

Habitat Conservation Fund (pulled from the settlement agreement).

- TCA shall commit to the expenditure of **\$28,000,000 as mitigation for a Post-Settlement Alignment for the primary purpose of preserving and restoring San Mateo Creek and its watershed (“Conservation Fund”)**. The Conservation Fund requirement is not intended to limit TCA’s mitigation obligations under applicable laws should those obligations exceed the Conservation Fund requirement.
- Environmental Oversight Committee. Within 90 days after the Effective Date, TCA shall establish a committee (“Environmental Oversight Committee”) that shall be responsible for identifying measures to mitigate impacts and protect the environment in connection with the SR 241 Extension Project. In consultation with SSOC, TCA shall prepare a framework that will address, inter alia, the identification and appointment of the Environmental Oversight Committee members and the process for identifying eligible mitigation and resource protection measures. The Environmental Oversight Committee shall include, at a minimum, TCA, NAHC, and three members to be selected by SSOC. TCA shall invite representatives from one or more Resource Agencies to serve on the Environmental Oversight Committee.
- With input from the Environmental Oversight Committee, TCA and SSOC shall cooperate in good faith to: (i) identify and assess potential land acquisitions and habitat restoration projects within the San Mateo Creek Watershed and adjacent watersheds that are ecologically related to habitat potentially impacted by a Post-Settlement Alignment (“Conservation Measures”); and (ii) prioritize such Conservation Measures on a list, (“Conservation Measure List” or “List”). A measure is “ecologically related” if it would provide ecosystem benefits that mitigate for biological values potentially impacted by a Post-Settlement Alignment. If a good faith dispute arises as to whether a proposed acquisition or restoration project is ecologically related to potentially impacted habitat, TCA and SSOC shall jointly request that the U.S. Fish and Wildlife Service (“USFWS”) provide a determination as to whether a measure is or is not ecologically related to potentially impacted habitat, which determination shall be binding on the Parties for purposes of this Section. If the USFWS refuses to issue such a determination, TCA and SSOC shall meet and confer to identify another mutually-agreeable Resource Agency to provide a binding determination.
- The Conservation Measure List shall not include any measure that (a) is determined by USFWS (or another mutually-agreeable Resource Agency if USFWS refuses to consult and issue a determination) as not ecologically related to habitat potentially impacted by a Post-Settlement Alignment, or (b) would physically interfere with the implementation of a Post-Settlement Alignment being considered in the Environmental Review Process. In preparing the Conservation Measure List, priority shall be given to Conservation Measures within the San Mateo Creek watershed. If TCA and SSOC determine such measures are infeasible or do not require expenditure of the full Conservation Fund, other measures, including measures outside of the San Mateo Creek watershed, may be approved by mutual agreement between TCA and SSOC. Preparation of the Conservation Measure List shall be completed no later than December 31, 2017. Upon completion of the Conservation Measure List, TCA shall provide a written copy of the List to the State Parties.

- After the Conservation Measure List has been prepared, TCA shall diligently and in good faith proceed to implement promptly each of the Conservation Measures on the List, in compliance with applicable laws, in the priority order set forth in the List, until the full Conservation Fund is exhausted. At least 15 days prior to making an expenditure from the Conservation Fund, TCA shall provide SSOC with written notice of the expenditure. If SSOC opposes such proposed expenditure within such 15 day period, the Parties shall meet and confer to resolve the dispute. TCA shall not proceed with the expenditure until such dispute has been resolved as identified in this Section. Upon making any expenditure from the Conservation Fund, TCA shall provide written notice containing a brief description of the expenditures to the State Parties. Nothing in this paragraph shall limit TCA's ability to expend monies other than or in excess of those in the Conservation Fund on any item on the Conservation Measure List or for other mitigation measures related to the SR 241 Extension Project.
- TCA and SSOC may from time to time amend the Conservation Measure List by joint written agreement, as may be needed to, inter alia, address measures on the Conservation Measure List that can no longer be reasonably accomplished and to ensure that the Conservation Measure List includes sufficient measures to allow expenditure of all of the Conservation Fund. In coordination with SSOC, as required by this Agreement, TCA shall use best efforts to implement each Conservation Measure at the earliest possible date, and to fully expend the Conservation Fund no later than December 31, 2021. If the Conservation Fund has not been fully expended by December 31, 2021, TCA shall place the remaining funds in an escrow account for the sole purpose of implementing the SSOC and TCA mutually agreed upon Conservation Measures for the benefit of the San Mateo Creek or adjacent watersheds.