

MITIGATION AGREEMENT

between

MONTEREY PENINSULA REGIONAL PARK DISTRICT

and

PACIFIC GAS & ELECTRIC COMPANY

This AGREEMENT is made by and between Monterey Peninsula Regional Park District (“MPRPD”), P. O. Box 223340 Carmel, CA 93922, and Pacific Gas and Electric Company (“PG&E”), 1455 E Shaw Ave Fresno, CA 93657. The parties enter into this Agreement to provide support for conservation projects described herein.

RECITALS

- A. MPRPD is a special district of the State of California. The mission of MPRPD is to acquire and maintain open space in the District for preservation and use, working with partners and the community, for public benefit, enjoyment and environmental protection.
- B. PG&E is a California based Utility Corporation. PG&E needs to develop various conservation related documents to support mitigation goals throughout California to compensate for impacts to special status species. PG&E’s role in the Project is to provide grant funding to the MPRPD to develop and implement a Marina Dunes Preserve Restoration Action Plan.
- C. Multiple Region Habitat Conservation Program (“MRHCP”) is a conservation plan and strategy supporting an incidental take permit issued by the U.S. Fish and Wildlife Service (USFWS) to PG&E, to provide take coverage under Section 10 of the Federal Endangered Species Act (ESA) for specified covered species while performing specified covered operations and maintenance (O&M) activities within the Sacramento Valley and foothills, the north coast, and the central coast of California. PG&E may fund habitat enhancement project that benefit covered species as compensatory mitigation under the conservation strategy for the MRHCP.
- D. “Compensatory Mitigation” is conservation and/or restoration for endangered species habitat. For the purposes of this Agreement the primary species of interest Smith’s blue butterfly (*Euphilotes enoptes smithi*; SBB), Monterey spineflower (*Chorizanthe pungens var. pungens*; CHPUP), and sand gilia (*Gilia tenuiflora ssp. arenaria*).
- E. “Project” is the restoration, enhancement, and creation of SBE/BCS/MBB/CSB habitat on MPRPD property. The Project will restore up to 35 acres at Marina Dunes Preserve, which is owned and managed by MPRPD and located at 3325 Dunes Drive Marina, CA 93933. PG&E’s role in the Project is to provide grant funding to the MPRPD to develop and implement a Marina Dunes Preserve Restoration Action Plan.
- F. The Project was proposed to the USFWS in November 2021 and expected to be approved as Compensatory Mitigation under the MRHCP conservation strategy in February 2022. Project location is shown in the “Conceptual Project Plan”, which is included as Attachment 1.

AGREEMENT

Now therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. SCOPE OF WORK. MPRPD shall furnish all necessary materials, labor, equipment and supplies to complete Project planning, implementation, and maintenance and monitoring over the "Performance Period". The Performance Period shall begin on the "Effective Date" as outlined in Section 4 and end consistent with Section 5 "Completion Date". MPRPD is responsible for the following major work categories related to implementation of the Project under this agreement:

a. **Task 1 – SBB Habitat Restoration.** MPRPD shall implement the plan outlined in Attachment 1 for SBB habitat restoration on approximately 21.7 acres including iceplant eradication, ERLA plantings, and minor erosion control/sand stabilization.

b. **Task 2 – SBB and CHPUP Habitat Restoration.** MPRPD shall implement the plan outlined in Attachment 1 for SBB and CHPUP on approximately 9.4 acres including sand stabilization, broadcast seeding of CHPUP, and planting of ERLA.

c. **Task 3 – San Gilia restoration.** MPRPD shall implement the plan outlined in Attachment 1 for San Gilia restoration on approximately one (1) acre including seed collection from the population on site, propagation of mother plants, seed harvesting from nursery plants, and broadcast.

d. **Task 4 – Monitoring and Reporting.** The MPRPD will follow the MDP-HCCP for up to eight (8) years with success monitoring of vegetative cover and species richness conducted pre and post restoration implementation.

e. **Task 5 – Project Management.** The MPRPD shall provide oversight and project controls to ensure successful implementation of the Conceptual Plan in Attachment 1.

2. ANNUAL REPORTS. MPRPD shall provide annual reports, which are projected to occur beginning in 2022 and end by 2032. Annual reports are due no later than March 15th for the previous year. Therefore, the first annual monitoring report is expected to be provided by March 15, 2023 based on restoration implementation beginning in 2022.

3. STATUS REPORTS. MPRPD shall provide correspondence as major milestones are met. Major milestones include implementation of Tasks 1-3 in Section 1 of this agreement.

4. EFFECTIVE DATE. The effective date of this Agreement is the date of the last signature below.

5. COMPLETION DATE. Project will commence upon the Effective Date of this agreement and terminate at the end of the Performance Period with the MPRPD providing a "Final Annual Report". Per the Conceptual Project Plan the project implementation and performance period is eight (8) to ten years (10). Project will be deemed complete upon meeting Success Criteria as defined in Attachment 1 and delivery of a Final Annual Report as provided by the MPRPD. Therefore, the Final Annual Report will be provided between 2030-2032 based on a tentative implementation start date of Spring 2022.

6. FUNDING. PG&E shall release \$624,346.00 to MPRPD to fund project implementation over the Performance Period. Any changes to scope shall be discussed and formally approved by PG&E prior to implementation to ensure MRHCP conservation goals and USFWS expectations are met. PG&E will provide funding within 30 days of the Effective Date of this Agreement.

7. MANAGEMENT RESERVE. PG&E shall maintain a \$90,000.00 management reserve (15% of total implementation cost, not including inflation) for funding of unrealized implementation, monitoring, or maintenance costs. MPRPD shall provide written justification explaining the specific conditions that warrant a funding release from the Management Reserve. MPRPD shall provide said written justification to PG&E for review and approval, which should not be reasonably withheld, no less than 60 days in advance of requested funding release date. If approved, PG&E shall provide funding within 20 days of requested date.

8. INTERPRETATION AND HEADINGS. The language of this Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any Party. Headings of the sections of this Agreement are for the purposes of convenience only and the words contained in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

9. MODIFICATION. This Agreement is not subject to modification except in writing signed by the Parties and any attempted modification not in compliance with this requirement shall be void. The Parties shall use their good faith efforts to complete any modifications within ninety (90) days after the initial request is made for a modification by the requesting Party.

10. NOTICES. All notices, demands, or requests from one Party to another may be electronically mailed, personally delivered, sent by facsimile, sent by recognized overnight delivery service, sent by mail, certified or registered, postage prepaid, return receipt requested, or by electronic mail, to the persons at the addresses set forth below. Notice shall be deemed given five (5) days after deposit in the United States mail as described above. Parties may from time to time specify an alternate address in writing and it shall be effective at the time of personal delivery, facsimile transmission, mailing or electronic mailing.

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Dr. Rafael Payan
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11. SUCCESSORS AND ASSIGNS. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

12. COUNTERPARTS. This Agreement may be executed by the Parties in several counterparts, each of which shall be deemed to be an original executed document.

13. NO PARTNERSHIPS. This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.

14. GOVERNING LAW. This Agreement shall be governed by and constructed in accordance with the laws of the State of California.

IN WITNESS HEREOF, the Parties hereto have executed and delivered this Agreement as of the last date set forth below.

PACIFIC GAS AND ELECTRIC,
a California corporation

Monterey Peninsula Regional Park District
a Special District of the State of California

By _____
Jon Wilcox,
Manager, Environmental Resources and Mitigation
PG&E

By _____
Dr. Rafael Payan
General Manager
MPRPD