State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

January 22, 2016

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A GRANT AGREEMENT BETWEEN THE NATIONAL FISH AND WILDLIFE FOUNDATION AND THE DIVISION OF FORESTRY AND WILDLIFE FOR $500,000 IN PRIVATE FUNDS TO COMPLETE THE LAND ACQUISITION AND MANAGEMENT PROJECT ENTITLED "CONSERVATION AND RESTORATION INITIATIVE AT UPPER KŪKA'IAU RANCH, HAWAI'I ISLAND," TAX MAP KEY NUMBERS (3) 4-2-008:021 AND (3) 4-2-008:008.

SUMMARY:

The National Fish and Wildlife Foundation (NFWF) offered to award a $500,000 grant to the Division of Forestry and Wildlife (DOFAW) to protect and improve palila critical habitat for sustained recovery efforts. DOFAW would receive the grant as a subrecipient of funds that NFWF received from Walmart Stores, Inc., Acres for America Program. The NFWF grant would contribute about 15% of the cost of DOFAW's proposed land acquisition at Upper Kūka'iau Ranch, Kūka'iau and Koholālele, Hāmākua, Hawai'i. This property spans 4,469 acres on the northwestern slopes of Mauna Kea.

BACKGROUND:

DOFAW's proposed land acquisition at Upper Kūka'iau Ranch (UKR) is an outgrowth of efforts by The Nature Conservancy (TNC) to acquire fee title to the property, over which TNC holds a conservation easement that restricts development thereupon. During 2012-2013, TNC secured funding commitments for the acquisition from DOFAW's Legacy Land Conservation Program (LLCP),[1] the U.S. Fish and Wildlife Service Recovery Land Acquisition (RLA) grant

[1] On May 11, 2012, the Board of Land and Natural Resources authorized full funding ($1,000,000) of TNC's application to LLCP "for the protection of watershed and endangered Palila bird habitat."

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program (through a subgrant from DOFAW),[2] and NFWF.[3] In October 2014, TNC decided that it would not proceed with the acquisition. Thereafter, DOFAW decided to retain its RLA award and seek additional funding from LLCP,[4] NFWF, and other sources to acquire the property for the State.

DOFAW and NFWF, aided by the Deputy Attorney General, recently agreed to terms for redirecting TNC's initial NFWF grant to DOFAW, and DOFAW now seeks BLNR approval to accept a $500,000 grant from NFWF for the acquisition of Upper Kūka'iau Ranch, agreement attached (Exhibit A).

DISCUSSION:

Securing a funding commitment from NFWF for the acquisition of Upper Kūka'iau Ranch will enhance DOFAW's opportunities to obtain matching funds from other sources, such as the Army Compatible Use Buffer Program, private donors, and the State Land Conservation Fund.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed acquisition of land at Upper Kūka'iau Ranch is a minor action that will probably have minimal or no significant effects on the environment and is exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawaii Administrative Rules, under the Department's Exemption Class 1, Exemption 45 (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

> Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
> 45. Acquisition of land or interests in land.

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[2] The U.S. Fish and Wildlife Service awarded $1,217,114 to DOFAW and TNC for "Kūka'iau Acquisition and Palila Habitat Restoration." The award performance period is July 31, 2012 to June 30, 2016.

[3] On September 26, 2013, TNC entered into a grant agreement with NFWF for $500,000 "to protect and improve palila critical habitat for sustained recovery efforts."

[4] At its meeting of December 03, 2015, the Legacy Land Conservation Commission (LLCC) ranked DOFAW's FY2016 application for Upper Kūka'iau Ranch acquisition fifth out of five, and recommended that the Board of Land and Natural Resources authorize $25,000 in funding, to be supplemented by additional Legacy Land funds—up to DOFAW's total request of $1,363,346—from other FY2016 awards that do not use all of their funding.

DOFAW activities to be conducted under the terms of the grant agreement include fencing 250 acres of palila critical habitat and planting 500 māmane trees on the newly-acquired State land. These are minor actions that will probably have minimal or no significant effects on the environment and are exempt from the requirement to prepare an environmental assessment in accordance with Chapter 343, HRS, and Chapter 11-200-8, Hawai'i Administrative Rules, under the Department's following exemption classes (Exemption List for the Department of Land and Natural Resources, Reviewed and Concurred Upon by the Environmental Council on June 05, 2015):

> Exemption Class 1: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
>
> Exemption Class 2: Replacement or reconstruction of existing structure and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced.
>
> Exemption Class 3: Construction and location of single, new, small facilities or structures and the alteration and modification of same and installation of new, small equipment and facilities and the alteration and modification of same [].
>
> Exemption Class 4: Minor alteration in the conditions of land, water, or vegetation.
>
> Exemption Class 5: Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.
>
> Exemption Class 6: Construction or placement of minor structures accessory to existing facilities.

In accordance with the Board's action at its meeting of November 13, 2015, under Item C-6, the Chairperson or the Chairperson's authorized representative is authorized to declare the exemptions.

RECOMMENDATIONS:

DOFAW recommends that the Board:

1. Approve DOFAW's acceptance of a $500,000 grant from the National Fish and Wildlife Foundation for DOFAW's "Conservation and Restoration Initiative at Upper Kūka'iau Ranch, Hawai'i Island" (proposed agreement attached as Exhibit A), subject to approval by the Attorney General.

Respectfully submitted,

Scott Fretz, Acting Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit A: National Fish and Wildlife Foundation Grant Agreement

EXHIBIT A

NFWF	**NATIONAL FISH AND WILDLIFE FOUNDATION GRANT AGREEMENT**	**1. NFWF PROPOSAL ID:** 51068	**2. NFWF GRANT ID:** 0701.12.051068
		3. UNIQUE ENTITY IDENTIFIER (DUNS #): 824671200	**4. INDIRECT COST RATE (REFERENCE LINE 17 for RATE TERMS):** N/A

5.SUBRECIPIENT TYPE State or Local Government	**6. NFWF SUBRECIPIENT** Hawaii Division of Forestry and Wildlife
7. NFWF SUBRECIPIENT CONTACT	**8. NFWF GRANTS ADMINISTRATOR/NFWF CONTACT INFORMATION**
David Penn Hawaii Division of Forestry and Wildlife 1151 Punchbowl St. Room 325 Honolulu, HI 96813 Tel: 808-587-4171 david.penn@hawaii.gov	Alyssa Hildt National Fish and Wildlife Foundation 1133 15th Street, N.W. Suite 1100 Washington, D.C. 20005 Tel:202-857-0166 Fax: 202-857-0162 alyssa.hildt@nfwf.org

9.PROJECT TITLE
Conservation and Restoration Initiative at Upper Kuka'iau Ranch, Hawai`i Island.

10. PROJECT DESCRIPTION
Acquire 4,469 acres on the northwestern slopes of Mauna Kea to protect and improve palila critical habitat for sustained recovery efforts. Project will strengthen connections between ranch lands, other existing protected lands, and ongoing reforestation and ecosystem restoration efforts; provide public access for people to enjoy the outdoors throughout the Mauna Kea summit region; and benefit local, community-based initiatives for historic preservation and cultural resource management.

11. PERIOD OF PERFORMANCE	12. TOTAL AWARD TO SUBRECIPIENT	13. TOTAL FED. FUNDS	14. TOTAL NON-FED. FUNDS
November 2, 2015 to June 30, 2017	$500,000	N/A	$500,000

15. FEDERAL MATCH REQUIREMENT $1,217,114	**16. NON-FEDERAL MATCH REQUIREMENT** $1,000,000

17. SUBRECIPIENT INDIRECT COST RATE TERMS
The rate specified in Line 4 reflects that the Subrecipient has elected not to claim an indirect cost rate and that this election shall apply throughout and subsequent to the project's period of performance.

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6	Other Representations, Certifications, Statements and Clauses

19. FUNDING SOURCE INFORMATION/FEDERAL AND NON-FEDERAL						
A. FUNDING SOURCE (FS)	**B. NFWF FS ID**	**C. FS AWARD DATE TO NFWF**	**D. FAIN**	**E. TOT FED. AWARD TO NFWF**	**F. TOT OBLG. TO SUBRECIPIENT**	**G. CFDA**
Walmart Stores, Inc.	TR.A049	N/A	N/A	N/A	$500,000	N/A

20. NOTICE OF AWARD

The National Fish and Wildlife Foundation (NFWF) agrees to provide the NFWF Award to the NFWF Subrecipient for the purpose of satisfactorily performing the Project described in a full proposal as identified on line 1 and incorporated into this Grant Agreement by reference. The NFWF Award is provided on the condition that the NFWF Subrecipient agrees that it will raise and spend at least the amount listed on lines 15 and 16 in matching contributions on the Project, as applicable. The Project must be completed, with all NFWF funds and matching contributions spent, during the Period of Performance as set forth above. All items designated on the Cover Page and the Table of Contents are incorporated into this Grant Agreement by reference herein. NFWF Subrecipient agrees to abide by all statutory or regulatory requirements, or obligations otherwise required by law, required of a subrecipient of Federal grant or cooperative agreement funds. Subrecipient is obligated to notify NFWF if any of the information on the Cover Page changes in any way, whether material or immaterial.

A. NAME AND TITLE OF AUTHORIZED SUBRECIPIENT SIGNER (*Type or Print*)		**D. NAME AND TITLE OF NFWF AWARDING OFFICIAL** Eric Schwaab, Vice President, Conservation Programs	
B. SUBRECIPIENT **BY**	**C. DATE**	**E. NATIONAL FISH AND WILDLIFE FOUNDATION** **BY**	**F. DATE**

See Reporting Schedule on the following page.

21. REPORTING DUE DATES/SUBRECIPIENT REPORTING SCHEDULE

Task Due Date	Reporting Task
October 31, 2016	Annual Financial Report
November 2, 2016	Interim Programmatic Report
September 30, 2017	Final Financial Report
September 30, 2017	Final Programmatic Report

SECTION 1 AGREEMENT ADMINISTRATION

1.1. Project Description/Purpose of Grant.

Acquire 4,469 acres on the northwestern slopes of Mauna Kea to protect and improve palila critical habitat for sustained recovery efforts. Project will strengthen connections between ranch lands, other existing protected lands, and ongoing reforestation and ecosystem restoration efforts; provide public access for people to enjoy the outdoors throughout the Mauna Kea summit region; and benefit local, community-based initiatives for historic preservation and cultural resource management.

1.2. Amendments.

During the life of the Project, the NFWF Subrecipient is required to inform the NFWF Grants Administrator of any changes in contact information or in the Project scope of work, as well as any difficulties in completing the performance goals articulated by the Project description immediately. If the NFWF Subrecipient determines that the amount of the budget is going to change in any one budget category by an amount that exceeds 10% of the Award, the NFWF Subrecipient must seek prior written approval from the Grants Administrator. NFWF Subrecipients must seek an amendment request upon determination of a deviation from the original Grant Agreement as soon as such deviation is detected. However, NFWF may initiate the amendment if NFWF determines an amendment is necessary at any time. Amendment requests are to be submitted via NFWF's Easygrants system.

1.3. Matching Contributions.

Matching Contributions consist of cash, contributed goods and services, volunteer hours, and/or property raised and spent for the Project. Matching Contributions for the purposes of this Project must meet the following criteria: (1) Are verifiable from the NFWF Subrecipient's records; (2) Are not included as contributions for any other Federal award; (3) Are necessary and reasonable for the accomplishment of project or program objectives; (4) Are allowable under OMB Cost Principles; (5) Are not paid by the U.S. Government under another Federal award except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs when authorized by Federal statute; (6) Are provided for in the approved budget when required by the Federal awarding agency; (7) Are committed directly to the project and must be used within the period of performance as identified in this Grant Agreement; (8) Otherwise conform to the law; and, (9) Are in compliance with the requirements of Section 2 of this Grant Agreement concerning Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions.

1.3.1. Documentation and Reporting of Matching Contributions. The NFWF Subrecipient must retain detailed time records for contributed services and original receipts and appraisals of real property and comparable rentals for other contributed property at its place of business in the event of an audit of the NFWF Subrecipient as required by applicable Federal regulations.

1.3.2. Cash, Goods and Services, and/or Property. The NFWF Subrecipient must report to NFWF as a part of the Final Report, the Matching Contributions received by the NFWF Subrecipient and expended in connection with the Project. Fair market value of donated goods and services, including volunteer hours, shall be computed as outlined in §200.306 of 2 CFR Subtitle A, Chapter II, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (hereinafter "OMB Uniform Guidance"),regardless of whether this Grant Agreement is federally funded.

1.3.3. Property. The NFWF Subrecipient may have a third party donor submit a letter to NFWF, documenting the fair market value and date of a Matching Contribution and stating that the donation is non-Federal, voluntary, and intended to qualify as a Matching Contribution. A letter provided to document a donation of real property must be accompanied by an appraisal by a certified appraiser; a letter provided to document rental of equipment or space must list three comparable rentals in the location of the Project.

1.4. Payment of Funds.

To be eligible to receive funds, NFWF Subrecipient must (1) return to NFWF an original executed copy of the grant agreement for the Project; (2) submit any due financial and programmatic reports; and (3) submit a complete and accurate payment request. NFWF Subrecipient may request funds by submitting a Payment Request via Easygrants. In the event that submission of a Payment Request via Easygrants is not possible, NFWF Subrecipient may arrange as agreed to by their NFWF Grants Administrator to submit the Payment Request via alternate means. NFWF Subrecipient may request advance payment of funds prior to expenditure provided that (1) NFWF Subrecipient demonstrates an immediate need for advance payment; and (2) NFWF Subrecipient documents expenditure of advanced funds on the next payment request and/or required financial report to NFWF. Approval of any advance payment of funds is made at the sole discretion of NFWF, based on an assessment of the NFWF Subrecipient's needs. In all other cases, funds are disbursed on a reimbursable basis. NFWF reserves the right to retain up to ten percent (10%) of funds until submission and acceptance of the final reports.

1.5. Reports.

1.5.1 Interim Programmatic and Financial Reports.

The NFWF Subrecipient will submit interim programmatic and financial reports to NFWF based on the reporting schedule in Line 21 of the Cover Sheet to this Agreement. The interim programmatic report shall consist of written statements of Project accomplishments since Project initiation, or since the last reporting period, and shall be uploaded via NFWF's Easygrants system. The interim financial report shall consist of financial information detailing cumulative receipts and expenditures made under this Project since Project initiation, and shall be uploaded via NFWF's Easygrants system.

1.5.2. Annual Financial Report.

An annual financial report detailing cumulative receipts and expenditures made under this Project is required annually, due on October 31st of each year of the grant term. In the annual financial report, the NFWF Subrecipient must report the amount of NFWF Funds expended during NFWF's fiscal year (October 1 – September 30). The NFWF Subrecipient must enter a justification when there is a difference between the amount disbursed by NFWF and the amount expended by the grantee. Failure to submit an annual financial report in a timely manner will delay payment of submitted payment requests.

1.5.3. Final Reports.

No later than 90 days after the completion of the Project, the NFWF Subrecipient will submit (1) a Final Financial Report accounting for all Project receipts, Project expenditures, and budget variances (if any) compared to the approved budget; (2) a Final Programmatic Report summarizing and evaluating the accomplishments achieved during the Period of Performance; (3) copies of any publications, press releases and other appropriate products resulting from the Project; and (4) Photographs as described in Section 1.5.3.1 below. The final reports and digital photo files should be uploaded via NFWF's Easygrants system. Any requests for extensions of the final reports submission date must be made in writing to the NFWF Grants Administrator and approved by NFWF in advance.

1.5.3.1. Photographs.

Together with the Final Programmatic Report NFWF Subrecipient will submit a representative number (minimum of 5) of high-resolution (minimum 300 dpi) photographs depicting the Project. Photographs should be uploaded via NFWF's Easygrants system as individual .jpg files. NFWF requests, as appropriate for the Project, before-and-after images of the Project, images of species impacted by the Project, and images of staff/volunteers working on the Project. In the Final Programmatic Report narrative include for each submitted photograph the date the photograph was taken, the location of the photographed image, caption, photo credit, and any other pertinent information. By uploading photographs to NFWF's Easygrants system the NFWF Subrecipient certifies that the photographs are unencumbered and may be used by NFWF and Project Funders as part of or separately from the permissions pertaining to the use of posting of Final Reports in Section 2.

1.5.4 Significant Developments.

The NFWF Subrecipient shall report on events that may occur between the scheduled performance reporting dates that have a significant impact on the Project. Such reporting shall be made as soon as the following conditions become known:

1.5.4.1 Problems, delays, or adverse conditions which will materially impair the ability to meet the Project objective. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the matter; and,

1.5.4.2 Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

1.5.5. Certification and Representation.

For each report in this section, except for 1.5.4, NFWF Subrecipient shall include the appropriate certification and representation pursuant to section 4.7.

1.6. Access to Records.

NFWF Subrecipient shall maintain all records connected with this Agreement for a period of at least three (3) years following the date of final payment or the close-out of all pending matters or audits related to this Agreement, whichever is later. NFWF or any of its authorized representatives shall have access to such records and financial statements upon request, as shall Inspectors General, the Comptroller General of the United States or any of their authorized representatives if the Funding Source or any funding entity (*i.e.,* a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds. NFWF Subrecipient must maintain records that demonstrate its compliance with federal statutory and regulatory requirements and that it is meeting the subaward project goals. Records for real property and equipment acquired with federal funds must be retained for at least three (3) years following disposition.

SECTION 2 NFWF AGREEMENT CLAUSES

2.1. Restrictions on Use of Funds.

The NFWF Subrecipient agrees that any funds provided by NFWF and all Matching Contributions will be expended only for the purposes and programs described in this Grant Agreement. No funds provided by NFWF pursuant to this Grant Agreement or Matching Contributions may be used to support litigation expenses, lobbying activities, or any other activities not authorized under this Grant Agreement or allowable under the Federal Cost Principles set forth in the OMB Uniform Guidance.

2.2. Assignment.

The NFWF Subrecipient may not assign this Grant Agreement, in whole or in part, to any other individual or other legal entity without the prior written approval of NFWF.

2.3. Subawards and Contracts.

When making subawards or contracting, NFWF Subrecipient (1) shall abide by all required granting and contracting procedures, including but not limited to those requirements of the OMB Uniform Guidance; (2) shall ensure that all applicable federal, state and local requirements are properly flowed down to the subawardee or contractor, including but not limited to the provisions of the OMB Uniform Guidance; and (3) shall ensure that such subaward or contracting complies with the requirements in Section 2.9.2 of this Grant Agreement concerning Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions. NFWF Subrecipient shall also include in any subaward or contract a similar

provision to this, requiring the use of proper grant and contracting procedures and subsequent flow down of federal, state and local requirements to lower-tiered subawardees and contractors.

2.4. Unexpended Funds.

Any funds provided by NFWF and held by the NFWF Subrecipient and not expended at the end of the Period of Performance will be returned to NFWF within ninety (90) days after the end of the Period of Performance.

2.5. Publicity and Acknowledgement of Support.

The NFWF Subrecipient gives NFWF the right and authority to publicize NFWF's financial support for this Grant Agreement and the Project in press releases, publications and other public communications. NFWF Subrecipient agrees to: (i) give appropriate credit to NFWF and any Funding Sources identified in this Grant Agreement for their financial support in any and all press releases, publications, annual reports, signage, video credits, dedications, and other public communications regarding this Grant Agreement or any of the project deliverables associated with this Grant Agreement, subject to any terms and conditions as may be stated in Section 5 and Section 6 of this Agreement; and (ii) include the disclaimer provided for herein. The NFWF Subrecipient must obtain prior NFWF approval for the use relating to this Award of the NFWF logo or the logo of any Funding Source.

2.5.1. Disclaimers.

Payments made to the NFWF Subrecipient under this Grant Agreement do not by direct reference or implication convey NFWF's endorsement nor the endorsement by any other entity that provides funds to the NFWF Subrecipient through this Grant Agreement, including the U.S. Government, as applicable, for the Project. All information submitted for publication or other public releases of information regarding this Grant Agreement shall carry the following disclaimer:

For Projects funded in whole or part with Federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government or the National Fish and Wildlife Foundation and its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government, or the National Fish and Wildlife Foundation or its funding sources."

For Projects not funded with Federal funds: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions of the National Fish and Wildlife Foundation or its funding sources. Mention of trade names or commercial products does not constitute their endorsement by the National Fish and Wildlife Foundation or its funding sources."

2.6. Posting of Final Reports.

The NFWF Subrecipient hereby acknowledges its consent for NFWF and any Funding Source identified in this Grant Agreement to post its final reports on their respective websites. In the event that the NFWF Subrecipient intends to claim that its final report contains material that does not have to be posted on such websites because it is protected from disclosure by statutory or regulatory provisions, the NFWF Subrecipient shall so notify NFWF and any Funding Source identified in this Grant Agreement and clearly mark all such potentially protected materials as

"PROTECTED," providing an accurate and complete citation to the statutory or regulatory source for such protection.

2.7. Website Links.

The NFWF Subrecipient agrees to permit NFWF to post a link on any or all of NFWF's websites to any websites created by the NFWF Subrecipient in connection with the Project.

2.8. Evaluation.

The NFWF Subrecipient agrees to cooperate with NFWF by providing timely responses to all reasonable requests for information to assist in evaluating the accomplishments of the Project for a period of five (5) years after the project end date, unless if any litigation, claim, or audit is started (irrespective of the NFWF Subrecipient's involvement in such matter) before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings or pending matters involving the records have been resolved and final action taken. NFWF shall notify NFWF Subrecipient if any such litigation, claim or audit takes place so as to extend the retention period.

2.9. Compliance with Laws.

2.9.1 In General. The NFWF Subrecipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances and to secure all appropriate necessary public or private permits and consents. The terms of this provision will survive termination of this Grant Agreement and must be flowed down to any and all contractors, subcontractors or subrecipients entered into by NFWF Subrecipient in the performance of this Grant Agreement.

2.9.2. Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Other Restrictions.

2.9.2.1. The NFWF Subrecipient shall ensure that no payments have been or will be made or received by the NFWF Subrecipient in connection with this Agreement in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §dd-1 *et seq.*), the UK Bribery Act 2010, or any other applicable anti-corruption laws or regulations in the countries in which the NFWF Subrecipient performs under this Grant Agreement.

2.9.2.2. The NFWF Subrecipient shall not provide material support or resources directly or indirectly to, or knowingly permit any funds provided by NFWF pursuant to this Grant Agreement or Matching Contributions to be transferred to, any individual, corporation or other entity that the NFWF Subrecipient knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (1) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control, which list is available at www.treas.gov/offices/enforcement/ofac;(2) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council at

http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; (3) on the consolidated list maintained by the U.S. Department of Commerce at http://export.gov/ecr/eg_main_023148.asp, or (4) on such other list as NFWF may identify from time to time.

2.9.2.3. The NFWF Subrecipient shall ensure that its activities under this Grant Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, U.S. export controls, restrictive trade practices, boycotts, and all other economic sanctions or trade restrictions promulgated from time to time by means of statute, executive order, regulation or as administered by the U.S. Department of State, the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Bureau of Industry and Security, U.S. Department of Commerce.

2.10. Indemnity.

The State shall be responsible for damage or personal injury resulting from acts or omissions of state employees while acting within the scope of their employment to the extent that the State's liability for such damage or injury has been determined by a court or otherwise agreed to by the State. The State shall pay for such damages and injury to the extent that funds have been authorized and appropriated by the Legislature for such purpose, and the funds have been allocated by the executive budget process.

2.11. Insurance.

The NFWF Subrecipient agrees to maintain all appropriate self-insurance coverages against liability for injury to persons or property from any and all activities undertaken by the NFWF Subrecipient and associated with this grant agreement in any way. The terms of this provision will survive termination of this Grant Agreement.

2.12. Choice of Law/Jurisdiction.

This Grant Agreement shall be subject to and interpreted by the laws of the District of Columbia, without regard to choice of law principles. By entering into this Grant Agreement, the NFWF Subrecipient agrees to submit to the jurisdiction of the courts of the District of Columbia. The terms of this provision will survive termination of this Grant Agreement.

2.13. Termination.

2.13.1. Upon the occurrence of any of the following enumerated circumstances, NFWF may terminate this Grant Agreement, or any portion thereunder, for default effective upon receipt by the NFWF Subrecipient of NFWF's written notice of termination, or as otherwise specified in the notice of termination:

2.13.1.1. The NFWF Subrecipient is adjudged or becomes bankrupt or insolvent, is unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors; or,

2.13.1.2. The NFWF Subrecipient voluntarily or involuntarily undertakes to dissolve or wind up its affairs; or,

2.13.1.3. In the event of suspension or debarment by the Government of the NFWF Subrecipient; or,

2.13.1.4. In the event of any breach of the requirements set forth in Section 2 of this Grant Agreement concerning Compliance with Anti-Corruption, Anti-Money Laundering, Terrorist Financing, and Trafficking in Persons Statutes and Other Restrictions; or,

2.13.1.5. In the event NFWF learns that NFWF Subrecipient has an organizational conflict of interest, or any other conflict of interest, as determined in the sole discretion of NFWF, that NFWF believes cannot be mitigated; or,

2.13.1.6. After written notice and a reasonable opportunity to cure the perceived non-compliance with any material term of this Grant Agreement. The cure period shall be considered the timeframe specified by the Government, if any, minus one (1) to five (5) days or as agreed upon by the Parties in writing, or if no time is specified by the Government, ten (10) days or as otherwise agreed upon by the Parties. Within this time period the NFWF Subrecipient shall, as determined by NFWF, (a) satisfactorily demonstrate its compliance with the term(s) originally believed to be in non-compliance; or (b) NFWF, at its sole discretion, may determine that NFWF Subrecipient has satisfactorily demonstrated that reasonable progress has been made so as not to endanger performance under this Grant Agreement.

2.13.2. Either Party may terminate this Grant Agreement by written notice to the other Party for any reason by providing thirty (30) days' prior written notice to the other Party. NFWF shall have the right to terminate this Agreement in whole or in part at any time, if the Funding Source issues an early termination under the funding agreement(s) covering all or part of the Project at issue hereunder.

2.13.3. In the event of termination of this Grant Agreement prior to Project completion, the NFWF Subrecipient shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to wind down the Project cooperatively with NFWF, including but not limited to the following:

2.13.3.1. Stop any portion of the Project's work that is incomplete (unless work to be completed and a different date for termination of work are specified in NFWF's notice).

2.13.3.2. Place no further work orders or enter into any further subawards or contracts for materials, services or facilities, except as necessary to complete work as specified in NFWF's notice.

2.13.3.3. Terminate all pending Project work orders, subawards, and contracts for work that has not yet commenced.

2.13.3.4. With the prior written consent of NFWF, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may

be caused by the failure to complete the Project, including but not limited to reasonable settlements of any outstanding claims arising out of termination of Project work orders, subawards, and contracts.

2.13.3.5. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the NFWF Subrecipient under this Grant Agreement, whether completed or in progress.

2.13.3.6. Return to NFWF any unobligated portion of the Award.

2.14. Entire Agreement.

These terms and conditions, including the Attachments hereto, constitute the entire agreement between the Parties relating to the Project described herein and supersede all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No representations or statements of any kind made by any representative of a Party, which are not stated herein, shall be binding on said Party.

2.15. Severability.

Each provision of this Grant Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

2.16. Interpretation and Construction.

2.16.1. This Grant Agreement shall be interpreted as a unified contractual document with the Sections and the Attachments having equal effect, except that in the event of any inconsistency between them. In the event of a conflict between any portion of this Grant Agreement and another portion of this Grant Agreement, first the Sections will apply, then any supplemental attachments.

2.16.2. The title designations of the provisions to this Grant Agreement are for convenience only and shall not affect the interpretation or construction of this Grant Agreement.

2.16.3. Every right or remedy conferred by this Grant Agreement upon or reserved to the Parties shall be cumulative and shall be in addition to every right or remedy now or hereafter existing at law or in equity, and the pursuit of any right or remedy shall not be construed a selection.

2.16.4. The failure of NFWF to exercise any right or privilege granted hereunder or to insist upon the performance and/or compliance of any provision of this Grant Agreement, a referenced contractual, statutory or regulatory term, or an Attachment hereto, shall not be construed as waiving any such right, privilege, or performance/compliance issue, and the same shall continue in full force and effect.

2.16.5. Notwithstanding any express statements regarding the continuation of an obligation beyond the expiration or termination of this Grant Agreement, the rights and obligations of this Grant Agreement which by their nature extend beyond its expiration or termination shall remain in full force and effect and shall bind the Parties and their legal representatives, successors, heirs, and assigns.

SECTION 3. REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS GENERAL

3.1. Binding Obligation.

By execution of this Grant Agreement, NFWF Subrecipient represents and certifies that this Grant Agreement has been duly executed by a representative of the NFWF Subrecipient with full authority to execute this Grant Agreement and binds the NFWF Subrecipient to the terms hereof. After execution by the representative of the NFWF Subrecipient named on the signature page hereto, this Grant Agreement represents the legal, valid, and binding obligation of the NFWF Subrecipient, enforceable against the NFWF Subrecipient in accordance with its terms.

3.2. Additional Support.

In making this Award, NFWF assumes no obligation to provide further funding or support to the NFWF Subrecipient beyond the terms stated in this Grant Agreement.

3.3. Compliance with Laws.

By execution of this Grant Agreement and through its continued performance hereunder, the NFWF Subrecipient represents and certifies that it is conducting all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances and to secure all appropriate necessary public or private permits and consents.

3.4. Conflicts of Interest.

By execution of this Grant Agreement, NFWF Subrecipient acknowledges that it is prohibited from using any Project funds received under this Grant Agreement in a manner which may give rise to an apparent or actual conflict of interest, including organizational conflicts of interest, on the part of the NFWF Subrecipient. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of NFWF Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. An organizational conflict of interest is defined as a relationship that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. The NFWF Subrecipient represents and certifies that it has adopted a conflict of interest policy that, at a minimum, complies with the requirements of the OMB Uniform Guidance, and will comply with such policy in the use of any Project funds received under this Agreement. NFWF Subrecipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of NFWF Subrecipient. If NFWF Subrecipient becomes aware of any actual or potential conflict of interest or organizational conflict of interest, during the course of performance of this Grant Agreement, NFWF subrecipient will immediately notify NFWF in writing of such actual or potential conflict of interest, whether organizational or otherwise.

SECTION 4 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS

4.1. If the Funding Source or any funding entity (*i.e.,* a secondary funding source) is a federal agency and/or any portion of the Project provided herein is paid with federal funds, the NFWF Subrecipient must read and understand certain applicable Federal regulations, including but not limited to, the following in Sections 4 and 5 of this Agreement as set forth herein.

If the NFWF Subrecipient is a Non-Profit Organization, Institution of Higher Education, State, Local or Tribal Government, it will need to understand and comply with the OMB Uniform Guidance (including related Supplements as may be applicable to a specific federal funding source(s), and Appendices as may be applicable), in addition to other applicable Federal regulations.

If NFWF Subrecipient subawards any portion of the Project under this Agreement to a third-party, NFWF Subrecipient shall, at a minimum, flow down those requirements and provisions required to be flowed down pursuant to the applicable regulations set forth above.

4.2. A-133 and 2 CFR § 200 Subpart F Audits.

It is the responsibility of subrecipients that are Non-Profit Organizations, State, Local or Tribal Governments to arrange for the conduct of audits as required by either OMB Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" or 2 CFR Part 200, Subpart F – Audit Requirements, whichever is applicable.

4.3. Interest.

Any interest earned in any one year on Federal funds advanced to the NFWF Subrecipient that exceeds $500 must be reported to NFWF, and the disposition of those funds negotiated with NFWF. Interest amounts up to $500 per year may be retained by the Subrecipient for administrative expense.

4.4. Subrecipient Debarment and Suspensions.

Unless NFWF Subrecipient has submitted a written justification fourteen (14) days prior to execution of this Grant Agreement, stating the reason that this term does not apply, which has been expressly accepted and approved by NFWF prior to execution, by and through NFWF Subrecipient's execution of this Grant Agreement, NFWF Subrecipient warrants and represents its initial and continued compliance that it is not listed on the General Services Administration's, government-wide System for Award Management Exclusions (SAM Exclusions), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement E.O.s 12549 (3 C.F.R., 1986 Comp., p. 189) and 12689 (3 C.F.R., 1989 Comp., p. 235), "Debarment and Suspension." The NFWF Subrecipient further provides that it shall not enter into any subaward, contract or other agreement using funds provided by NFWF with any party listed on the SAM Exclusions in accordance with Executive Orders 12549 and 12689. The SAM Exclusions can be found at https://www.sam.gov/portal/public/SAM/.

4.5. Mandatory Disclosure.

NFWF Subrecipient must disclose, in a timely manner, in writing to NFWF all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in this Grant

Agreement, including termination, and any remedies provided under law, including suspension or debarment by cognizant federal authorities.

4.6. Trafficking in Persons.

Pursuant to section 106(a) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g)) (codified at 2 C.F.R. Part 175), NFWF Subrecipient shall comply with the below provisions. Further, NFWF Subrecipient shall flow down these provisions in all subaward and contracts, including a requirement that Subrecipients similarly flow down these provisions all lower-tiered subawards and subcontracts. The provision is cited herein:

a. Trafficking in persons.
    1. *Provisions applicable to a recipient that is a private entity.*
        i. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
            a. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
            b. Procure a commercial sex act during the period of time that the award is in effect; or
            c. Use forced labor in the performance of the award or subawards under the award.
        ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
            1.1. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
            1.2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
                1. Associated with performance under this award; or
                2. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *[agency must insert reference here to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., "2 CFR part XX")]*.
    2. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-
        i. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
        ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
            a. Associated with performance under this award; or
            b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at *[agency must insert reference here*

to its regulatory implementation of the OMB guidelines in 2 CFR part 180 (e.g., "2 CFR part XX")].

3. *Provisions applicable to any recipient-*
   i. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
   ii. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
      a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
      b. Is in addition to all other remedies for noncompliance that are available to us under this award.

   1.2.1. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
4. *Definitions*. For purposes of this award term:
   i. "Employee" means either:
      a. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
      b. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
   ii. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
   iii. "Private entity":
      a. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
      b. Includes:
         1. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
         2. A for-profit organization.

   1.2.2. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

4.7. Subrecipient Monitoring Requirements.

NFWF Subrecipients receiving federal funds understand that NFWF may require NFWF Subrecipient to take corrective action measures in response to a deficiency brought to NFWF and NFWF Subrecipient's attention during the course of an audit.

4.8. Certification and Representation.

NFWF Subrecipient must submit those certifications and representations required by Federal statutes, or regulations to NFWF on an annual basis. Submission may be required more frequently if the NFWF Subrecipient entity fails to meet a requirement of a Federal award.

Programmatic and financial reports or payment requests under a Federal award must be submitted by a representative of the NFWF Subrecipient who has the NFWF Subrecipient's full authority to render such reports and requests for payment and certify to the following at time of submission:

> By signing this [report] [payment request], I certify to the best of my knowledge and belief that the [report] [payment request] is true, complete, and accurate. [The expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Grant Agreement.]. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

4.9. Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection 41 United States Code (U.S.C.) 4712, Pilot Program for Enhancement of Recipient and Subrecipient Employee Whistleblower Protection: This requirement applies to all awards issued after July 1, 2013 and shall be in effect until January 1, 2017.

a) This award and related subawards and contracts over the simplified acquisition threshold and all employees working on this award and related subawards and contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

b) Recipients, and their subrecipients and contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

c) The recipient shall insert this clause, including this paragraph (c), in all subawards and contracts over the simplified acquisition threshold related to this award.

4.10. 41 USC §6306, Prohibition on Members of Congress Making Contracts with Federal Government.

No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this award, or to any benefit that may arise therefrom; this provision shall not be construed to extend to an award made to a corporation for the public's general benefit.

4.11. Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.

(Sub)Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the order.

4.12. 43 CFR §18 New Restrictions on Lobbying.

The NFWF Subrecipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the NFWF Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

(c) The NFWF Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

SECTION 5 – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO FEDERAL FUNDS – FUNDING SOURCE SPECIFIC

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SECTION 6 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS RELATING TO NON-FEDERAL FUNDS – FUNDING SOURCE SPECIFIC

INSURANCE for Real Property and Equipment acquired

For purposes of the Agreement, the NFWF Subrecipient shall be required to provide NFWF evidence that it has obtained, at a minimum, equivalent insurance coverage for Real Property and Equipment acquired with Federal funds as provided to property owned by the NFWF Subrecipient (and obtain such evidence from any of its sub-recipients and contractors) and deliver it to NFWF within thirty (30) days of purchase of any such Real Property or Equipment).

Because this project involves land acquisition, the Award is subject to the following:

Prior to the disbursement of any funds, the NFWF Subrecipient shall provide NFWF with copies of the following documents: 1) recent appraisal by a licensed appraiser showing fair market value (FMV) of the Property; 2) recent survey (as applicable), map, and clear legal description of the Property; 3) title insurance report; 4) Level One Environmental Assessment report plus any additional reports appropriate to environmental work as required per the Level One Report; 5) baseline inventory of habitat and wildlife; 6) draft of the proposed conveyance of title; 7) letter from federal, state, or local agency or other entity stating that they will accept the property (applicable only to acquisitions involving subsequent third party transfer of title).

Following the disbursement of funds to acquire the Property, the NFWF Subrecipient shall provide NFWF with copies of the following documents: 1) final executed settlement statement; 2) management plan for Property, and 3) recorded deed conveying new title. The deed must include the following language: "One of the main purposes of this acquisition is to perpetually protect an important wildlife area. Therefore, as its purchase is partially funded by a National Fish and Wildlife Foundation (NFWF) grant, the funds awarded under this grant shall be returned to NFWF should a sale of the property occur without NFWF 's approval. Likewise, should the property be condemned in whole or in part, NFWF shall share in the proceeds of such condemnation, in direct proportion, percentage-wise, to its share in this purchase. NFWF will use such recovered funds to purchase, restore, or enhance similar wildlife habitats. If the property is sold by the NFWF Subrecipient with NFWF's approval, but the sale price exceeds the sum of the purchase price paid by the grantee to acquire the property and the costs associated with the ownership and management of the property (Excess Proceeds), then NFWF shall share in such Excess Proceeds, in direct proportion, percentage-wise, to its share in this purchase. NFWF shall have the foregoing right to recover a portion of the Excess Proceeds solely with respect to a sale by the grantee, not sales by the successors in interest to the grantee. NFWF will use its share of any Excess Proceeds to purchase, restore, or enhance the property or similar wildlife habitats."