



SACRAMENTO - SAN JOAQUIN

DELTA CONSERVANCY

A California State Agency



Proposition 1 Grant Program

2015-16 Staff Recommendation

I. Project Overview

Project Title	Paradise Cut Flood and Conservation Easement Acquisition		
Applicant	San Joaquin County Resource Conservancy District		
Project Number	Prop 1-Y1-2015-010	Category	2
County	San Joaquin	Funding Request	\$2,000,000.00
Score	85.6	Total Project Cost	\$2,500,000.00
Staff Recommendation: Conditional approval of reservation of funds pending submission of additional land transaction documents and determination that the project is categorically exempt from CEQA.		Funding Recommended	\$2,000,000.00

II. Staff Recommendations

Delta Conservancy staff recommends that the Board conditionally reserve funding for the Paradise Cut Flood and Conservation Easement Acquisition project (#Prop 1-Y1-2015-010) proposed by the San Joaquin County Resource Conservation District (SJCRCDC). Approval of the funds is conditional upon receipt of the items as required on the attached checklist, and on determination by the lead agency that the project is categorically exempt from environmental review pursuant to CEQA. Conservancy staff anticipates that the items required to approve funding will be received by June of 2017.

The proposed project is a category 2 acquisition grant to acquire flood and conservation easements needed to protect Swainson’s hawk habitat and to build a new flood bypass along the San Joaquin River south of Paradise Cut. Acquisition of flood and conservation easements will enable managers to ensure that the land can be managed as floodplain-compatible agriculture and habitat that will not be converted to perennial crops inconsistent with habitat requirements for Swainson’s hawk and the development of a flood bypass. The attached map illustrates the priority acquisition area for the project. The grant proposal does not specify which parcels will be purchased, but does include letters from three landowners willing to consider selling an easement on their land. Project proponents expect the total acquisition costs to range from \$8 to \$16 million, and will use

Delta Conservancy funding to leverage other state funds to purchase flood and conservation easements on up to 2,000 acres within the acquisition area. The project team will use private cost-share dollars (\$500,000 from the River Islands Settlement Fund) to acquire options to purchase easements, and then will use state funds to execute the options and acquire the easements. The applicant will not spend any of the Conservancy's funding until the necessary approvals to close escrow are in place; Delta Conservancy funds will be transferred directly into an escrow account only when all requisite conditions and tasks are fulfilled, and required documents are approved by the Conservancy's legal counsel and, where warranted, the Department of General Services (DGS). Prior to transferring money into escrow for this project, DGS will review and approve an appraisal of the fair market value of the land proposed for acquisition. If the appraised fair market value, as stated in the DGS-approved appraisal, exceeds the cost estimated by the applicants and subsequently reserved by the Board, the Conservancy will not fund any amount beyond the original reservation of funds.

The specific outputs of this project include: final appraisals and all necessary reviews from the Department of General Services; options purchased for flood and conservation easements on up to 2,000 acres; the Department of Water Resources and other funding agencies join with the Delta Conservancy in financing acquisition of up to 2,000 acres; and easements are purchased and recorded. The project is clearly aligned with Proposition 1's multibenefit emphasis, as it will pave the way for flood protection, water management flexibility, climate change adaptation, habitat restoration, improved ecosystem function, and watershed health. It is consistent with State plans and priorities, including the Delta Conservancy's enabling legislation and strategic plan, as well as the Delta Plan, which specifically describes and maps an expanded flood bypass south of Paradise Cut as is described by this proposal.

The proposed project is well-aligned with state priorities. It is supported locally and is being advanced by an effective, cross-sector partnership with a history of working together and extensive applicable expertise. The proposal notes the importance of the South Delta for Swainson's hawk habitat. The preservation of Swainson's hawk habitat is consistent with the local Habitat Conservation Plan, but is not serving as mitigation and therefore is eligible for Proposition 1 funds. The proposed short-term habitat protection project and the long-term flood bypass project are being designed specifically to address the resource demands of a changing climate. Project proponents are advancing innovative means of monitoring and integrating adaptive management into the project.

The long-term goal of this project, the flood bypass, is a significant, complex, and important project that is not without proportional risks. Those risks are mitigated by the no-regrets nature of preserving the land in question as habitat for Swainson's hawk and other species. This proposal demonstrates the momentum that is building around the floodway project, and, if funded, provides a means for making the primary capital investments needed to advance the floodway. Purchasing land is a necessary first step in the construction of the flood bypass.

Staff is also recommending for funding a separate proposal to the Conservancy for a category 1 planning grant to advance the design, environmental compliance, and stakeholder engagement for the flood bypass. Each project has independent utility and is

not dependent upon the other being funded. If they are both funded, this acquisition project effort will occur in parallel with the planning effort.

Staff has prepared the text and tables below based on staff's best understanding of the information provided in the application. The Conservancy has received comments on the proposal from the Delta Stewardship Council and the Delta Protection Commission. If approved, staff will work with the applicant to further refine the project's scope of work and performance measures, and to address comments prior to entering into a grant agreement.

III. Project Summary

Project Description:

The Paradise Cut Flood and Conservation Easement Acquisition project proposes to acquire flood and conservation easements to build a new flood bypass that will reduce flood risk, improve habitat and maintain agricultural land in San Joaquin County, along the San Joaquin River south of Paradise Cut. The easements will protect habitat for Swainson's hawk and other species whether the flood bypass is built or not.

Consistent with the Delta Conservancy's enabling legislation (Public Resources Code Section 32364.5 (b)), the project proposal explains that the property over which an easement will be acquired will be used as agricultural land consistent with providing Swainson's hawk habitat; the land will be managed by the landowner or the landowner's designee; the easement holder - Southern Delta Levee Protection and Channel Maintenance Authority - will manage the easements, ensuring that the land is managed consistent with the easement terms; The landowner will bear the costs of maintaining the agricultural operation, and the cost of managing the easement will be funded by an endowment, for which money is already in-hand; and the landowner will continue to pay taxes and assessments to local government.

Over the last four years, the project team—which includes the SJCRCD, South Delta Water Agency, Reclamation District 2062, Southern Delta Levee Protection and Channel Maintenance Authority, River Islands LLC, American Rivers, and Natural Resources Defense Council—has worked with the Department of Water Resources (DWR) and other agencies and stakeholders to develop a conceptual design for expanding Paradise Cut to create a flood bypass (see attached site plan). Extensive modeling analyses indicate that the design will lower the flood stage by over two feet where Interstate 5 crosses the San Joaquin River. This will substantially reduce flood risk for the rapidly urbanizing reach of river between I-5 and Stockton. Further, expanding the floodway will significantly improve habitat for several sensitive species without changing agricultural production in most years. DWR's hydraulic analyses indicate that farmland incorporated into an expanded floodway would only be inundated once every 12 years. Moreover it should be possible to plant crops even in those infrequent years when the area is inundated during the spring. Expanding the floodway will enable managers to create more functional riparian and floodplain habitat along the channel margins of the river through a reach that is now characterized by heavily armored levees. Acquiring easements will preserve farmland and habitat and maintain the option to construct a flood bypass.

Location (Site Description):

The project is located in an unincorporated portion of San Joaquin County immediately southwest of Paradise Cut and the San Joaquin River between the cities of Lathrop and Tracy. The land over which the applicant is proposing to place an easement is owned by several private landowners; land tenure will be substantiated through the acquisition process, as outlined in the attached checklist. The Paradise Cut expansion area is flat, low-elevation farmland (seasonal forage crops). The entire site is within the 100-year floodplain and provides high-quality Swainson’s hawk habitat (numerous roosting trees exist along Paradise Cut). Paradise Cut provides the most important remaining refugia habitat for riparian brush rabbit and consists of perennial channel, riparian vegetation, and seasonal agriculture. Paradise Cut is separated from the acquisition area by a federal project levee that also separates the acquisition area from the San Joaquin River.

IV. Implementation of California Water Action Plan and Consistency with Prop 1 and Conservancy Enabling Legislation

State Priority/Plan	Action	Project Benefits
Proposition 1	Ch. 6 79732(a)(1) Protect and increase the economic benefits arising from healthy watersheds, fishery resources, and instream flow.	Protects agricultural land and urban areas from catastrophic flooding.
	Ch. 6 79732(a)(2) Implement watershed adaptation projects in order to reduce the impacts of climate change on California’s communities and ecosystem.	Provides flood protection for the more extreme flood events projected to occur due to climate change.
	Ch. 6 79732(a)(4) Protect and restore aquatic, wetland, and migratory bird ecosystems, including fish and wildlife corridors and the acquisition of water rights for instream flow.	Expands and restores floodplain and aquatic habitat.
	Ch. 6 79732(a)(11) Reduce pollution or contamination of rivers, lakes, streams, or coastal waters, prevent and remediate mercury contamination from legacy mines, and protect or restore natural system functions that contribute to water supply, water quality, or flood management instream flow.	Restores natural riverine processes that enhance ecosystem function and increase flood attenuation.

State Priority/Plan	Action	Project Benefits
	Ch. 6 79732. (a) (12) Assist in the recovery of endangered, threatened, or migratory species by improving watershed health, instream flows, fish passage, coastal or inland wetland restoration, or other means, such as natural community conservation plan and habitat conservation plan implementation.	Consistent with the San Joaquin County Habitat Conservation Plan. While this property is consistent with the local HCP, it is not serving as mitigation and therefore is eligible for Prop. 1 funds.
California Water Action Plan	Action 3. Achieve the co-equal goals for the Delta.	Restores floodplain habitat in the Delta and along the San Joaquin River.
	Action 4. Protect and restore important ecosystems.	Restores floodplain habitat in the Delta and along the San Joaquin River.
	Action 6. Expand water storage capacity and improve groundwater management.	Expands the floodway to increase groundwater recharge and flexibility for managing upstream reservoirs for water supply and flood control.
	Action 8. Increase flood protection.	Lowers flood stage.
	Action 9. Increase operational and regulatory efficiency.	Restores endangered species that constrain flood system improvements.
Conservancy's enabling legislation	§32301(i)(1) Protect and enhance habitat and restoration.	Restores floodplain habitat.
	§32301(i)(2) Protect and preserve Delta agriculture and working landscapes.	Protects working lands through easements and flood protection.
	§32301(i)(5) Increase the resilience of the Delta to the effects of natural disasters such as floods.	Provides flood protection to urban and rural areas in San Joaquin County.
Conservancy's Strategic Plan	Goal 1. Establish the Conservancy as a valuable partner with Delta growers, agriculture-related businesses, and residents in protecting and enhancing the Delta's agricultural and working landscapes and sense of place.	Significantly reduces flood risk for thousands of acres of agricultural land in the South Delta.
	Goal 2. Lead economic enhancement activities that support the Delta ecosystem and economy.	Significantly reduces flood risk for thousands of acres of agricultural land in the South Delta.

State Priority/Plan	Action	Project Benefits
Conservancy's Strategic Plan	<p>Goal 3. Lead efforts in protecting, enhancing and restoring the Delta ecosystem in coordination with other governmental and non-governmental entities and citizens in the Delta.</p> <p>3.2.1 Protect, enhance and restore large areas of interconnected intertidal marsh, floodplain, transitional and upland habitats.</p> <p>3.7.1 Design restoration projects that allow for activities that create revenue, including wildlife-friendly farming practices, boating, and bird-watching, to help pay for long-term maintenance and stewardship of the property.</p>	Restores floodplain habitat and integrates agricultural land preservation and conservation into floodway design.
Delta Plan	ER R2. Prioritize and Implement Projects that Restore Delta Habitat.	Advances the protection of the Lower San Joaquin River Floodplain priority habitat restoration area.
	ER P3. Protect Opportunities to Restore Habitat.	Advances the protection of the Lower San Joaquin River Floodplain priority habitat restoration area.
	ER P4. Expand Floodplains and Riparian Habitats in Levee Projects.	Proposes flood protection alternatives to levee enhancement along Paradise Cut.
	RR P4. Floodplain Protection.	Advances the protection of the Lower San Joaquin River Floodplain Bypass.
	RR R5. Fund and Implement San Joaquin River Flood Bypass.	Funds planning for the San Joaquin River Flood Bypass.

V. Outcomes/Outputs

Project Goals	Desired Project Outcomes	Output Indicators
Goal 1. Protect lives and property from catastrophic flooding	Flood easements needed to stimulate development of new flood bypass are acquired	Options to purchase flood easements secured Final appraisals and other documents approved Funding secured for acquisition Flood easements negotiated, approved and purchased/ recorded
Goal 2. Conserve seasonal farmland and associated habitat	Conservation easements needed to protect seasonal agricultural land and associated habitat for Swainson's hawk and other species are is acquired	Options to purchase conservation easements secured Final appraisals and other documents approved Funding secured for acquisition Conservation easements negotiated, approved and purchased/recorded

VI. Budget

The total project cost is \$2,500,000. Project proponents are requesting \$2,000,000 from the Conservancy. \$500,000 (cash) of private cost share dollars are being provided by the River Islands Settlement Fund, a private settlement fund that must be used to advance the floodway and that is unrelated to mitigation.

VII. Consistency with Grant Program Guidelines

Readiness (Including CEQA Status if Applicable):

The project is in the early stages of a real estate transaction, but, by requesting that Conservancy funds only be used to close escrow, the deal is structured so that the Conservancy bears minimal risk should the proposed acquisitions fail to materialize. While the land transaction is not ready to be executed immediately, the assembled project team is well-equipped to begin the process of advancing the easement purchase by utilizing the real estate transaction experience of team members. The project proponents have identified landowners who may be willing to sell an easement on their property, and are actively engaging the largest of those landowners as their top priority acquisition. The project proposal includes an acquisition schedule that includes a timeframe for completing an appraisal by June of 2017. Proponents have money in-hand to purchase option agreements, engage landowners and other stakeholders, and complete the necessary pre-closing tasks (conduct appraisal and baseline monitoring, review title report, draft easement terms and management plan, etc.). The project team has successfully worked with numerous state and local entities to inform local stakeholders, evaluate the technical

feasibility of the bypass, quantitatively model the impacts and benefits, and build broad support. The proposed project is a critical component to advancing the bypass project.

Prior to awarding funding, Conservancy staff will work with the applicant to determine whether the project is categorically exempt from environmental review pursuant to CEQA. The presumption is that the applicant will serve as the lead agency. Land acquisition for habitat protection is categorically exempt from the provisions of CEQA pursuant to 14 Cal. Code of Regulations sections 15313 and 15325. Because the award of funds is for acquisition of an easement for fish and wildlife conservation purposes in order to preserve habitat, and no habitat enhancements or construction work will occur with project funds, the award is expected to be exempt from CEQA.

Local Support:

The acquisition of easements is a component of the flood bypass project, which has a long history of stakeholders working together with the community to build support and integrate the project into local, regional, and state plans. To date, project proponents have worked closely with DWR to hold seven public meetings, integrate the project into the Delta Plan, evaluate project alternatives, and refine the proposal through the Delta Dialogues process. The project team briefed landowners in the acquisition zone, and landowners outside the acquisition zone to ensure there is local support. No one has expressed opposition and several entities and landowners have expressed support. The Delta Protection Commission has been consulted. Although a County resolution was not included with the proposal, project proponents have briefed County supervisors and the City of Lathrop, and the latter submitted comments in favor of the project as part of the Conservancy's local notification process. Six letters of support accompanied the proposal; they came from two national NGOs, two local districts, one local developer, and one local water agency.

The project proponents are working in close partnership with local and state entities, NGOs, and private businesses. The partnerships are long-standing and well-formed, with clear roles and responsibilities, governance and decision-making structures to effectively implement the project.

Scientific Merit:

The applicant indicates the scientific basis for Swainson's hawk preservation at the proposed project site. In the South Delta, lands are above sea level, and thus one of the best places to conserve habitat for the endangered Swainson's hawk. Many acres of Swainson's hawk habitat are likely to be lost in the future due to tidal marsh restoration, levee failure in the Delta, or crop conversion to orchards or vineyards.

Long Term Management & Adaptive Management Plan:

The proposal identifies an entity to hold and manage the easements, and the project team has already secured funding for an easement endowment. The South Delta Levee and Channel Maintenance Authority (SDLCMA) will hold title to the easements and the landowners will own and farm the land under the terms of the easements. The project team has reserved \$130,000 for a long-term management endowment and will work with

landowners to develop a detailed long-term management and finance plan for each parcel before any property interest is acquired.

This project is a land acquisition project, and the conservation and flood easements acquired will allow managers to adaptively manage the property interests acquired, consistent with the purposes of the grant and the preferences of the underlying landowner. Project proponents propose to use the recently developed Habitat Quantification Tool (HQT) to evaluate and document project performance in terms of the number of functional acres of habitat generated for multiple species, allowing them to quantify how different land and flood management practices or conservation actions such as the new bypass could benefit special status species. This quantitative tools will allow the project team to quantify linkages in accordance with step 3 of the adaptive management planning circle in the Delta Plan.

Monitoring and Assessment:

The proposal provides a draft monitoring plan that explains how the project team will use the innovative HQT to establish a habitat baseline against which future conditions can be monitored. The HQT will be used to assess the physical characteristics of the site to determine the quantity and quality of habitat on acquired lands and to quantify how those physical characteristics will change under future management scenarios including construction of a flood bypass or changes in cropping patterns.

The primary purpose of the monitoring program for this acquisition project is to document baseline habitat conditions for a few sensitive species, including Swainson's hawk. The secondary purpose of the monitoring program is to use this baseline information to project the quality and quantity of habitat that would be created by a new bypass or under alternative agricultural practices. The project team will measure the total number of acres or easements acquired, provide a detailed description of baseline conditions and a basis for quantitatively predicting how baseline conditions will or could change over time. The team's methods and results will be subject to third party review.

As easements are acquired, conditions on the parcel will be monitored annually or according to the terms of the conservation easement, and compared with baseline conditions during the grant period. Monitoring data will be shared with the Conservancy. The monitoring plan is in draft form, and will be finalized as part of the easement negotiation.

Climate Change Considerations:

The South Delta lands that project proponents propose to protect are particularly well-suited to serve as in-perpetuity Swainson's hawk habitat. These lands are above sea level, and thus are not likely to be lost in the future due to levee failure in the Delta.

Delta Conservancy Proposition 1 Grant Program Checklist for Conservation Easement Proposals

Project No: _____

Project Name: _____

I. Information Submitted with Application:

- A table including: parcel numbers, acreage, willing seller name and address, breakdown of how the funds will be budgeted, and an acquisition schedule
- Copy of the Purchase Agreement or a Willing Seller Letter
- Appraisal or Estimation of Fair Market Value
- Preliminary Title Report
- Letter stating that applicant will directly pay DGS for review of appraisal and associated materials
- Map of plotted easements
- Underlying documents to title exceptions, upon request
- Analysis of mineral rights issues, if applicable

II. Staff Review and Evaluation:

- Staff will review and evaluate all submitted information and work with Legal Counsel to determine if these supporting documents are adequate and consistent with the requirements of the grant funds

POLICIES GOVERNING GRANT AGREEMENT FOR CONSERVATION EASEMENT

III. Board Approval:

Staff recommendations for Board Approval include the following:

- A copy of the table including: parcel numbers, acreage, willing seller name and address, breakdown of how the funds will be budgeted, and an acquisition schedule
- A copy of the Purchase Agreement or a Willing Seller Letter
- A copy of the Appraisal or Estimation of Fair Market Value
- A copy of the Preliminary Title Report
- A copy of the map of plotted easements
- A copy of underlying documents to title exceptions, if requested
- A copy of the analysis of mineral rights issues, if applicable

IV. Before Execution of Agreement:

Applicant submits the appraisal to the Conservancy for DGS review and approval

[DGS APPRAISAL GUIDELINES](#)

Staff reviews State Lands Commission holdings, if applicable

Applicant submits draft grant deed or conservation easement

Applicant provides any updates to PTR

Applicant's board provides a resolution for Grant Authority certifying that:

- Signatory has authority
- Acceptance of grant
- Acceptance of property interest

SAMPLE RESOLUTION DOCUMENT

Staff reviews mineral rights, if applicable

Applicant submits Phase 1 Environmental Site Assessment for review/approval by DC PL

Applicant submits stewardship plan

Applicant submits escrow instructions for review/approval by DC PL

Applicant submits an original, certified copy of the fully executed grant deed or conservation easement certified by the escrow officer holding the document

Applicant submits Disbursement Request with an original signature of Grantee's authorized signatory

SAMPLE DISBURSEMENT REQUEST DOCUMENT

Board approved the project (Date: _____)

Grant Agreement must be fully executed by Grantee & DC Executive Officer

V. Conservation Easement Grant - Closing Escrow (*Before final invoice is paid*):

DC PL must review/approve:

Baseline report

MINIMUM REQUIREMENTS FOR BASELINE REPORTS

Monitoring protocol

MINIMUM REQUIREMENTS FOR MONITORING PROTOCOLS

VI. CLOSING THE PROJECT. After COE, applicant submit the following to DC PL (*Before grant is closed*):

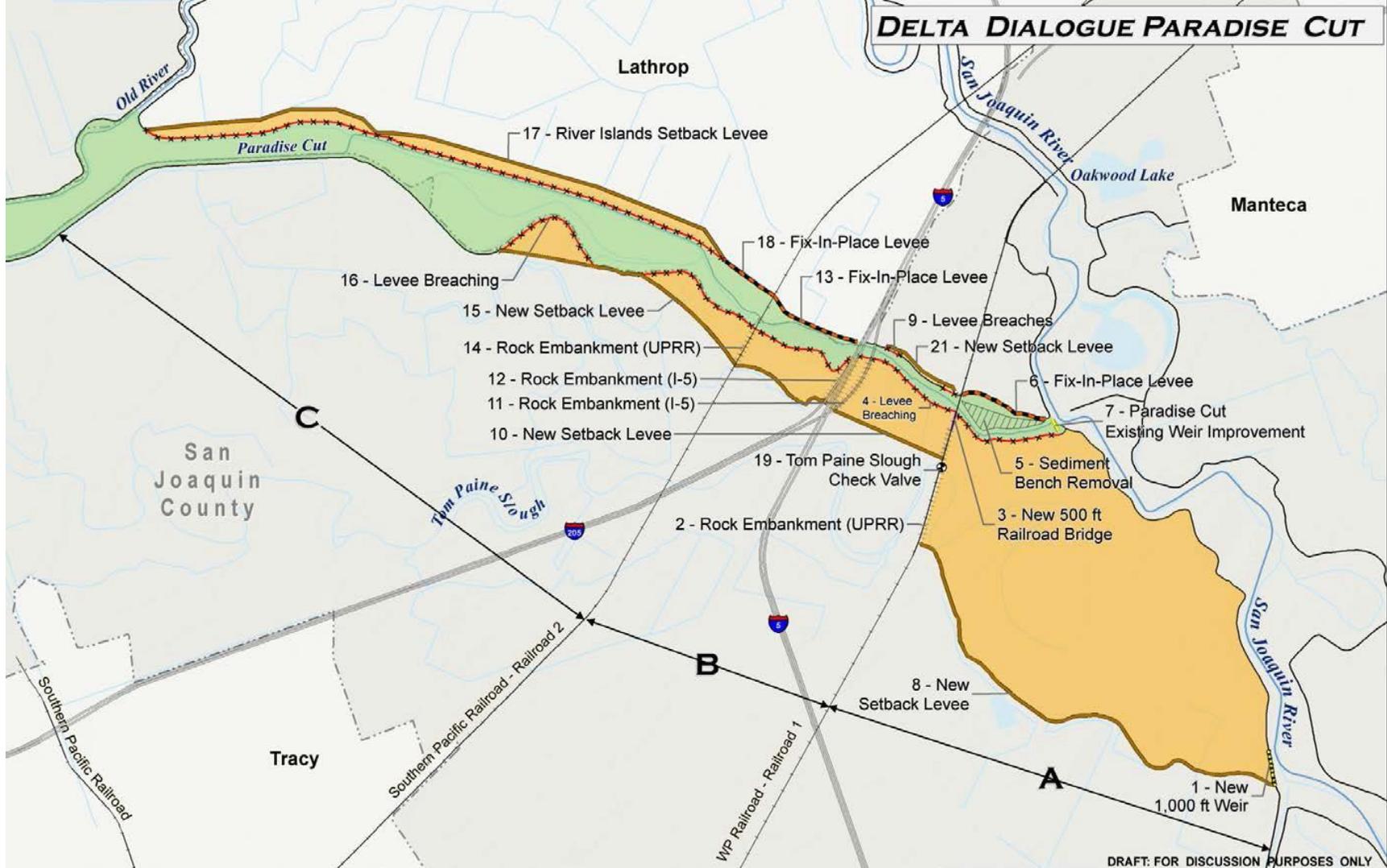
A copy of the recorded deed

A copy of the recorded NUGA (*original to follow via County Recorder*)

A copy of the title insurance policy

Escrow closing statement

DELTA DIALOGUE PARADISE CUT



DRAFT: FOR DISCUSSION PURPOSES ONLY