimous vote or in written form from the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.*
7. *Approval by the Conservancy's Board of Directors must be obtained.*
8. The non-Land Acquisition portion of the HCP fee must be paid contemporaneously with the land dedication. The Conservancy must receive that portion of the Land Acquisition fund that includes contingencies for legal and other matters.

9. *Approval of Conservancy legal counsel as to form must also be obtained.*
10. Any approvals that must be acquired from land use agencies for lot line adjustments or parcel splits (and similar approvals) must be done in such a manner that the Conservancy's parcel(s) maintain the full bundle of property rights first proposed.
11. If the proposed land to be dedicated lies within 800 feet of land designated for urban use by a land use agency, then the property may not be used for NBHCP mitigation. Certain exceptions may be granted, however, these exceptions are often difficult to obtain.
12. *Property proposed for dedication must not conflict with the Sacramento International Airport's Comprehensive Airport Land Use Compatibility Plan ("Compatibility Plan"). Before The Conservancy can accept a property for land dedication under the NBHCP or MAPHCP, the Conservancy must be satisfied that the land proposed for dedication meets the requirements of the Compatibility Plan and that the Airport and the Sacramento Area Council of Governments (SACOG) officials have no objection to its use as mitigation land pursuant to the NBHCP or MAPHCP.*

•Process and facilitation

13. Conservancy shall choose and/or approve the escrow agent and title officer.
14. *The Conservancy will have completed a Pre-Acquisition Biological Inventory (PABI) as required by the HCP.*
15. *Conservancy staff will ensure that all "land acquisition" terms in the 2003 NBHCP or MAPHCP are or will be met by Closing.*
16. Property seller must provide the Conservancy with a right of access to the property for the Phase One environmental report consultants, surveyors, Conservancy biologists preparing the PABI, and any others necessary to complete the transaction.

•Farm and water

17. Assurance must be obtained from the Natomas Central Mutual Water Company that the property to be dedicated is included in the NCMWC service territory and that stock representing the approximate number of acres in the land to be dedicated are transferable. If the property is not in the NCMWC service territory, then the project proponent/fee payer must work with the Conservancy staff to demonstrate that the "irrigability" requirements of the HCP can be met. The Conservancy may require that these requirements (that is, alternatives to inclusion in the NCMWC) are assured or guaranteed by way of a letter of credit, a reserve in escrow or some other mutually satisfactory financial assurance.
18. The property must be free of groundwater agency agreements, or similar such agreements, that could diminish the subject property's value as mitigation land for the NBHCP or MAPHCP.
19. The Conservancy expects that the rice base and other crop base on the property to be dedicated will approximate the total number of acres being conveyed, and that the seller will cooperate in conveying that rice base and other crop base to the Conservancy.

20. Mineral rights reservations are not acceptable unless they are, (i) pre-existing reservations of rights for a period dating back to the seller's acquisition of the property or prior to that if a more recent transaction removed such rights, and (ii) there are no express or implied rights of entry within 100 feet of the surface measured vertically from the surface. Easements for oil and gas drilling pads or pipelines are not acceptable. In no case can a property be accepted where a reservation of surface mining rights exists, including, but not limited to, surface mining rights for sand, gravel, and soil mining.
21. Emission Reduction Credits (ERCs) must be available on the property. Open field burning is an essential part of habitat lands management, and precluding this makes the property less valuable and more expensive to manage for the Conservancy. If ERCs have been previously sold off, then the Conservancy must disclose this to federal and state Wildlife Agencies, so that it will be considered when acceptance approval is requested.
22. The Conservancy wishes to acquire lands that are contiguous to existing preserves or which in some other way advance the contiguity of Conservancy preserves in order to comply with the HCP's.
23. Any agricultural or similar leases must be terminated so that the Conservancy inherits no obligation from any existing lease or leases. There must be assurances that the Conservancy will not be responsible for any obligations of any leases with tenants. Further, if the land is in rice production, then the seller and/or tenant must take all commercially reasonable steps to treat the current crop's rice straw and stubble. The Conservancy prefers chopping and discing of the post-harvest rice straw and stubble, but other means may be acceptable.