TO:    Board of Supervisors  
FROM:  Steve Pedretti  
       Agency Director  
BY:    Gregg McKenzie  
       PCCP Administrator  
SUBJECT: Placer County Conservation Program (PCCP) – Big Gun Conservation Bank Credits

DATE: October 3, 2017  

ACTION REQUESTED
1. Approve and authorize the CORA Director to execute a contract with Westervelt Ecological Services, LLC in the amount of $360,000 to purchase four (4) California red-legged frog credits from the Big Gun Conservation Bank, funded by General Fund and Open Space Fund allocations in the Planning Services FY 2017-18 Final Budget.

BACKGROUND/PROPOSAL
Placer County Conservation Plan
CORA is in the process of completing the Public Review Draft PCCP, including the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP), and the County Aquatic Resources Program (CARP), in coordination with the City of Lincoln, Placer County Water Agency, and South Placer Regional Transportation Authority. The PCCP work program is presently focused on finalizing Public Review Drafts of the PCCP, CARP, and a joint EIS/EIR for release to the Federal Register and beginning public review. Staff has principally finalized negotiations of these draft program documents with the wildlife agencies California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and cooperating regulatory agencies (U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and Regional Water Quality Control Board).

Through these negotiations the County has agreed to purchase four (4) California red-legged frog credits from the Big Gun Conservation Bank (Bank) in the Michigan Bluff area east of Auburn. The Bank is occupied by the California red-legged frog (rana draytonii) and is the only site approved by the FWS in Placer County to provide compensatory mitigation for impacts to the California red-legged frog and its habitat. The California red-legged frog is designed as Threatened under the Federal Endangered Species Act and as a Species of Special Concern for the State of California.

As a PCCP Covered Species, the California red-legged frog and its habitat is anticipated to be affected through PCCP Covered Activities including ongoing maintenance and development of new water and wastewater infrastructure; new construction and maintenance of roads, bridges, and utility line crossings of wetlands and streams; pruning and removal of riparian vegetation; and, effects to water quality associated with these and other similar activities.

In accordance with the 2017 Draft PCCP Conservation Strategy, the conservation goals for California red-legged frog are to protect occupied habitat through the purchase of credits at the Bank; to provide additional, suitable habitat to facilitate the expansion of the population in the Plan Area; and, to minimize and potentially reduce invasive, non-native species that may adversely affect California red-legged frog, such as bullfrogs or non-native fish species.
The credits are being assigned to the County of Placer for implementation of the PCCP. If the PCCP were not approved or significantly delayed for any reason, the four (4) credits could be assigned, with authorization from the FWS, to other impacts resulting from the activities listed above having the potential to affect the California red-legged frog or its habitat.

The acquisition of credits in advance of the PCCP is strategic and designed to offset risks associated with limited remaining credit availability at the Bank, increasing demand for credits resulting from transportation and other infrastructure projects, and to offset the resulting price appreciation in the market.

FISCAL IMPACT
The total amount of the contract is $360,000 and will be funded from approved General Fund ($190,000) and Open Space Fund ($170,000) allocations in the Agency’s FY 2017-18 budgets. The PCCP Finance Plan includes a cost recovery fee component that will reimburse all General Fund revenues used to develop the PCCP, including the advance acquisition of the four (4) credits from the Bank.

Attachment 1: Agreement for sale of Conservation Credits – Big Gun Conservation Bank

cc: Karin Schwab, County Counsel
Donna Kirkpatrick, CDRA
James Importante, County Executive Office
ATTACHMENT 1

AGREEMENT FOR SALE OF CONSERVATION CREDITS
BIG GUN CONSERVATION BANK

This Agreement is entered into this _____ day of ______, 2017, by and between WESTERVELT ECOLOGICAL SERVICES, LLC (hereinafter referred to as “Bank Owner”) and the COUNTY OF PLACER (hereinafter referred to as “Project Applicant”), jointly referred to as the “Parties,” as follows:

RE bâtals

A. The Big Gun Conservation Bank (hereinafter referred to as “Bank”) is located in Placer County, California and is owned and operated by Bank Owner; and

B. The Bank Owner received approval by the U.S. Fish and Wildlife Service (hereinafter referred to as “Service”) on October 29, 2010, for the Bank which is currently in good standing with this agency; and

C. The Bank Owner received approval from the Service to offer California red-legged frog compensation for impacts regulated by the federal Endangered Species Act, through the Big Gun Conservation Bank Enabling Instrument (hereinafter referred to as “Bank Agreement”); and

D. Project Applicant is seeking to implement the Placer County Conservation Program (hereinafter referred to as “Project”) described on Exhibit “A” attached hereto, which seeks to conserve California red-legged frog (Rana draytonii) habitat, and seeks to compensate for the potential loss of California red-legged frog by purchasing credits from Bank; and

E. Project Applicant has been authorized to purchase a total of 4.0 California red-legged frog credits (hereinafter referred to as “Credits”) upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

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

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Bank Owner hereby sells to Project Applicant and Project Applicant hereby purchases from Bank Owner, the Credits in accordance with the following purchase structure.

   (a) Project Applicant will purchase 4.0 Credits within the calendar year of 2017 at the total purchase price of $360,000.00.

   (b) Project Applicant will purchase the 4.0 credits subject to approval of the PLACER COUNTY Board of Supervisors.

   (c) The Bank Owner will deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit “B”. The purchase price for the respective Credits shall be paid by check or cashier’s check or, at the option of Bank Owner, wire transfer of funds according to written instructions by Bank Owner to Project Applicant.
2. The transactions contemplated herein are not intended to be sales or transfers to Project Applicant of any 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 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 Credits sold, or the Bank Owner. 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 Credits sold to Project Applicant. Bank Owner shall be fully and completely responsible for satisfying any and all conditions placed on the Bank Owner or the Credits by all state or federal jurisdictional agencies.

4. The Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other project or purpose, except as set forth or as contemplated and allowed under the Placer County Conservation Plan.

5. Project Applicant hereby commits to purchase the credits and in association therewith shall tender payment for the credits no later than 60 days from approval by the Placer County Board of Supervisors.

6. Upon purchase of the Credits specified in paragraph E at the total price identified in paragraph 1(a) above, the Bank Owner shall submit to the parties listed in the Notices section of the Bank Agreement and those parties listed in paragraph 7, copies of the: a) Agreement for Sale of Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Service File Number (if applicable); vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory / ledger should include all sales data from Bank opening/establishment to the present.

7. Any notices required under this Agreement shall include the following parties:

Project Applicant
County of Placer
Attn: PCCP Administrator
3091 County Center Drive
Auburn, CA 95603

Bank Owner
Westervelt Ecological Services, LLC
Attn: Travis Hemmen
600 North Market Blvd., Suite 3
Sacramento, CA 95834

[Signatures on next page.]
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK OWNER:

WESTERVELT ECOLOGICAL SERVICES, LLC

By: [Signature] Date: 8/16/2017
Its: Vice President

PROJECT APPLICANT:

PLACER COUNTY

By: [Signature] Date: 
Its: 

UNITED STATES FISH AND WILDLIFE SERVICE

This Agreement fulfills a portion of the Project Applicant's proposed California red-legged frog habitat conservation measures to fulfill requirements under the Placer County Conservation Plan. The Service verifies that the Big Gun Conservation Bank is in good standing as of the date of this Agreement.

By: [Signature] Date: 
Sacramento Fish and Wildlife Office
Its: 

Agreement for Sale of Conservation Credits
Big Gun Conservation Bank
Exhibit “A”

DESCRIPTION OF PROJECT TO BE MITIGATED

The Placer County Conservation Program (PCCP) applies to western Placer County and specific areas where conservation activities will take place in neighboring Sutter County. The goal of the PCCP is to provide an effective framework to protect, enhance, and restore the natural resources in specific areas of western Placer County while streamlining environmental permitting for Covered Activities. Within this framework, the PCCP will achieve conservation goals, comply with state and federal environmental regulations, accommodate anticipated urban and rural growth, and permit the construction and maintenance of infrastructure needed to serve the county’s population.

The PCCP includes two separate, but complementary, components that support two sets of state and federal permits:

- **Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan**, referred to as the HCP/NCCP or “Plan.” The Plan is a joint HCP and NCCP that will protect fish and wildlife and their habitats and fulfill the requirements of the federal Endangered Species Act (ESA), and the California Natural Community and Conservation Planning Act (NCCP Act).

- **Western Placer County Aquatic Resources Program**, referred to as the CARP. The CARP will protect streams, wetlands, and other water resources and fulfill the requirements of the federal Clean Water Act (CWA) and analogous state laws and regulations.

The Plan was prepared by the local agencies that will become Permittees, in cooperation with state and federal regulatory agencies, collectively termed the "Resource Agencies."

The Permittees are as follows:

- Placer County
- City of Lincoln
- South Placer Regional Transportation Authority (SPRTA)
- Placer County Water Agency (PCWA)
- Placer Conservation Authority (PCA), created to implement the HCP/NCCP and the CARP on behalf of the other Permittees

In addition to the Permittees, other parties may elect to seek coverage under the HCP/NCCP as “Participating Special Entities.”
The goal of this Plan is to protect species and their habitats in a manner that supports the issuance of incidental take authorizations for Covered Species under the ESA and the NCCP Act for certain types of activities in specific areas of Placer County, in accordance with approved land use plans. Covered Activities are generally any action undertaken in the Plan Area by or under the authority of the Permittees that may affect Covered Species or covered natural communities. Covered activities may be projects, programs, or operations and maintenance (O&M). Covered activities fall into the following categories.

1. Valley Potential Future Growth
2. Valley Conservation and Rural Development
3. Foothills Potential Future Growth
4. Foothills Conservation and Rural Development
5. Regional Public Programs
6. In-Stream Programs
7. Conservation Programs
In consideration of $360,000.00, receipt of which is hereby acknowledged, WESTERVELT ECOLOGICAL SERVICES, LLC does hereby bargain, sell and transfer to PLACER COUNTY, 4.0 California red-legged frog credits from the Big Gun Conservation Bank in Placer County, California, developed, and approved by the U.S. Fish and Wildlife Service.

Westervelt Ecological Services, LLC 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.

Westervelt Ecological Services, LLC 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: __________________________

WESTERVELT ECOLOGICAL SERVICES, LLC

By: __________________________

Its: __________________________
Exhibit "C"

Big Gun Conservation Bank
PAYMENT RECEIPT

PARTICIPANT INFORMATION
Name: PLACER COUNTY
Address: Community Development Resource Agency, 3091 County Center Drive, Auburn, CA 95603
Telephone: (530) 745-3074
Contact: Gregg McKenzie, PCCP Administrator

PROJECT INFORMATION
Project Description: Placer County Conservation Plan
Species/Habitat Affected: California Red-legged Frog Habitat
Credits to be Purchased: 4.0 California red-legged frog credits
Payment Amount: $360,000.00
Project Location: Placer County
County: Placer County

PAYMENT INFORMATION
Payee: Westervelt Ecological Services, LLC
Payer: Placer County
Amount: $360,000.00
Method of payment: Cash
Received by: 
(Signature)
Name: 
Title: 

Date: 
Check No. 
Money Order No. 

Agreement for Sale of Conservation Credits Page 7 of 6
Big Gun Conservation Bank