



**Consideration of the Process and Criteria for Waiving the Recording of Landowner Access Agreements for Conservancy Agreements**  
**Staff Report**

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This agenda item presents for consideration a process and criteria to waive the recording of the landowner access agreement (LAA) against the deed of the property for Conservancy funded agreements.

**RECOMMENDATION**

Staff recommends the Board approve the Process and Criteria for Waiving the Recording of LAA for Delta Conservancy Agreements detailed in Agenda Item 8.2.

**BACKGROUND**

Through conversations with applicants and grantees, Conservancy staff have encountered repeated reluctance from landowners in recording a LAA against the deed of the property with the County. During the Proposition 1 Cycle 5 Solicitation period, Conservancy staff received a request from an applicant and the landowner to waive the requirement to record the LAA with the County. As part of this request, Conservancy staff researched existing LAA policies across several California Natural Resource Agency departments, including California Department of Fish and Wildlife, State Coastal Conservancy, the Sierra Nevada Conservancy, and the Wildlife Conservation Board. The requirements of recording a LAA against the deed of the property varied greatly between agencies; ranging from no requirements to record the LAA to case-by-case determination by staff. In addition to the inter-department research, Conservancy staff conducted an inventory and assessment of Conservancy projects that require a LAA and determined that waiving the requirement to record the LAA against the deed of the property has been allowed in the past but only in well-justified scenarios. Currently, the Conservancy does not have an established process or criteria for waiving the recording of a LAA against the deed of the property.

Based on this research, the Delta Conservancy may want to consider waiving the recording requirement for LAAs in some situations to effectively meet the Conservancy's mission.

**Risk**

The primary risk to the Conservancy in waiving the requirement to record a LAA is that it will allocate funds for a project on property owned by a third party and if a change in landownership occurs it could undermine or impede implementation and retention of the project over time. Potential benefits in waiving the recording requirement include increasing opportunity for projects on private land, demonstrating willingness to work with hesitant landowners, and reducing the barrier to access state funding opportunities for landowners. The proposed process and criteria aim to identify, assess, communicate, and balance the risks to the Conservancy (and the State) while maintaining flexibility to support projects that benefit the Delta region, its community, and the citizens of California.

### Existing Requirements

The Delta Conservancy's Grant Guidelines currently require adequate site control for projects to be funded. Site control is necessary to ensure that the project will be implemented and maintained over time by the current property owner and by any subsequent owner or lessee if the property is transferred, sold, or leased. Demonstration of site control varies on project type (planning, implementation, or acquisition) and ownership (grantee or other entity) of the property where the project is located.

- For planning grants where the grantee is not the landowner, the Conservancy requires a letter of support for the project from the landowner. Regardless of ownership, no documents are recorded against the deed of the property for planning grants.
- For implementation projects where the grantee does not own the land on which the project is being implemented, the Conservancy requires that a LAA between the grantee and the property owner be executed and recorded against the property with the county prior to dispersal of funds.
- For implementation grants where the grantee owns the land on which the project is being implemented, the grantee must record a Notice of Unrecorded Grant Agreement (NUGA) against the deed of the property. In this case, the grant agreement itself is not recorded, but is incorporated by reference through the NUGA.

A LAA and NUGA are similar in that, when recorded, they both provide constructive notice to subsequent owners or other interested parties of an encumbrance (the Grant Agreement) affecting the underlying land. As such, subsequent owners or other parties that acquire an interest in the land will be legally bound to abide by and not interfere with the terms of the grant agreement.

### Recommended Process

Conservancy staff drafted a recommended process and set of criteria that (if adopted) would assist the Board in deciding whether to waive the recording of a LAA against the deed of the property for future Delta Conservancy funded projects. The proposed process would require three steps.

- A formal written request from the applicant or grantee and the landowner to Conservancy Staff requesting a waiver from the general requirement to record the LAA against the deed of the property (the Waiver).
- Conservancy staff reviews the Waiver request using, but not limited to, the established criteria (the nine proposed criteria are detailed in Agenda Item 8.2).
- Conservancy staff present analysis of the waiver request before the Board for consideration.

### Proposed Criteria

Conservancy staff refined criteria used by other California Natural Resource Agency departments to evaluate requests to waive recording the LAA against the deed of the property. Suggested criteria for consideration include the landowner incentive to retain or remove the project, land development

potential, land ownership duration, collaboration with other public entities, and more. The nine proposed criteria are detailed in Agenda Item 8.2.

**Grant Language Changes**

In addition to the process and criteria described in this agenda item, Conservancy staff will add language to the existing LAA template that would require landowners to notify Conservancy staff if the project site is being transferred or sold. Additionally, Conservancy staff will modify grant guidelines, where appropriate and with Board approval, to allow applicants and grantees to request a waiver for recording a LAA against the deed of the property, using the process and criteria described in this agenda item.

**SUGGESTED MOTION LANGUAGE:**

Move that the Board approve the Process and Criteria for Waiving the Recording of Landowner Access Agreements for Conservancy Agreements as presented in this agenda item.

**CONTACT**

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