CALENDAR ITEM
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PROPOSED AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING/CONSERVATION AGREEMENT TO ENSURE THE CONSERVATION OF A STATE ENDANGERED PLANT SPECIES, THE TAHOE YELLOW CRESS, LOCATED EXCLUSIVELY AT LAKE TAHOE, PLACER AND EL DORADO COUNTIES.

PARTY:

California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

BACKGROUND:

Tahoe yellow cress (*Rorippa subumbellata* Roll.) is a rare plant species endemic to the shores of Lake Tahoe in California and Nevada. It was listed as endangered by the State of California in 1982 (California Fish and Game Code 2050 *et seq.*) and is considered endangered throughout its range by the California Native Plant Society. Tahoe yellow cress is state-listed as critically endangered in Nevada (Nevada Revised Statutes 527.270 *et seq.*), and is considered threatened by the Northern Nevada Native Plant Society. It is classified as a candidate species for listing under the federal Endangered Species Act of 1973, as amended (64 FR 57533).

Previous evidence suggested the threat to the number of sites occupied by Tahoe yellow cress is primarily due to:

1) alterations in lake level dynamics caused by construction and operation of the Truckee River outlet dam and reservoir;

2) destruction of actual and potentially suitable habitat by the construction of piers, jetties, and other structures;

3) high levels of recreational activity associated with beaches and dunes;

4) disturbance of the sand by public and private property maintenance activities; and

5) possibly random environmental events.

Because of the threats facing the species, a task force, composed of the agencies listed below, was formed to develop and implement a Conservation Strategy (CS) for the Tahoe yellow cress. The CS is coupled with a Memorandum of Understanding (MOU)/Conservation Agreement (CA), and was signed by the State Lands Commission in 2002 along with the other signatory agencies listed below. Implementation of the CS/MOU demonstrated the commitment of all involved to the long-term protection of the species. The State Lands Commission has been an integral part of the conservation and protection of Tahoe yellow cress and this role continues to be reflected in the CS.

The following entities have been committed to the implementation of the CS and are signatory to the MOU/CA: Tahoe Regional Planning Agency, U.S. Fish & Wildlife Service, U.S. Forest Service, Nevada Division of Forestry, Nevada Division of State Lands, Nevada Division of State Parks, Nevada Natural Heritage Program, California State Lands Commission, California Department of Fish & Game, California Department of Parks & Recreation, California Tahoe Conservancy, Tahoe Lakefront Owners' Association, and League to Save Lake Tahoe.

Since implementation of the CS in 2002, great strides have been made in the conservation of the species. The agencies have continued annual lake-wide surveys of Tahoe yellow cress and have produced annual reports (2002 to 2009) on the status of the plant around the lake. Extensive scientific research has occurred including successful outplanting and transplanting the plants at many sites around Lake Tahoe; experimental designs testing survivorship along varying beach profiles; genetic studies of the plant to understand the metapopulation of the species; public outreach efforts; establishing protective policies among agencies for shorezone projects (e.g., shorezone revetment and pier projects); and, developing site-specific information sheets on all known occupied Tahoe yellow cress sites around the lake.

Presently, the U.S. Fish & Wildlife Service is requesting the signatory parties to approve a modification to the MOU/CS to allow more effective adaptive management of the species. The State Lands Commission's continued responsibilities under the MOU/CA and proposed amendment will not require any more staff or resources than is already provided for the conservation of Tahoe

yellow cress. The MOU/CA outlines the CSLC's continued participation in and commitment to the Adaptive Management Working Group, formerly the Technical Advisory Group, and Executive Committee. The proposed amendment would modify the MOU/CA allowing that any changes to the CS can be made by mutual verbal consent of the Executive Committee rather than written consent of the parties. This modification will provide more flexibility in the implementation of the CS from an adaptive management perspective. The State Lands Commission staff would continue to oversee the successful implementation of the CS, ensure protective measures where the State Lands Commission has jurisdiction, and work with private landowners through education and stewardship.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15261), the staff has determined that this activity is exempt from the requirements of CEQA because it involves a feasibility or planning study for possible future action, which the Commission has not approved, adopted, or funded.

   Authority: Public Resources Code section 21102 and Title 14, California Code of Regulations, section 15262.

2. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

REFERENCES:

A. Conservation Strategy for Tahoe Yellow Cress. August 2002.

EXHIBITS:

A. Memorandum of Understanding/Conservation Agreement. August 2002.

B. Proposed Amendment to the Memorandum of Understanding/ Conservation Agreement. February 2010.

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21102 and Title 14, California Code of Regulations, section 15262, feasibility or

planning study for possible future action which the Commission has not approved, adopted, or funded.

2. Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code sections 6370, et seq.

3. Authorize the Executive Officer to sign, on behalf of the Commission, the amendment to the Memorandum of Understanding/ Conservation Agreement that would modify language that would provide making any modifications to the Conservation Strategy be by mutual verbal consent of the Executive Committee rather than mutual written consent by the parties.

Memorandum of Understanding/Conservation Agreement

This Memorandum of Understanding/Conservation Agreement (MOU/CA) is made among the Tahoe Regional Planning Agency (TRPA), the U.S. Fish and Wildlife Service (USFWS); the U.S. Forest Service; the Nevada Division of State Parks; the Nevada Division of State Lands; the Nevada Division of Forestry (NDF); Nevada Natural Heritage Program; the California Department of Fish and Game (CDFG), the California Department of Parks and Recreation; the California Tahoe Conservancy; the California State Lands Commission; the League to Save Lake Tahoe, a non-profit organization; and the Tahoe Lakefront Owners' Association, a non-profit organization. The above entities are collectively known as "the Parties."

RECITALS

WHEREAS, Tahoe Yellow Cress (TYC) is a plant species endemic to the shores of Lake Tahoe; and

WHEREAS, imminent threats coupled with a reduction in the distribution and number of TYC populations caused the States of Nevada and California to list the species as endangered; and

WHEREAS, USFWS declared TYC to be a candidate for listing under the Endangered Species Act of 1973, as amended (ESA); and

WHEREAS, the protection and conservation of TYC requires a coordinated effort of all the Parties, and

WHEREAS, it is the intent of the Parties to prevent the extinction and promote the recovery and conservation of TYC through coordinated management and cost sharing; and

WHEREAS, an Executive Committee of directors and executive officers was formed to guide the preparation and implementation of a Conservation Strategy (CS) for the protection and conservation of the TYC and the Executive Committee appointed a Technical Advisory Group (TAG) to develop the CS; and

WHEREAS, the CS developed in response to the Executive Committee's direction provides the basis for avoiding, minimizing, and mitigating the effects of human activities within occupied and potentially suitable TYC habitat; and

WHEREAS, the CS coordinates conservation efforts among the Parties to adaptively manage this species and coordinate monitoring to provide for the recovery of this species; and

WHEREAS, the actions described within the CS for TYC are grounded in a rigorous review and analysis of this species and the Lake Tahoe region; and

WHEREAS, the key aspect of the biology of TYC is the metapopulation dynamic of its life history, which makes it necessary to consider both occupied and potentially suitable habitat for management; and

WHEREAS, the role of the private land owner in the stewardship of TYC is crucial and this critical role is reflected within the CS and this MOU/CA; and

WHEREAS, the Parties desire to formalize their commitment to implement the CS.

NOW, THEREFORE, the Parties agree as follows:

A. PURPOSES

1. To ensure the implementation of conservation measures and management activities identified in the CS to provide long-term conservation benefits and achieve long-term survival of the TYC; and

2. To facilitate voluntary cooperation between the Parties to provide long-term protection for TYC and its habitat; and

3. To describe a process to be undertaken if a Party is unable to perform a conservation measure or management activity set forth in the CS; and

4. To set forth the miscellaneous provisions of the Parties' agreement to implement the CS.

B. COMMITMENT TO TYC CONSERVATION STRATEGY

1. Subject to the provisions of this MOU/CA, each Party agrees to implement the CS, including but not limited to the actions specified for each Party in Table 14 and the adaptive management strategy outlined in Chapter II.H of the CS. Table 14 will be reviewed and revised after 5 years. Each Party shall also designate individuals to serve on the Executive Committee and TAG. Any action taken by an individual Party must be consistent with that Party's governing authority and decision making processes.

2. The Parties incorporate by reference into this MOU/CA the TYC CS, attached hereto as Exhibit A, and any future revisions to that document pursuant to Paragraph G.7 of this MOU/CA.

C. ANNUAL REPORTS

1. By January 1 of each year, the TAG shall prepare an annual report describing the status of TYC following each survey year. This report will be a primary source of resource information for decision making for entities involved in conservation efforts.

2. The report shall include the following information:

a. Number of populations identified during the most recent survey
b. Number of individuals estimated during the most recent survey
c. Copies of the annual data sheets
d. Graphical representation of the population trend
e. Conservation activities undertaken in the previous growing season
f. Recommended conservation activities for the upcoming season
g. Number of shorezone projects permitted within potentially suitable habitat
h. Number of significant disturbances to the species or its habitat and subsequent responses
i. Status of reintroduced populations (where appropriate)
j. Brief summary of any reported research findings
k. Estimate of staff time spent in past year
l. Approved management plans

3. When preparing the annual report, the TAG shall, inter alia, explore the following questions as necessary:

a. To what degree is each goal of the CS being achieved?
b. Are conservation efforts effective in conserving the species and the metapopulation dynamic?
c. Is reintroduction an effective conservation technique?
d. Should the monitoring scheme be altered, and why?
e. What regulatory changes should be made to ensure the survival of this species?
f. What research questions are important to answer?

4. The TAG's production of the annual report and data analysis of the 2001 survey data shall initiate the adaptive management process described in the CS.

5. The TAG shall also develop recommended actions to be undertaken in each successive year by each land management agency and regulatory agency that are integral to the conservation effort. This list shall be prioritized in order of importance of protecting the species. Each recommended action item shall include a rough cost, schedule, and rationale to allow the Executive Committee to make decisions or recommendations to Governing Authorities for the coming year's work program.

6. To the extent permitted by law, all Parties agree to provide to each other all relevant information in their possession or control related to implementation of the CS within 30 days of a request by another Party.

7. The Executive Committee shall approve the annual report or request specific modifications within 60 days of the TAG delivering the report to the Parties. TRPA shall post an electronic copy of the final report on its web page for general access.

D. FUNDING

1. The Parties warrant necessary funds exist to implement the CS for Fiscal Year 2001-2002 and commit to seek funding necessary to implement the CS in succeeding years. However, implementation of this MOU/CA and the CS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOU/CA will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury, or from state or local funds. Any Party will promptly notify the Parties of any material change in a Party's financial ability to fulfill its commitments.

2. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the Parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

E. ENFORCEABILITY OF THIS MOU/CA

1. Successful implementation of the MOU/CA, CS, and adaptive management process should remove the threats to the species and ensure the long-term survival of TYC by maintaining and enhancing existing habitat in the Lake Tahoe basin and integrating new information on the biology of the species into future conservation and management activities. As a result, the need to list the species under the ESA should be avoided. If conservation and management practices are effective in removing the threats and long-term protection of the species and its habitat are achieved, the USFWS may modify the listing priority number or remove the TYC from candidate status under the ESA. When or if it becomes known that threats to the survival of the TYC exist that are not or cannot be resolved through the CS, the USFWS may choose to reassign candidate status, an appropriate listing priority number, and list the species. The sole consequence of failure by a Party or Parties to implement this MOU/CA shall be reconsideration by the USFWS to list the TYC under the ESA if it has not already done so.

2. Without limiting the applicability of rights granted to the public pursuant to any law, this MOU/CA or the CS shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this MOU/CA to maintain a suit for enforcement of the MOU/CA or CS, personal injuries or damages. The duties, obligations, and responsibilities of the Parties to this MOU/CA with respect to third parties shall remain as imposed under existing law.

F. DURATION OF MOU/CA AND TERMINATION CLAUSE

1. This MOU/CA shall terminate 10 years from the date of the last signature of the Parties hereto ("the initiating date"). The Parties shall meet and assess this MOU/CA after 5 years from the initiating date. if more than one party remains, this MOU/CA shall automatically extend for the remainder of the 10-year term.

2. If any Party anticipates that some portion of the CS cannot be carried out by their agency, then that Party must notify other Parties in writing within 60 days prior to final determination of its inability to carry out such action. Within that time frame, the remaining Parties will meet to discuss alternatives to the implementation of the unfulfilled action.

3. Any Party may suspend or terminate its participation in this MOU/CA and CS by providing 90 days written notice to all other Parties. Suspension or termination by one or more Parties shall not alter this MOU/CA between the remaining Parties.

G. MISCELLANEOUS PROVISIONS

1. Notices

Any notice permitted or required pursuant to this MOU/CA or CS shall be in writing, delivered personally to the appropriate persons listed in Exhibit B hereto, or shall be deemed to be given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

2. Elected officials not to benefit

No member of or delegate to the U.S. Congress or California or Nevada legislatures shall be entitled to any share or part of this MOU/CA, or to any benefit that may arise from it.

3. Relationship to Legal Authorities

a. The terms of this MOU/CA and the CS shall be governed by and construed in accordance with the federal ESA, the California ESA (CESA), the Nevada Revised Statutes (NRS), the TPRA Compact and Code of Ordinances, and other applicable federal and state laws.

b. Nothing in the MOU/CA or CS is intended to limit the authority of the USFWS, CDFG, NDF, and TRPA to seek penalties or otherwise fulfill their responsibilities under the ESA, CESA, NRS, and TRPA Code, respectively. Moreover, nothing in the MOU/CA or CS is intended to limit or diminish the legal obligations and responsibilities of the USFWS, CDFG, NDF, and TRPA as agencies of the federal and state governments. Nothing in this MOU/CA or CS limits the right or obligation of any state or private entity to engage in appropriate consultation or permitting process required under any applicable federal or state law; however, it is intended that the rights and obligations of the Parties under the MOU/CA and CS may be considered in any consultation affecting a Party's use of the specified lands.

4. Successors and assigns

This MOU/CA and each of its covenants and conditions shall be binding on and shall insure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the MOU/CA shall be governed by the TRPA, USFWS, CDFG, and NDF regulations in force at the time.

5. Public documents

Information provided to any governmental agency pursuant to this MOU/CA and CS may be subject to release to members of the public under either state or federal law including but not limited to information furnished to the USFWS under the Freedom of Information Act (5 U.S.C. 552).

6. Modification

The MOU/CA and CS may only be modified by mutual written consent of the Parties.

7. Participation in similar activities

This instrument in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

8. No regulatory approvals

Neither this MOU/CA nor CS constitutes regulatory approval by any Party of any projects mentioned in the MOU/CA or CS. All projects and actions must follow the otherwise applicable regulatory process for all necessary permits or approvals.

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed as of the day and year first above written

TAHOE REGIONAL PLANNING AGENCY

By: _____ _____
Juan Palma, Executive Director Date

U.S. FISH AND WILDLIFE SERVICE

By: _____ _____
Steve Thompson, Manager, Date
California/Nevada Operations Office

U.S. FOREST SERVICE

By: _____ _____
Maribeth Gustafson, Forest Supervisor Date

NEVADA DIVISION OF STATE PARKS

By: _____ _____
Wayne Perock, Administrator Date

NEVADA DIVISION OF STATE LANDS

By: _____ _____
Pamela B. Wilcox, Administrator Date

NEVADA DIVISION OF FORESTRY

By: _____ _____
Steve Robinson, State Forester Firewarden Date

NEVADA NATURAL HERITAGE PROGRAM

By: _____ _____
Glenn Clemmer, Program Manager Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____ _____
Banky Curtis, Regional Manager Date

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: _____ _____
John Knott, Superintendent Date

CALIFORNIA TAHOE CONSERVANCY

By: _____ _____
Dennis Machida, Executive Officer Date

CALIFORNIA STATE LANDS COMMISSION

By: _____ _____
Paul D. Thayer, Executive Officer Date

LEAGUE TO SAVE LAKE TAHOE

By: _____ _____
Rochelle Nason, Executive Director Date

TAHOE LAKEFRONT OWNERS ASSOCIATION

By: _____ _____

Jan Brisco, Executive Director Date

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IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed as of the day and year first above written

TAHOE REGIONAL PLANNING AGENCY

By: _____ 9/25/02
Juan Palma, Executive Director — Date

U.S. FISH AND WILDLIFE SERVICE

By: _____ 1/29/2003
Steve Thompson, Manager, California/Nevada Operations Office — Date

U.S. FOREST SERVICE

By: _____ 9/26/02
Maribeth Gustafson, Forest Supervisor — Date

NEVADA DIVISION OF STATE PARKS

By: _____ 11/20/02
Wayne Perock, Administrator — Date

NEVADA DIVISION OF STATE LANDS

By: _____ 11/20/02
Pamela B. Wilcox, Administrator — Date

NEVADA DIVISION OF FORESTRY

By: DEPUTY FOR 12/03/02
Steve Robinson, State Forester Firewarden Date

NEVADA NATURAL HERITAGE PROGRAM

By: 27 Nov '02
Glenn Clemmer, Program Manager Date

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Oct. 3, 2002
Banky Curtis, Regional Manager Date

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: 10/16/02
John Knott, Superintendent Date

CALIFORNIA TAHOE CONSERVANCY

By: 12/11/02
Dennis Machida, Executive Officer Date

CALIFORNIA STATE LANDS COMMISSION

By: 10/2/02
Paul D. Thayer, Executive Officer Date

LEAGUE TO SAVE LAKE TAHOE

By: 11/20/02
Rochelle Nason, Executive Director Date

TAHOE LAKEFRONT OWNERS ASSOCIATION

By: 1/24/03
Jan Brisco, Executive Director Date