

IMPLEMENTING AGREEMENT

for the

EAST CONTRA COSTA COUNTY  
HABITAT CONSERVATION PLAN/  
NATURAL COMMUNITY CONSERVATION PLAN

by and between

EAST CONTRA COSTA COUNTY HABITAT CONSERVANCY,  
COUNTY OF CONTRA COSTA,  
CITY OF PITTSBURG,  
CITY OF CLAYTON,  
CITY OF OAKLEY,  
CITY OF BRENTWOOD,  
CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT,  
EAST BAY REGIONAL PARK DISTRICT,  
UNITED STATES FISH AND WILDLIFE SERVICE,  
and  
CALIFORNIA DEPARTMENT OF FISH AND GAME

January 22, 2007



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## **AGREEMENT**

### **1.0 PARTIES**

This Implementing Agreement (“Agreement”), made and entered into by and among the United States Fish and Wildlife Service (“USFWS”) of the United States Department of the Interior, the California Department of Fish and Game (“CDFG”) of the State of California Resources Agency, the East Contra Costa County Habitat Conservancy (the “Implementing Entity”), the County of Contra Costa (“County”), the City of Pittsburg (“Pittsburg”), the City of Clayton (“Clayton”), the City of Oakley (“Oakley”), the City of Brentwood (“Brentwood”), the East Bay Regional Park District (“Park District”) and the Contra Costa County Flood Control And Water Conservation District (“Flood Control District”), implements the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”) as of the Effective Date,.

These entities may be referred to collectively as the “Parties” and individually as a “Party.” The USFWS and CDFG may be referred to collectively as the “Wildlife Agencies.” Pittsburg, Clayton, Oakley and Brentwood may be referred to collectively as the “Cities” and each individually as a “City.” The Implementing Entity, County, Cities, Park District, and Flood Control District may be referred to collectively as the “Permittees” and each individually as a “Permittee.”

### **2.0 RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

- 2.1** The East Contra Costa County HCP/NCCP is intended to provide a comprehensive framework to protect natural resources in eastern Contra Costa County, while improving and streamlining the environmental permitting process for certain projects that would cause impacts on endangered and threatened species. The primary policy priority of the HCP/NCCP is to provide comprehensive species, wetlands, and ecosystem conservation and provide for the conservation and management of endangered and threatened species within East Contra Costa County while balancing open space, habitat, agriculture, and urban development. To that end, the HCP/NCCP describes how to provide for the conservation and management of, and how to avoid, minimize, and mitigate, to the maximum extent practicable, impacts on, Covered Species and their habitats while allowing for the urban development in selected regions of the County and the Cities.
- 2.2** The East Contra Costa County Habitat Conservancy is a joint powers authority formed by its members, the County, and the Cities, to implement the HCP/NCCP. The East Contra Costa County Habitat Conservancy is the Implementing Entity.
- 2.3** The HCP/NCCP covers approximately one-third of the County, or 174,082 acres, all in East Contra Costa County, in which impacts from



certain development and other activities are evaluated, and in which conservation will occur.

- 2.4** The area covered by the HCP/NCCP has been determined to provide, or potentially provide, habitat for twenty-eight (28) species that are listed as endangered or threatened, or that carry other special status, under federal and state laws.
- 2.5** The Permittees are seeking authorization from the Wildlife Agencies for the “take” of the twenty-eight (28) special-status species and certain other species, as take is defined respectively under federal and state law (see below at Section 3.46 of this Agreement), while carrying out certain development and other activities.
- 2.6** The Wildlife Agencies’ take authorizations will cover urban development only if it occurs (a) within the unincorporated areas of the County within the Urban Limit Line (“ULL”) as the ULL may be amended during the Term of this Agreement, or (b) within the jurisdictional limits of the Cities as they may be amended during the term of this Agreement, provided that any such amendments are consistent with certain assumptions made in the HCP/NCCP. The Wildlife Agencies’ take authorizations will also apply to specific rural infrastructure projects and activities outside the ULL or the jurisdictional limits of the Cities and to land management activities on lands protected as part of the HCP/NCCP “Preserve System,” as further described in the HCP/NCCP.
- 2.7** The USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various federal laws, including the federal Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.) (“FESA”), the Migratory Bird Treaty Act (16 U.S.C. §701 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. §668 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. §§661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. §742(a) et seq.).
- 2.8** FESA prohibits the “take” of species listed as endangered or threatened under FESA, as take is defined under federal law. Under Section 10(a)(1)(B) of FESA (16 U.S.C. §1539(a)), USFWS may issue a permit authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan (“HCP”) describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such “taking.” The Permittees submitted the HCP/NCCP to USFWS, and applied for a federal permit for incidental take of Covered Species within the Permit Area. The incidental take permit issued by USFWS based on the HCP/NCCP will be issued concurrently with the USFWS’ execution of this Agreement.



- 2.9** CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species under various state laws, including the California Endangered Species Act (Fish & G. Code, §2050 et seq.) (“CESA”), the Natural Community Conservation Planning Act (Fish & G. Code, §2800 et seq.) (“NCCPA”), the Native Plant Protection Act (Fish & G. Code, §1900 et seq.), and California Fish and Game Code sections 1600 et seq., 1801, 1802, 3511, 4700, 5050 and 5515.
- 2.10** CESA prohibits the take of species listed as endangered, threatened or candidate species under CESA. The NCCPA allows CDFG to authorize by permit the take of any species, whether or not they are listed as endangered or threatened under CESA, where the conservation and management of the species are provided for in a natural community conservation plan (“NCCP”) approved by CDFG. (Fish & G. Code, §2835.) The Permittees submitted the HCP/NCCP to CDFG for approval and permitting for take pursuant to NCCPA. The take authorization issued by CDFG based on the HCP/NCCP will be issued concurrently with CDFG’s execution of this Agreement.
- 2.11** The Park District manages more than 97,000 acres of parkland, wilderness, shorelines, preserves and land banks in Alameda and Contra Costa counties. Its mission is to acquire, develop, manage, and maintain a high quality, diverse system of interconnected parklands that balances public usage and education programs with protection and preservation of natural and cultural resources. Approximately ninety percent (90%) of the Park District’s lands are managed as natural parklands.
- 2.12** The HCP/NCCP was developed by the East Contra Costa County Habitat Conservation Plan Association (“HCPA”) and contains a series of measures to minimize and mitigate to the maximum extent practicable the effects of specified categories of activities on certain special-status species. The HCP/NCCP also includes measures to provide for the conservation and management of the species and certain natural communities.
- 2.13** The County and the Cities intend to allow developers, infrastructure project proponents and certain landowners to receive coverage under the federal incidental take permit and State take authorization for certain development and other activities, subject to the conditions in this Agreement, the HCP/NCCP and the permits. The Implementing Entity may also negotiate agreements with other entities to allow certain activities of theirs to be covered by the permits, subject to the conditions in this Agreement, the HCP/NCCP and the permits, as described in Section 13.2.4.
- 2.14** To streamline other environmental regulatory programs, the HCP/NCCP is intended to serve as the basis for both a Streambed Alteration Agreement issuance program with CDFG, under Section 1602 of the California Fish and Game Code, and a Regional Permit with the United States Army



Corps of Engineers under Section 404 of the federal Clean Water Act, although the Parties acknowledge that the approval of those programs by CDFG and the Army Corps of Engineers is independent of this Agreement.

- 2.15 The HCP/NCCP was developed according to a planning process identified in a planning agreement between the HCPA and CDFG (“Planning Agreement”) (executed November 19, 2003). The planning process included intensive study of the special-status species, their habitats, and other natural communities, and proposed development and other activities within the HCP/NCCP area; discussions between the HCPA and the Wildlife Agencies; input from independent science advisors and the public; and environmental review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.) (“NEPA”) and the California Environmental Quality Act (Pub. Resources Code, §21000 et seq.) (“CEQA”).
- 2.16 The Permittees are agreeing to substantial commitments of land, natural resources, financial resources, human resources and other assets to conserve and manage the special-status species, their habitats and other natural communities, in exchange for the assurances provided by the Wildlife Agencies in this Agreement.

### 3.0 **DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS and DFG under those statutes shall have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1 **“Agreement”** means this Implementing Agreement, which incorporates the HCP/NCCP and the Permits by reference.
- 3.2 **“Authorized Take”** means the extent of incidental Take of Covered Species authorized by the USFWS in the Federal Permit issued to the Permittees pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFG in the State Permit issued to the Permittees pursuant to California Fish and Game Code section 2835.
- 3.3 **“Bald and Golden Eagle Protection Act”** means the federal Bald and Golden Eagle Protection Act (16 U.S.C. §668 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.4 **“CDFG”** means the California Department of Fish and Game, a department of the California Resources Agency.
- 3.5 **“CEQA”** means the California Environmental Quality Act (Pub. Resources Code §21000 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.



- 3.6 **“CESA”** means the California Endangered Species Act (Fish & G. Code, §2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.7 **“Changed Circumstances”** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 12.2 of this Agreement and Chapter 10.2.1 of the HCP/NCCP. Changed Circumstances do not include Unforeseen Circumstances.
- 3.8 **“Chapter”** means a chapter of the HCP/NCCP.
- 3.9 **“Conserve,” “Conserving,” or “Conservation”** means to use, and the use of, methods and procedures within the HCP/NCCP Plan Area that are necessary to bring the federally and state-listed Covered Species to the point at which the measures provided pursuant to FESA and CESA are not necessary, and to maintain or enhance the condition of the non-listed Covered Species so that listing pursuant to FESA and CESA will not become necessary.
- 3.10 **“Conservation Measure”** means each action detailed in Chapter 5 of the HCP/NCCP that is a component of the Conservation Strategy.
- 3.11 **“Conservation Strategy”** means all of the conservation and management measures described in Chapters 5 through 7 of the HCP/NCCP and as further required by the Permits to minimize, mitigate and monitor the impacts of Take of the Covered Species, plus all reporting requirements described in Chapter 8.10 of the HCP/NCCP, and the Permittees’ responses to Changed Circumstances described in Chapter 10.2.1. of the HCP/NCCP. The Conservation Strategy is more particularly defined in Section 7, below.
- 3.12 **“Covered Activities”** means those land uses and conservation and management activities described in Chapter 2.3 of the HCP/NCCP (including all ground-disturbing projects and activities that may occur within the Permit Area and Urban Development Area described in Chapter 2.3.1 of the HCP/NCCP, specific Rural Infrastructure Projects and Activities described in Chapters 2.3.2 & 2.3.3 of the HCP/NCCP, and management and recreational activities described in Chapter 2.3.4 of the HCP/NCCP) to be carried out by the Permittees, their agents, Third Party Participants and Participating Special Entities in the Permit Area that may result in Authorized Take of Covered Species during the term of the HCP/NCCP, and that are otherwise lawful.
- 3.13 **“Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for by the HCP/NCCP and for which limited Take is authorized by the Wildlife Agencies pursuant to the Permits. Covered Species are listed in **Exhibit B** to this Agreement.
- 3.14 **“ECCC HCP/NCCP EIS/EIR”** means the Joint Environmental Impact Statement and Environmental Impact Report dated October, 2006



prepared to analyze the environmental impacts of the HCP/NCCP and Permits under NEPA and CEQA.

- 3.15 **“Effective Date”** means the date on which the State Permit or the Federal Permit is issued, whichever is later.
- 3.16 **“Federal Listed Species”** means the Covered Species which are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species which are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.17 **“Federal Permit”** means the federal incidental Take permit issued by USFWS to the Permittees pursuant to Section 10(a)(1)(B) of FESA, as it may be amended from time to time.
- 3.18 **“FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.19 **“Fully Protected Species”** means any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515 that occur within the Plan Area.
- 3.20 **“HCP”** means a habitat conservation plan prepared pursuant to Section 10 of FESA.
- 3.21 **“HCPA”** means the East Contra Costa Habitat Conservation Planning Association, which was formed to develop the HCP/NCCP and is separate and distinct from the Implementing Entity.
- 3.22 **“HCP/NCCP”** means the Habitat Conservation Plan/Natural Community Conservation Plan prepared by the HCPA and approved by the Wildlife Agencies under Section 10 of FESA and Section 2835 of the California Fish and Game Code.
- 3.23 **“Implementing Entity”** means the East Contra Costa County Habitat Conservancy, a joint exercise of powers authority formed by the Cities and the County.
- 3.24 **“Initial Urban Development Area”** means the Urban Development Area where the Permits will apply to urban development as of the Effective Date, as depicted in Figure 2.3 of the HCP/NCCP.
- 3.25 **“Jurisdictional Wetlands and Waters”** means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act (33 U.S.C. §1251 et seq.), from the State Water Resources Control Boards under either Section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act (California Water Code, §13000 et seq.), or from CDFG under Section 1602 of the California Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- 3.26 **“Listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under FESA or CESA.



- 3.27 **“Management Activities”** means all management actions required by the HCP/NCCP that are necessary to achieve HCP/NCCP biological goals and objectives.
- 3.28 **“Maximum Urban Development Area”** means the largest area in which urban development could occur without requiring a major amendment to the Permits pursuant to Section 17.0 of this Agreement, if the Cities amend their jurisdictional boundaries and/or the County amends the ULL during the term of the Permits, as long as those boundary amendments are consistent with the assumptions supporting the changes to the Urban Development Area provided in Chapter 2.3.1 of the HCP/NCCP.
- 3.29 **“Migratory Bird Treaty Act”** means the federal Migratory Bird Treaty Act (16 U.S.C. §703 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.30 **“NCCP”** means a natural community conservation plan prepared according to the NCCPA.
- 3.31 **“NCCPA”** means the California Natural Community Conservation Planning Act (Fish & G. Code, §2800 et seq.), as amended on January 1, 2003, and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.32 **“NEPA”** means the National Environmental Policy Act (42 U.S.C. §4321 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.33 **“Neighboring Landowners”** means owners of those lands within 1.0 mile of the Preserve System that are actively being used for agricultural purposes at the time the HCP/NCCP preserve is established, and that are eligible for Authorized Take beyond the baseline condition that existed prior to the establishment of the neighboring HCP/NCCP preserve.
- 3.34 **“Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under FESA or CESA.
- 3.35 **“Participating Special Entities”** mean entities within the Plan Area that are not subject to a City’s or the County’s land use authority, or entities that have projects not subject to a City’s or the County’s land use authority, that have entered into special agreements with the Implementing Entity to participate in the HCP/NCCP and receive Take authorization subject to the terms of this Agreement, the HCP/NCCP and the Permits, plus any additional conditions imposed in the special agreement.
- 3.36 **“Party”** or **“Parties”** means any or all of the signatories to this Agreement.
- 3.37 **“Permit Area”** means the area within the Plan Area where the Permittees are seeking authorization from the Wildlife Agencies for the Authorized Take of Covered Species while carrying out Covered Activities, including: (1) the Urban Development Area; (2) the footprint of specific Rural Infrastructure Projects and Activities outside the Urban Development Area described in Chapter 2.2.2 and Chapter 2.3.2 of the HCP/NCCP; and (3)



the boundaries of any land within the Plan Area that is acquired in fee title or by conservation easement and managed as part of the Preserve System.

- 3.38 **“Permits”** means the Federal Permit and the State Permit.
- 3.39 **“Permittees”** means the Implementing Entity, County, Cities, Park District and Flood Control District.
- 3.40 **“Plan Area”** means the geographic area analyzed in the HCP/NCCP, located in the eastern portion of Contra Costa County, as depicted in Figure 1-1 of the HCP/NCCP, attached to this Agreement as **Exhibit A**. The Plan Area is further described in detail in Chapter 1.2.1 of the HCP/NCCP. The Plan Area is also referred to as the “Inventory Area” in the HCP/NCCP.
- 3.41 **“Planning Agreement”** means the document executed on November 19, 2003, by the Implementing Entity and CDFG pursuant to the NCCPA to guide the preparation of the NCCP.
- 3.42 **“Preserve Management Plan”** means a site-specific implementation and management plan for each preserve prepared pursuant to Section 10.3.2 of this Agreement.
- 3.43 **“Preserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the Conservation Strategy of the HCP/NCCP.
- 3.44 **“State Listed Species”** means the Covered Species which are listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, and the Covered Species that are listed as threatened or endangered, or a candidate for such status pursuant to CESA during the term of the HCP/NCCP, as of the date of such listing.
- 3.45 **“State Permit”** means the state Take permit issued to the Permittees pursuant to Section 2835 of the California Fish and Game Code, as it may be amended from time to time.
- 3.46 **“Take”** and **“Taking”** have the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also have the same meaning provided in the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.47 **“Third Party Participants”** means developers, infrastructure project proponents, Neighboring Landowners, Participating Special Entities and other persons or entities that qualify for and receive Take authorization from a Permittee in exchange for compliance with applicable conservation measures and other terms and conditions of this Agreement, the HCP/NCCP and the Permits, as further described in Section 13.2 of this Agreement.
- 3.48 **“ULL”** or **“Urban Limit Line”** means the boundary of allowable urban growth within the unincorporated area of Contra Costa County as approved by voters in 1990 and amended by the County Board of Supervisors in 2000 and in 2004. For purposes of this Agreement and amending the Urban Development Area below, the ULL adopted by voters in November 2006 will be regarded as an amendment to the ULL since



this boundary was approved after publication of the HCP/NCCP and the ECCCHCP/NCCP EIS/EIR.

- 3.49 “Unforeseen Circumstances”** under the Federal Permit means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the plan developers and USFWS at the time of the plan’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.50 “Urban Development Area”** means the area designated in the HCP/NCCP for urban development, including (a) areas within the unincorporated areas of the County and within the Urban Limit Line (“ULL”) as it may be amended during the Term of this Agreement, and/or (b) areas within the jurisdictional limits of the Cities as they may be amended during the Term of this Agreement. Boundary amendments to (a) or (b) will be automatically included in the Urban Development Area unless the Implementing Entity determines in writing that they are inconsistent with the assumptions supporting the changes to the Urban Development Area provided in Chapter 2.3.1 of the HCP/NCCP.
- 3.51 “USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.52 “Wildlife Agencies”** means USFWS and CDFG.

#### **4.0 PURPOSES**

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Covered Activities within the Plan Area, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are:

- 4.1** To ensure implementation of each of the terms and conditions of the HCP/NCCP, this Agreement, and the Permits;
- 4.2** To provide long term assurances to the Permittees that, pursuant to the federal “No Surprises” provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and California Fish and Game Code section 2820, subdivision (f), as long as the terms and conditions of this Agreement, the HCP/NCCP, and the Permits are fully satisfied, no additional land, water or financial compensation or additional restrictions on the use of land, water, or other natural resources will be required of the Permittees, either to minimize and mitigate the impacts of Authorized Take, or to provide for the conservation and management of the Covered



Species in the Plan Area, except as provided in this Agreement and the HCP/NCCP or required by law; and

- 4.3** To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement.

## **5.0 INCORPORATION OF THE HCP/NCCP**

The HCP/NCCP and each of its provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the HCP/NCCP, recognizing that the HCP/NCCP is a conservation plan and was not drafted as a contract. In the event of any direct contradiction, conflict or inconsistency between this Agreement and the HCP/NCCP, the terms of this Agreement shall control. In all other cases, the provisions of this Agreement and the HCP/NCCP shall be interpreted to be consistent with and complementary to each other.

## **6.0 LEGAL FINDINGS AND REVIEW BY THE WILDLIFE AGENCIES**

### **6.1 USFWS Findings**

As further described in the Federal Permit issued by USFWS, USFWS has found that the HCP/NCCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of FESA for each Covered Species that is a Federal Listed Species within the jurisdiction of the USFWS. This finding supports the Take authorization for Federal Listed Species conferred to the Permittees as of the Effective Date.

For each Covered Species that is not a Federal Listed Species as of the Effective Date, USFWS has found that the HCP/NCCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of FESA that would otherwise apply if such Covered Species were a Federal Listed Species. This finding supports the Take authorization for Federal Non-listed Species that shall automatically be conferred to the Permittees if and when the species is listed pursuant to FESA.

The Take of Federal Listed Species that are plants is not prohibited under FESA, and therefore Take authorization for federally listed plants is not necessary. Plant species included on the list of Covered Species are listed on the Federal Permit in recognition of the conservation measures and benefits provided for those plants under the HCP/NCCP. As of the Effective Date, any reference in this Agreement or the HCP/NCCP to the Authorized Take of Covered Species shall, for the purpose of incidental Take authorized under Section 10(a)(1)(B), refer solely to Federal Listed Species other than plants on the Covered Species list. If at any time during the term of this Agreement and the Federal Permit, any plant listed on the Covered Species becomes subject to the take prohibition under FESA, the Federal Permit shall automatically become effective as to such species, and the Permittees shall receive incidental Take Authorization for that plant.



Concurrent with the USFWS' execution of this Agreement, and on satisfaction of all other requirements, USFWS issued to the Permittees the Federal Permit under Section 10(a)(1)(B) of FESA, authorizing the incidental Take by the Permittees of each Covered Species within the jurisdiction of USFWS resulting from Covered Activities in the Permit Area. The Federal Permit is conditioned on compliance with the terms and conditions of this Agreement, the HCP/NCCP, and the Federal Permit.

## **6.2 CDFG Findings**

### **6.2.1 State Listed and Non-Listed Species**

As further described in the State Permit and the findings issued by CDFG pursuant to the NCCPA, CDFG has found that the HCP/NCCP satisfies the permit issuance criteria listed in Sections 2820, 2821 and 2835 of the California Fish and Game Code for each Covered Species, both State Listed Species and Non-listed Species. This finding supports the Take authorization for State Listed Species and Non-Listed Species conferred to the Permittees as of the Effective Date.

Concurrent with CDFG's execution of this Agreement, and on satisfaction of all other requirements, CDFG issued to the Permittees the State Permit under Section 2835 of the California Fish and Game Code, authorizing the Take by the Permittees of each Covered Species, both State Listed Species and Non-listed Species, within the jurisdiction of CDFG resulting from Covered Activities in the Permit Area. The State Permit is conditioned on compliance with the terms and conditions of this Agreement, the HCP/NCCP, and the State Permit.

### **6.2.2 State Fully Protected Species**

Although one Fully Protected Species, the golden eagle, is included in the list of Covered Species, Take of this species is not authorized by the State Permit. Section 3511 of the California Fish and Game Code prohibits CDFG from authorizing the take of golden eagles, except for necessary scientific research, including golden eagle recovery efforts. If at any time there is a change in state law such that CDFG may issue a Section 2835 Permit or other permit or authorization allowing the incidental Take of golden eagle, the Permittees may request an amendment to the State Permit or apply for a new permit to authorize Take of such species, as provided in Section 17.3 of this Agreement.

## **6.3 Environmental Review**

### **6.3.1 Federal Law – National Environmental Policy Act**

Issuance of the Federal Permit under Section 10(a)(1)(B) of FESA to the Permittees by USFWS is an action subject to review under NEPA. USFWS is the lead agency under NEPA. Prior to the Effective Date, USFWS evaluated the HCP/NCCP pursuant to NEPA in the ECCC HCP/NCCP EIS/EIR.



### **6.3.2 State Law – California Environmental Quality Act**

Approval of the HCP/NCCP and issuance of the State Permit under Section 2835 of the California Fish and Game Code to the Permittees by CDFG is an action subject to review under CEQA. The HCPA is the lead agency, CDFG is the trustee agency, and CDFG and the other Permittees are responsible agencies under CEQA. On or before the Effective Date, the Implementing Entity and CDFG each evaluated the HCP/NCCP pursuant to CEQA in the ECCC HCP/NCCP EIS/EIR, and issued findings addressing whether the implementation of the HCP/NCCP would cause significant adverse impacts to the environment. Unless otherwise required by CEQA or other applicable law, the Permittees shall rely on and use relevant portions of the ECCC HCP/NCCP EIS/EIR and the CEQA Findings when conducting future environmental review of Covered Activities.

## **7.0 CONSERVATION STRATEGY**

Chapters 5, 6, 7, 8.10, and 10.2.1 of the HCP/NCCP describe a Conservation Strategy that includes: the biological goals and objectives of the HCP/NCCP; avoidance and minimization measures to reduce impacts resulting from Covered Activities; land acquisition and assembly of the Preserve System; Preserve System management that includes habitat creation, enhancement and restoration and species population enhancement; Plan Area monitoring and reporting; and adaptive management. As further provided in this Agreement, the HCP/NCCP and the Permits, the Implementing Entity, other Permittees and Third Party Participants are each responsible to implement every applicable Conservation Measure and other measures described in the HCP/NCCP when engaging in Covered Activities and when otherwise required, as they may be modified through adaptive management, whether or not such measures are specifically referenced in this Agreement. For the purposes of this Agreement, all of these measures are collectively referred to as the “Conservation Strategy.”

## **8.0 AVOIDANCE & MINIMIZATION OF IMPACTS**

### **8.1 General Framework**

As required by FESA and NCCPA, the Conservation Strategy includes measures to avoid and minimize take of Covered Species and to conserve natural communities and Covered Species at the landscape-, habitat- and species-level. Avoidance and minimization measures include surveys and specific conditions on Covered Activities, all as further detailed in Chapter 6 of the HCP/NCCP. Chapter 6 of the HCP/NCCP provides further instructions to determine which avoidance and minimization measures are applicable to particular Covered Activities. Each Permittee and Third Party Participant shall implement all applicable avoidance and minimization measures as required by the HCP/NCCP. Prior to approving or carrying out any Covered Activity within their respective land use jurisdictions, the County and Cities shall evaluate the Covered Activity and apply the above referenced instructions to ensure that all applicable avoidance and minimization measures are incorporated into the Covered Activity, as further provided by this Agreement. For those Covered Activities that are not implemented directly by, or subject



to the land use authority of, any one of the Permittees, the Implementing Entity shall be responsible to ensure that all applicable avoidance and minimization measures are implemented. Throughout this Section 8.0, the phrase “the Permittee or the Implementing Entity” shall be construed to refer to the Permittee that will implement the Covered Activity or, for Covered Activities implemented by Third Party Participants, to the County or City with land use authority over the subject Covered Activity, and shall be construed to refer to the Implementing Entity only with regard to Covered Activities that are not implemented directly by any other Permittee and are not subject to the land use authority of the County or any City.

## **8.2 Surveys**

The applicable Permittee or the Implementing Entity shall require each proponent of a Covered Activity to submit a planning survey in accordance with Chapter 6.2.1 of the HCP/NCCP, prior to carrying out the Covered Activity. The Permittee or the Implementing Entity will ensure that the proponent of the Covered Activity implements and complies with all applicable preconstruction surveys and construction monitoring requirements described in Chapters 6.2.2 and 6.2.3 of the HCP/NCCP.

## **8.3 Responsibility for Projects at the Urban-Wildland Interface**

Development projects adjacent to land in the existing or planned Preserve System shall incorporate Conservation Measure 1.9, set forth in Chapter 6 of the HCP/NCCP, which requires design elements to minimize the indirect impacts of the development on the Preserve System. The applicable Permittee or the Implementing Entity shall ensure that each such project incorporates adequate design elements, and shall be responsible for enforcing compliance with Conservation Measure 1.9. All applicable design elements to establish a satisfactory interface shall be within the footprint of the development, and not within the Preserve System. The implementation and ongoing maintenance of the design elements shall be funded by the development project’s property owner(s) and/or their successors, as described in Conservation Measure 1.9. In the event the Permittee or the Implementing Entity determine that complying with Conservation Measure 1.9 could severely impact a property owner’s use or economic interest in private property, the Permittee or the Implementing Entity, as applicable, and the Wildlife Agencies shall promptly consult with the property owner to consider whether any modifications to Conservation Measure 1.9 are appropriate that will reduce the impact on the property owner. Where compliance with Conservation Measure 1.9 would deny a private property owner of substantially all economically viable use of his or her property, the Permittee or the Implementing Entity and the Wildlife Agencies shall confer and identify modifications or alternatives to Conservation Measure 1.9 that would not deny substantially all economically viable use.

## **8.4 No Take of Extremely Rare Plants or Fully Protected Species**

Nothing in this Agreement, the HCP/NCCP or the Permits is intended or shall be construed to allow the Take of extremely rare plant species listed in Table 6-5 of the



HCP/NCCP (“No-Take Plant Population”) or any Fully Protected Species under California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515. All Permittees and Third Party Participants shall avoid take of these species.

#### **8.4.1 No-Take Plant Management Plans**

If a no-Take plant population is found on the site of a Covered Activity, it is the responsibility of the proponent of the Covered Activity, whether a Permittee or a Third Party Participant, to adequately preserve the population, prepare a long-term management and monitoring plan, and fund the implementation of this plan, all pursuant to Conservation Measure 1.11 in the HCP/NCCP. Each Third Party Participant shall submit the plan for approval to the Permittee or the Implementing Entity prior to carrying out the Covered Activity.

In the event that complying with Conservation Measure 1.11 would severely impact a property owner’s use or economic interest in private property, the Permittee or the Implementing Entity and the Wildlife Agencies shall promptly consult with the property owner to consider whether any modifications to Conservation Measure 1.11 are appropriate that will reduce the impact on the property owner, or whether the Implementing Entity may instead purchase the property as part of the Preserve System. Even if the property owner sells or otherwise transfers the land into the Preserve System, he or she must fund the preparation and long-term implementation of the management and monitoring plan for conservation of the plant population.

#### **8.4.2 Golden Eagle**

Although the list of Covered Species includes the golden eagle, which is a Fully Protected Species, the Permits do not authorize Take of this species. CDFG acknowledges and agrees that if the avoidance measures set forth in the Conservation Strategy, including but not limited to Conservation Measure 1.11, are complied with, the Covered Activities are not likely to result in Take of golden eagles. If CDFG determines that such measures are not adequate to prevent Take of golden eagles, CDFG shall notify the Implementing Entity and other affected Permittees in writing of its determination, and propose new, additional or different conservation measures designed to avoid Take of these species. The affected Permittees shall implement the measures proposed by CDFG, or other measures mutually agreed to by the Parties, to avoid Take of golden eagles.

### **8.5 Design Requirements for Covered Roads Outside the Urban Limit Line**

New roads or major road improvements identified as a Covered Activity shall comply with the siting, design and construction requirements set forth in Conservation Measure 1.14 and Table 6-3 in the HCP/NCCP. The proponent of any such Covered Activity in the Plan Area shall submit an application to the Implementing Entity, CDFG and USFWS, describing how the project’s siting, design and construction complies with Conservation Measure 1.14, Table 6-3, and all other applicable conservation measures in



the HCP/NCCP. To qualify for Authorized Take, the project's siting, design, and construction must conform to the applicable requirements of the HCP/NCCP, as determined by the Wildlife Agencies based on the application.

## **8.6 Delineation of Jurisdictional Wetlands and Waters**

When Jurisdictional Wetlands and Waters are present on the site of a Covered Activity, the proponent of the Covered Activity shall provide a jurisdictional delineation verified by the U. S. Corps of Engineers, an appropriate State regulatory agency, or the Implementing Entity according to Chapter 6.3.1 of the HCP/NCCP and present a report on the verified delineation to the appropriate Permittee prior to carrying out the Covered Activity.

## **9.0 LAND ACQUISITION & ASSEMBLY OF PRESERVE SYSTEM**

### **9.1 General Framework**

The Implementing Entity shall create a Preserve System by acquiring land and dedicating it in perpetuity to the Preserve System through either a fee interest or conservation easement. The Implementing Entity may also include in the Preserve System lands acquired by the Park District in accordance with Section 9.4, below, and lands acquired through partnerships with other entities in accordance with Section 9.5. Where the Implementing Entity itself acquires a fee interest in land, preservation shall be ensured through restrictive covenants, deed restrictions, or equivalent title restrictions, recorded in favor of the Wildlife Agencies. Where acquisition is by conservation easement, each conservation easement shall provide for the permanent protection and dedication of the land to the Preserve System, consistent with the criteria listed in Chapter 8.6.3 of the HCP/NCCP. All acquisitions shall adhere to the principles and priorities for preserve design, and for species population and habitat preservation and enhancement, as set forth in Conservation Measure 1.1 of the HCP/NCCP, including any Zone and Subzone Requirements detailed in Conservation Measure 1.1 and the acreage requirements set in Tables 5-7 and 5-8 of the HCP/NCCP. The creation of the Preserve System shall follow the process contained in the Conservation Measure 1.1, which the Parties acknowledge allows for some flexibility in how the Preserve System is ultimately assembled, including the acceptance of credits from approved mitigation or conservation banks, to account for availability and funding. The Implementing Entity shall also comply with the steps and guidelines for land acquisition described in Chapters 5.2 and 5.3 of the HCP/NCCP.

As detailed in Table 5-9 of the HCP/NCCP, the Preserve System will contain a minimum of 21,450 acres under the Initial Urban Development Area scenario, or a minimum of 26,050 acres under the Maximum Urban Development Area scenario.



### **9.1.1 Assembly of Preserve System – Implementing Entity’s Responsibility for Mitigation and Conservation**

Under FESA, the Permittees are required to mitigate the impacts of the Covered Activities to the maximum extent practicable, and under the NCCPA the Permittees are required to provide for the conservation and management of the Covered Species. To meet these legal requirements, the Implementing Entity shall acquire all land necessary to assemble the Preserve System according to the assumptions and criteria set forth in Tables 5-5a, 5-5b, 5-7 and 5-8 of the HCP/NCCP and Conservation Measure 1.1 of the HCP/NCCP, minus the Wildlife Agencies’ contribution provided in Section 9.1.2 of this Agreement. Under both the Initial and Maximum Urban Development Area, the Implementing Entity’s requirement to mitigate to the maximum extent practicable will be fully satisfied through land acquisitions and other actions using mitigation fees described in Chapter 9.3.1 of the HCP/NCCP. All other acquisitions will contribute to the conservation component, rather than the mitigation component, of the Preserve System and are therefore eligible for public funding. To complete the conservation component beyond the Wildlife Agencies’ contribution in Section 9.1.2 of this Agreement, the Implementing Entity will pursue other local funding sources described in Chapter 9.3.2 of the HCP/NCCP, and will work jointly with the Wildlife Agencies to apply for competitive state, federal and other land acquisition grants that are not directly administered by the Wildlife Agencies.

### **9.1.2 Assembly of Preserve System – The Wildlife Agencies’ Contribution to Conservation and Recovery**

To contribute to the conservation and recovery goals of the Covered Species under FESA and the NCCPA, the Wildlife Agencies herein agree to share in the effort to acquire and manage a portion of the number of acres needed to assemble the Preserve System as stated in Section 9.1 of this Agreement. Thus, the Wildlife Agencies agree to use reasonable efforts to contribute 8,700 acres, or to assist the Implementing Entity with obtaining federal and state funding to acquire the same number of acres, in addition to the land acquired by the Implementing Entity pursuant to Section 9.1.1 of this Agreement, for perpetual dedication to the Preserve System and long-term management by the Implementing Entity. The Wildlife Agencies will further assist the Implementing Entity with applications for state, federal and other land acquisition grants that are not directly administered by the Wildlife Agencies. As further explained in Section 9.3.3 of the HCP/NCCP, based on an analysis of past investments and potential future investments from these other state and federal funding sources, the Parties expect such funding sources to be sufficient to contribute an additional 4,650 acres of land to the Preserve System.

The agreement by the Wildlife Agencies in this Section 9.1.2 is subject to the limitations provided in Section 24.8 of this Agreement. In the event the Wildlife Agencies are not able to fulfill their agreement in this Section 9.1.2, the Implementing Entity and the Wildlife Agencies will work together cooperatively to modify the Conservation Strategy and Permits as necessary. However, because acquisitions and other actions that will be



adequately funded by the revenues generated by the County, Cities and Flood Control District through mitigation fees and local funding mechanisms described in Chapter 9.3.1 of the HCP/NCCP will meet the mitigation responsibilities of the Permittees under FESA, in no case will the failure of the Wildlife Agencies to achieve their intended contribution goal under this Section 9.1.2 result in the revocation or suspension of the Federal Permit pursuant to Sections 19.0 or 21.0 of this Agreement.

## **9.2 Stay Ahead Provision**

The Implementing Entity shall ensure that the assembly of the Preserve System stays ahead of Authorized Take under the Permits, as more particularly described in the Stay Ahead Provision set forth in Chapter 8.6.1 of the HCP/NCCP. To provide flexibility in complying with the Stay Ahead Provision throughout the first ten (10) years of the term of this Agreement, the Implementing Entity may satisfy the Stay Ahead Provision in Chapter 8.6.1 using either Stay Ahead Measurement Method #1 or #2 detailed in Chapter 8.6.1. After the first ten (10) years, the Implementing Entity shall use Stay Ahead Measurement Method #1.

The Implementing Entity shall report the status of the Stay Ahead Provision in each Annual Report (see Section 11.4). The first Annual Report shall be prepared following the first full calendar year of HCP/NCCP implementation and shall report on all applicable activities and results from the Effective Date to the end of the first full calendar year. Compliance with the Stay Ahead Provision shall be determined based on each Annual Report; however, compliance with the Stay Ahead Provision shall not be required until the time at which the second Annual Report is due. If, based on any Annual Report (beginning with the second Annual Report), the Stay Ahead Provision is not met for any land-cover type, the Implementing Entity and the Wildlife Agencies shall meet and confer within thirty (30) days of the Annual Report to develop and implement a mutually agreeable plan of action to remedy the situation and achieve compliance with the Stay Ahead Provision, as further described in Chapter 8.6.1 of the HCP/NCCP. The plan of action may include a requirement that Permittees must require some or all project proponents to provide land in-lieu of mitigation fees.

In addition, if the Implementing Entity concludes at any time that progress towards assembling the Preserve System is likely to fail to meet the requirements of the Stay Ahead Provision, the Implementing Entity may recommend that the County and the Cities require land in-lieu of mitigation fees. If a land in-lieu of fee requirement is necessary either as part of a plan of action to remedy a failure to meet the Stay Ahead Provision or based on the Implementing Entity's independent determination, the Implementing Entity shall provide written notice thereof to the other Permittees. The Implementing Entity's notice will recommend a scope (e.g., to projects of greater than ten acres) of a land in-lieu of mitigation fee requirement. Each Permittee shall thereafter consider requiring project proponents to provide land in-lieu of mitigation fees in accordance with the notice and the guidelines in Chapter 8.6.7 of the HCP/NCCP and Section 13.2.2.2 of this Agreement. The Permittees acknowledge that failure to



implement responsive actions in accordance with the Stay Ahead Provision may result in suspension or termination of the Permits.

If the Implementing Entity recommended the land in-lieu of fee requirement based on its own determination, the Implementing Entity may recommend termination of the requirement at its discretion by providing written notice of its recommendation to the other Permittees, which shall thereafter consider terminating the requirement. If the Implementing Entity recommended the requirement to remedy non-compliance with the Stay-Ahead provision, the Implementing Entity may recommend terminating the requirement only after progress towards assembling the Preserve System complies with the Stay Ahead Provision or with the written concurrence of the Wildlife Agencies.

### **9.3 Rough Proportionality Standard**

Pursuant to section 2820, subdivision (b)(9) of the California Fish and Game Code, the Implementing Entity, County, Cities and Flood Control District must “ensure that the implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or Covered Species.” Section 2820, subdivision (b)(9) also requires a statement of consequences of the failure to acquire lands in a timely manner.

For purposes of the HCP/NCCP, whether “rough proportionality” is met shall be determined pursuant to Chapter 8.6.1 of the HCP/NCCP. If at any time CDFG provides written notification that rough proportionality on a plan basis has not been met, then the Implementing Entity, County, Cities and Flood Control District will either: (1) regain rough proportionality within forty-five (45) days; or (2) enter into an agreement with CDFG within forty-five (45) days, which will set a course of action to expeditiously regain rough proportionality. The agreement may include any of a variety of commitments or adjustments to the NCCP designed to regain rough proportionality, including but not limited to, a plan to acquire, restore, or enhance lands of appropriate vegetation or land-cover type expeditiously.

If the Implementing Entity, County, Cities and Flood Control District do not regain rough proportionality within forty-five (45) days or enter into an agreement with CDFG within forty-five (45) days setting a course of action to regain rough proportionality, CDFG will suspend or revoke the State Permit, in whole or in part, pursuant to California Fish and Game Code section 2820, subdivision (c). The Parties agree that partial suspension or revocation may include removal of one or more species from the Covered Species list for purposes of the State Permit or reducing the geographic scope of the Take authorization provided by the State Permit. Before suspending or revoking the State Permit *in whole* due to a failure to maintain rough proportionality, DFG shall meet with the Permittees to determine whether mutually agreeable modifications to the HCP/NCCP would obviate a suspension or revocation *in whole*. The Parties agree that if CDFG suspends or revokes the State Permit, the Permittees may, based on the HCP/NCCP, apply for one or more CESA incidental take permits under section 2081, subdivision (b), of the California Fish



and Game Code to replace the State Permit, in which case CDFG shall expeditiously review the application in accordance with CESA.

#### **9.4 Land Acquired by the Park District**

The Park District's acquisitions within the Plan Area will be formally credited towards the obligations set forth in Conservation Measure 1.1, including the Stay Ahead Provision described in Section 9.2 of this Agreement, and added to the Preserve System where the acquisition contributes to meeting the goals and objectives of the HCP/NCCP, is approved by the Implementing Entity, ensures preservation through restrictive covenants, deed restrictions, or equivalent title restrictions, recorded in favor of the Wildlife Agencies, and the Park District agrees to manage the land in perpetuity pursuant to a Preserve Management Plan as described in Section 10.3.2 of this Agreement. A Park District acquisition may be so credited before the Preserve Management Plan has been completed, provided the conditions described in Chapter 8.6 of the HCP/NCCP are met. The Implementing Entity and Park District may further agree to record a temporary easement or permanent conservation easement on new Park District lands to provide additional assurances that the lands will be preserved and managed in accordance with Section 10.3.2 of this Agreement. Subject to the availability of funding, the Park District agrees to maintain its historical rate of land acquisition within the Plan Area, which the Park District estimates will result in the acquisition of approximately 10,000 acres over the initial 30-year term of this Agreement, the Permits and the HCP/NCCP. The Park District agrees to collaborate with the Implementing Entity to maximize the extent and ecological value of jointly-funded land acquisitions in the Plan Area and further agrees that funds provided by the Implementing Entity for land management and for land acquisition within the Plan Area will be used to benefit the HCP/NCCP, and will not replace or redirect planned or actual Park District expenditures within the Plan Area.

#### **9.5 Land Acquired Through Partnerships with Other Agencies and Organizations**

The Implementing Entity may enter into agreements and other partnerships involving land acquisitions with other land management agencies and organizations where those acquisitions meet the goals and objectives of the HCP/NCCP. However, such acquisitions will be formally credited towards the obligations set forth in Conservation Measure 1.1, including the Stay Ahead Provision described in Section 9.2 of this Agreement, only where the acquisition (a) contributes to meeting the goals and objectives of the HCP/NCCP, (b) contains a conservation easement or other permanent dedication of land to the Preserve System, (c) will be managed in perpetuity pursuant to a Preserve Management Plan, as described below in Section 10.3.2 of this Agreement, and (d) is approved by the Implementing Entity. Such acquisitions may initially be credited toward the obligations set forth in Conservation Measure 1.1 (including the Stay Ahead Provision) before the Preserve Management Plan has been completed, provided the conditions described in Chapter 8.6 of the HCP/NCCP are met.



## **9.6 Lands and Revenues Acquired Before Issuance of the Permits**

Section 5.1.7 of the Planning Agreement provides that lands acquired before issuance of the Permits may be credited towards the land acquisition obligations of the HCP/NCCP under certain circumstances. The Parties agree that lands acquired after the Planning Agreement was executed, but before issuance of the Permits, shall be formally credited towards the obligations set forth in Conservation Measure 1.1 as set forth in Table 5-21 and Chapter 8.6.2 of the HCP/NCCP, in the subsection entitled “Land Acquisition During Plan Development.”

In addition, the Parties acknowledge that, under terms negotiated separately between public and private projects proponents and the Wildlife Agencies, funds have been committed to the implementation of the HCP/NCCP to mitigate impacts from projects in the Inventory Area that were approved during the development of the HCP/NCCP. Such funds include funds in the account established by CDFG and maintained by the California Wildlife Foundation for the mitigation of impacts in East Contra Costa County and mitigation fees collected by the County for the mitigation of biological impacts resulting from the construction of the State Route 4 Bypass and from certain flood control projects. The Parties agree that all such funds will be transferred to the Implementing Entity upon its request and shall be used by the Implementing Entity at its discretion to implement HCP/NCCP conservation actions in the Inventory Area.

## **9.7 Faria South/Costa and Montecito Project Mitigation**

Portions of two proposed projects southwest of the City of Pittsburg near Bailey Road, the “Faria South/Costa Project” and the “Montecito Project,” were designated in the draft HCP/NCCP as high priority for inclusion in the Preserve System. After release of the draft HCP/NCCP for public review, the City of Pittsburg in a public initiative adopted an urban limit line that included both projects in their entirety. The Parties agreed that the public initiative reduced the feasibility of conserving land in that area to the extent proposed in the draft HCP/NCCP. Consequently, the Parties considered an alternative preservation approach in that area. As the result of subsequent discussions with the proponent of the two projects, the Wildlife Agencies identified substantial, mutually agreeable, additions of land to the Preserve System and funding for HCP/NCCP implementation that would maintain the level of conservation evaluated in the draft HCP/NCCP while allowing revision of the HCP/NCCP such that significant portions of the two projects are no longer identified as a high priority for inclusion in the Preserve System. The mitigation, which would maintain the level of conservation, includes dedication of land or easements comprising approximately one-thousand (1,000) acres (most of which is within the high priority acquisition area) and payment of substantial fees. The mitigation is expected to include the approximately sixty-three (63) acre area identified as high priority within Zone 1a, as well as portions of the Smith, West Coast, and Nortonville properties. These measures differ from the general mitigation fee and land acquisition requirements of the HCP/NCCP. Nevertheless they were contemplated in the final HCP/NCCP and they are consistent with the requirements of and further the



HCP/NCCP Conservation Strategy. Additionally, they provide sufficient mitigation for the two projects.

The details of the measures associated with the “Faria South/Costa Project” and the “Montecito Project” will be set forth in an in-lieu fee agreement as described in Section 13.2.2.2. Since this agreement is expected to be finalized prior to formation of the Implementing Entity, the agreement may be executed by the Wildlife Agencies without the Implementing Entity and the City of Pittsburg. The Implementing Entity may become a signatory thereto at a later date. Execution of such an in-lieu agreement, which conforms to the structure set forth in Chapter 8.6.7, or which otherwise meets the criteria for in-lieu agreements set forth in Chapter 8.6.7, supports Take authorization for the two projects under the Permits. Because the change in high priority acquisition areas was based in part on the expectation that an alternative mitigation and preservation approach that maintains the level of conservation evaluated in the draft HCP/NCCP would be established in an in-lieu agreement, such an agreement is necessary in order to authorize Take for these properties under the HCP/NCCP and the Permits. The mitigation provided under the terms of the agreement will count toward fulfillment of the HCP/NCCP obligations set forth in Conservation Measure 1.1.

## **9.8 Cypress Corridor Project Mitigation**

The Cypress Corridor in the northeast portion of the City of Oakley is included in the HCP/NCCP’s Urban Development Area. However, Oakley has completed or is near completion of its environmental review of many projects in the area. The proponents of these projects will pursue, or are currently pursuing, independent take authorizations under Section 7 of FESA and/or CESA. As the result of discussions with the project proponents, the Wildlife Agencies have identified substantial, mutually agreeable additions of land to the Preserve System and funding for HCP/NCCP implementation that they expect will provide sufficient mitigation for the projects without compromising the overall viability of the Preserve System or the Implementing Entity’s ability to meet HCP/NCCP goals and objectives. (Copies of the June 1, 2006 agreement between the Wildlife Agencies and the project proponents, the “East Cypress HCP/NCCP Memorandum of Agreement,” may be obtained from CDFG or the Implementing Entity.) If such projects receive independent take authorizations under FESA and CESA based on these alternative mitigation requirements, the projects will not be Covered Activities or otherwise be covered by or subject to the HCP/NCCP or this Agreement, and will not receive take authorization under the Permits. However, the Parties agree that the take resulting from such projects and the mitigation provided will be accounted for in the HCP/NCCP and this Agreement as if the projects were Covered Activities for purposes of calculating Stay Ahead and Rough Proportionality requirements in accordance with Section 9.2 and Section 9.3 of this Agreement and with Chapter 8.6.1 of the HCP/NCCP and will be credited toward the obligations set forth in Conservation Measure 1.1.



## **10.0 PRESERVE MANAGEMENT**

### **10.1 Responsibility of the Implementing Entity**

The Implementing Entity shall carry out the preserve management responsibilities, as further described in this Section 10.0 and Chapters 5 and 7 of the HCP/NCCP. The Implementing Entity may delegate planning and implementation tasks to other Parties or qualified third parties, including but not limited to universities, scientists and other contractors. However, the Implementing Entity shall remain solely responsible for ensuring the management of the preserve lands in perpetuity and the timeliness and quality of all requirements of preserve management, except where the Park District has assumed that responsibility as provided in Section 10.2, below.

### **10.2 Management of Park District Lands in Preserve System**

The Park District agrees to manage all of its lands that are formally credited toward the obligations in Conservation Measure 1.1 and added to the Preserve System, as described in Section 9.4, in accordance with a Preserve Management Plan, as described in Section 10.3.2. The Implementing Entity or other Permittee shall provide sufficient funds to the Park District to pay for incremental costs incurred to prepare and update the Preserve Management Plan and incremental land management costs incurred to meet the land management standards set forth in Conservation Measure 1.1 in the HCP/NCCP. The Park District shall be obligated to manage its lands in accordance with a Preserve Management Plan only to the extent that it is provided sufficient funds for such incremental costs. If the Permittees' fail to provide the Park District with such funds and, as a result of the lack of funding, the Park District does not manage some or all of its lands that have been added to the Preserve System in accordance with a Preserve Management Plan, the amount of the Park District's lands that have been credited toward the obligations in Conservation Measure 1.1 may be reduced accordingly by the Wildlife Agencies. As used herein, "incremental costs" include only those costs related to implementing the HCP/NCCP that would not otherwise be incurred by the Park District to manage its lands. The Park District agrees to continue to fund the management of all of its lands within the Plan Area to achieve its internal management standards and will receive funding from the other Permittees only for incremental costs attributable to meeting more rigorous standards imposed by the HCP/NCCP. Similarly, the Park District shall ensure that long-term management of its lands within the Plan Area meets HCP/NCCP standards (i.e., beyond the 30-year initial term of this Agreement, the Permits and the HCP/NCCP) provided it receives the required incremental funding for that purpose. The Implementing Entity may seek to enter into separate agreements with the Park District to incorporate newly acquired Park District lands into the Preserve System and may also seek to enter into one or more separate agreements with the Park District to normalize cost-sharing arrangements and other coordination with regard to land acquisition and management within the Plan Area, as further described in Section 13.6.



### **10.2.1 Recreational Uses**

The Parties acknowledge that providing recreational opportunities on Park District lands is integral to the Park District's mission. The Parties further acknowledge that certain low-intensity recreational uses are appropriate within the Preserve System, subject to appropriate constraints to protect Covered Species and natural communities. The Parties therefore agree that it is appropriate for the Implementing Entity, in consultation with the Park District, to integrate the Park District's recreation planning goals and objectives into the system-wide preserve management plans and parcel-specific Preserve Management Plans described in Section 10.3, below, for Park District lands within the Plan Area that are being credited to the HCP/NCCP, to the extent consistent with the HCP/NCCP's land management goals and objectives and the requirements of this Agreement and the Permits.

### **10.2.2 Coverage for Park District Land Management in Plan Area**

The Park District's management of lands that are formally credited toward the obligations in Conservation Measure 1.1 and added to the Preserve System in accordance with Section 9.4, above, shall be a Covered Activity. The Parties acknowledge that the Park District may in the future seek State and Federal Take authorization for management of its other lands in or near the Plan Area and may elect to prepare a separate habitat conservation plan, a subarea habitat conservation plan/natural community conservation plan designed to be integrated with the HCP/NCCP, or other conservation planning document, for that purpose.

## **10.3 Preserve Management Plans**

### **10.3.1 System-Wide Preserve Management**

The Implementing Entity shall prepare and implement plans pursuant to Conservation Measures 1.4 and 1.5 that apply to the entire Preserve System to control exotic species and manage recreational uses. The Implementing Entity shall evaluate these system-wide plans for effectiveness and revise them as appropriate (a) at least every five (5) years until all preserve acquisition is completed, (b) every five (5) years after preserve acquisition is completed, and (c) whenever necessary under Changed Circumstances pursuant to Section 12.2 of this Agreement.

### **10.3.2 Preserve Management Plans**

Within two (2) years of the dedication of any parcel of land that is not cultivated for agriculture to the Preserve System, the Implementing Entity shall ensure that a Preserve Management Plan prepared pursuant to Conservation Measure 1.2 adequately provides for any necessary management or enhancement of the habitat, species populations, or other aspects of that land. Concurrent with the dedication of a particular parcel of land to the Preserve System, the Implementing Entity will determine whether an existing



Preserve Management Plan provides sufficient implementing mechanisms and management guidance to satisfy the Conservation Strategy, or whether a new Preserve Management Plan must be prepared. If a new Preserve Management Plan is needed, the Implementing Entity shall be responsible for ensuring the land is managed to maintain and improve Covered Species habitat using the best available information and management methods in practice within the Plan Area until the new Preserve Management Plan is completed, as described in Conservation Measure 1.2.

The Implementing Entity shall evaluate each Preserve Management Plan for effectiveness and revise it as appropriate (a) at least every five (5) years until all preserve acquisition is completed, (b) as necessary pursuant to the adaptive management provisions of the HCP/NCCP, and (c) whenever necessary under Changed Circumstances pursuant to Section 12.2 of this Agreement.

### **10.3.3 Agricultural Management Plans**

The Implementing Entity shall prepare an Agricultural Management Plan (“AMP”) for cultivated agricultural lands that are acquired for preservation, pursuant to Conservation Measure 1.3. For agricultural lands that are acquired through fee title, the Implementing Entity shall include the terms of the AMP in any lease or other agreement that allows continued agricultural use of the land. For lands that are acquired through conservation easement, any key elements (i.e., essential requirements, restrictions or other criteria required for the AMP) shall be included or referenced in the conservation easement, and the AMP itself shall be completed within one (1) year after recording the conservation easement.

### **10.3.4 Grazing Leases Within the Preserve System**

The Parties acknowledge that livestock grazing can be an important management tool in the Preserve System. The Implementing Entity may include lands in the Preserve System that are subject to existing grazing leases, as long as the grazing leases are consistent with the applicable Preserve Management Plan or AMP. The Implementing Entity shall review all existing grazing leases within ninety (90) days of acquisition of such lands and shall terminate or revise the leases as necessary to bring them into compliance with the Preserve Management Plan, the AMP, and/or the terms and conditions of this Agreement, the HCP/NCCP and the Permits; however, the Implementing Entity shall not be required to violate the terms of existing grazing leases. If a Preserve Management Plan has not yet been prepared, the Implementing Entity may continue any existing grazing leases on a parcel until a Preserve Management Plan is prepared. Once a Preserve Management Plan is prepared, the Implementing Entity may renew an existing grazing lease or enter into a new grazing lease only if it is consistent with the Preserve Management Plan and includes the requirements and conditions of Chapter 8.6.4 of the HCP/NCCP.



#### **10.4 Review and Approval By the Wildlife Agencies**

All system-wide preserve management plans, Preserve Management Plans, and AMPs must be reviewed and approved by the Wildlife Agencies. The Implementing Entity will also update and revise such plans as part of the HCP/NCCP's adaptive management program. The Implementing Entity shall submit such plans or revisions in writing with a cover sheet explaining the plan or revisions and the rationale for such plan or revisions. The Wildlife Agencies shall review the submission and provide a consistent response in writing within sixty (60) days. The written response shall contain either an approval, which shall not be unreasonably withheld, a description of reasonable modifications needed to reach approval, or an objection accompanied by a written explanation of the objection. During preparation and agency review of such plans and revisions, preserve management shall continue according to the HCP/NCCP and best scientific practices.

### **11.0 PLAN AREA MONITORING & REPORTING**

#### **11.1 Responsibility of the Implementing Entity**

The Implementing Entity shall carry out the compliance and effectiveness monitoring and reporting, as further described in Chapters 6.0 and 7.0 of the HCP/NCCP. The Implementing Entity may delegate monitoring and reporting tasks to other Parties or qualified third parties, including universities, scientists and other contractors. However, the Implementing Entity shall remain solely responsible for all monitoring and reporting requirements in perpetuity and for the timeliness and quality of the monitoring and reporting plan.

#### **11.2 Compliance Monitoring**

The Implementing Entity shall conduct compliance monitoring to track key implementation elements of the HCP/NCCP, as specifically described in Chapters 8.9 and 8.10 of the HCP/NCCP and further provided herein.

##### **11.2.1 Compliance Monitoring Data Repository**

Within eight (8) months of the Effective Date, the Implementing Entity shall develop a Geographic Information System-linked data repository pursuant to Chapter 8.9 of the HCP/NCCP, to organize all required compliance monitoring data, as such data is more specifically described in Section 11.2.2 of this Agreement and Chapter 8.9 of the HCP/NCCP. The Implementing Entity will either use the HabiTrak database developed by CDFG, or a Geographic Information System-based data repository that is transferable to HabiTrak. The Implementing Entity shall make the data repository accessible to the Parties to this Agreement, including the Wildlife Agencies. The Wildlife Agencies shall safeguard sensitive species information to the extent permitted by the Freedom of Information Act and the California Public Records Act. Subject to the California Public Records Act, the Implementing Entity shall maintain sole discretion over whether to



grant access to any of the data in the database to third parties, including Third Party Participants.

### **11.3 Effectiveness Monitoring**

The Implementing Entity shall accomplish effectiveness monitoring of the HCP/NCCP by implementing all elements of the integrated monitoring and adaptive management program described in Chapter 7.0 of the HCP/NCCP.

### **11.4 Annual Report and Public Workshop**

By March 15 of each year following the Effective Date, the Implementing Entity shall prepare and submit an Annual Report to the Wildlife Agencies and the Permittees that summarizes: the previous calendar year's monitoring and research results; an accounting, by project and cumulatively, of habitat acreage lost and conserved within the Plan Area by habitat type or vegetation community; and assessment of the rough proportionality standard under Section 9.3 of this Agreement. The first Annual Report shall be prepared by no later than March 15 following the first full calendar year of HCP/NCCP implementation and shall report on all applicable activities and results from the Effective Date to the end of the first full calendar year. Each Annual Report shall address, at a minimum, the descriptions and analyses detailed in Chapter 8.10 of the HCP/NCCP. The Implementing Entity shall make the latest Annual Report accessible to the public via the Internet, and at a publicly noticed open meeting jointly conducted on an annual basis by the Implementing Entity, USFWS and CDFG to disseminate and discuss the annual report.

### **11.5 Annual Implementation Review and Meeting**

The Parties will review the Annual Report described in Section 11.4 above for the purposes of evaluating the implementation of the HCP/NCCP during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the HCP/NCCP, utilizing HabiTrak or a Geographic Information System-based system that is transferable to HabiTrak. Items to be considered in the evaluation include, but are not limited to, all contributions towards the assembly of the Preserve System, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. Habitat management activities undertaken or proposed will also be discussed. The Parties will also review all available reports and recommendations from Science Advisors, Land Management Agencies, the Independent Conservation Assessment Team, and others involved in preserve management and monitoring as described in Chapter 8.3.7 of the HCP/NCCP. If, based on this information, Wildlife Agencies determine that adequate progress towards implementation of the HCP/NCCP is not being achieved, Wildlife Agencies shall provide their findings and the basis for such findings in writing to the Permittees; and the Parties will take the actions specified in the HCP/NCCP and this Agreement to remedy that situation. If Wildlife Agencies determine that adequate progress towards implementation of the HCP/NCCP is being achieved, but that it is nevertheless not



providing sufficient protection to the Covered Species, the Wildlife Agencies shall provide their findings and the basis for such findings in writing to the Permittees; and then the Parties shall work cooperatively and take appropriate actions consistent with the HCP/NCCP and this Agreement (such as altering management activities or redirecting mitigation and acquisition) in order to remedy the situation. Once each year, the Implementing Entity and any other Permittee that wishes to participate shall meet with Wildlife Agencies to review and coordinate implementation of the HCP/NCCP.

#### **11.6 Other Reports**

Within thirty (30) days of receipt of a written request from the Wildlife Agencies, the Implementing Entity will provide any additional information in its possession or control related to implementation of the HCP/NCCP for the purpose of assessing whether the terms and conditions of this Agreement, the HCP/NCCP and the Permits are being fully implemented.

#### **11.7 Monitoring by the Wildlife Agencies**

The Wildlife Agencies may conduct inspections and monitoring of the site of any Covered Activity and may inspect any data or records required by the HCP/NCCP, this Agreement or the Permits in accordance with applicable law and regulations.

### **12.0 ADAPTIVE MANAGEMENT & CHANGED CIRCUMSTANCES**

#### **12.1 General Framework of Adaptive Management**

The Implementing Entity shall implement an adaptive management program as further described in Chapter 7.0 of the HCP/NCCP, in order to gauge the effectiveness of the HCP/NCCP, propose and modify conservation measures as the need arises, and address Changed Circumstances. The adaptive management program will be based on biological monitoring results and directed research, including hypotheses and studies, as applied to specific pilot projects identified in Table 7-3 of the HCP/NCCP. The specific responsibilities of the Implementing Entity in carrying out the adaptive management program are further defined in Chapter 7.0 of the HCP/NCCP.

##### **12.1.1 Adaptive Management Initiated by the Implementing Entity**

The Implementing Entity shall implement the HCP/NCCP adaptive management program when changes in management practices are necessary to achieve the HCP/NCCP's biological objectives, or to respond to monitoring results or new scientific information, as described more particularly in Chapter 8.0 of the HCP/NCCP. The Implementing Entity will make such changes without awaiting notice from the Wildlife Agencies, and will report to the Wildlife Agencies on any actions taken pursuant to this section.

##### **12.1.2 Adaptive Management Initiated by the Wildlife Agencies**

If the Wildlife Agencies determine that one or more of the adaptive management provisions in the HCP/NCCP have been triggered and that the Implementing Entity has



not changed its management practices in accordance with Chapter 7.0 of the HCP/NCCP, the Wildlife Agencies shall notify the Implementing Entity and direct the Implementing Entity to make the required changes. Within thirty (30) days after receiving such notice, the Implementing Entity shall initiate the required changes and report to the Wildlife Agencies on its actions. Such changes are provided for in the HCP/NCCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP/NCCP, except as otherwise provided in this section.

## **12.2 Changed Circumstances**

### **12.2.1 Federal Definition**

Under Federal law, the term “Changed Circumstances” is defined to mean changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Wildlife Agencies and the Parties, and that can reasonably be planned for in the HCP/NCCP. (50 C.F.R. §17.3.)

### **12.2.2 State Definition**

Under State law, the term “Changed Circumstances” is defined to mean reasonably foreseeable circumstances that could affect a Covered Species or Plan Area covered by the NCCP. (Fish & G. Code, §2805, subd. (c).)

### **12.2.3 Identification of Changed Circumstances**

Changed Circumstances identified and planned for in the HCP/NCCP are specifically listed in Chapter 10.2.1 of the HCP/NCCP, including new species listing; natural communities lost to fire, invasion by new exotic species, pond or wetland control structures fail, flooding destroys riparian plantings, and natural communities lost to drought. In the event one of those specific Changed Circumstances occurs, the Implementing Entity shall implement the remedial conservation measures identified in Chapter 10.2.1 for the specific Changed Circumstance. As long as the HCP/NCCP is being properly implemented, USFWS and CDFG shall not require any Permittee or Third Party Participant to implement any conservation measures that are not listed in Chapter 10.2.1 of the HCP/NCCP to respond to Changed Circumstances. The Parties agree that Chapter 10 of the HCP/NCCP addresses all reasonably foreseeable Changed Circumstances and describes specific responses for them; other changes not identified as Changed Circumstances shall be treated as Unforeseen Circumstances.

### **12.2.4 Responses to Changed Circumstances Initiated by the Implementing Entity**

The Implementing Entity shall notify the Wildlife Agencies in writing within thirty (30) days after learning that any of the Changed Circumstances listed in Chapter 10.2.1 of the HCP/NCCP has occurred. As soon as practicable thereafter, but no later than thirty (30) days after learning of the Changed Circumstances, the Implementing Entity will initiate responsive actions in the manner described in Chapter 10.2.1 of the HCP/NCCP, to the



extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to the Wildlife Agencies on its actions. The Implementing Entity will initiate such actions without awaiting notice from the Wildlife Agencies. Such actions are provided for in the HCP/NCCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP/NCCP.

#### **12.2.5 Responses to Changed Circumstances Initiated by the Wildlife Agencies**

If the Wildlife Agencies determine that Changed Circumstances have occurred and that the Permittees have not responded in accordance with Chapter 10.2.1 of the HCP/NCCP, the Wildlife Agencies shall notify the Permittees specifically what changes must be made. The Permittees shall make the required changes expeditiously. Within thirty (30) days after receiving the Wildlife Agencies' notice, the Implementing Entity shall report on the Permittees' action(s). Such changes are provided for in the HCP/NCCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP/NCCP.

#### **12.2.6 Listing of Species that are Not Covered Species**

In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under FESA or CESA, the Implementing Entity will initiate responsive actions or measures to avoid Take of, jeopardy to, or adverse modification of critical habitat developed in consultation with the Wildlife Agencies until the respective Permit is amended to include such species, or until the Wildlife Agencies notify the Implementing Entity that such measures are no longer needed to avoid take of, jeopardy to, or adverse modification of the critical habitat of the non-Covered Species.

### **12.3 No Increases In Take**

This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP/NCCP and any amendments thereto. Any such modification must be reviewed as an HCP/NCCP amendment under Section 17.6 of this Agreement.

## **13.0 IMPLEMENTING MECHANISMS**

As of the Effective Date, each of the Permittees is granted Take authorization under the Permits, pursuant to the terms and conditions of this Agreement, the HCP/NCCP and the Permits. The Implementing Entity shall be responsible for overseeing and managing the implementation of the HCP/NCCP. However, the Permittees collectively are ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits including all applicable conservation measures, management plans, monitoring and reporting requirements, and funding.



### **13.1 Role of the Implementing Entity**

The Implementing Entity's responsibilities are described in Chapter 8.3 of the HCP/NCCP and include, but are not limited to:

- Overseeing the assembly and management of the Preserve System;
- Receiving, managing, tracking, reporting and expending HCP/NCCP implementation fee revenues collected by the other Permittees;
- Auditing HCP/NCCP implementation fee revenues to determine whether the fees must be increased or decreased, in accordance with Chapter 9 of the HCP/NCCP;
- Calculating annually and distributing to Permittees tables depicting the appropriate amounts of automatic fee increases, in accordance with Chapter 9 of the HCP/NCCP;
- Negotiating and approving in-lieu land dedications in accordance with Chapter 8.6.7 of the HCP/NCCP and Section 13.2.2.2 of this Agreement and resolving other matters concerning HCP/NCCP implementation that require approval of the Implementing Entity, as specified in this Agreement and the HCP/NCCP including, but not limited to, the matters summarized in Chapter 8.7 of the HCP/NCCP;
- Ensuring that mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact of Authorized Take, as provided in Section 9.3, and ensuring compliance with the Stay Ahead Provision, as provided in Section 9.2;
- Receiving, managing and expending HCP/NCCP implementation fee payments made by, and extending Take authorization to, Participating Special Entities, in accordance with Section 13.2.4 of this Agreement;
- Providing technical support and advice to Permittees about what HCP/NCCP measures apply to Covered Activities they implement or approve and how they should be applied, including, but not limited to, avoidance and minimization measures and the amount of fee payments;
- Promoting coordination among Permittees to ensure that the HCP/NCCP is implemented consistently and effectively;
- Receiving, managing and expending fee payments provided by Permittees for Covered Activities they implement, in accordance with Section 13.1.1, below;
- Preparing Preserve Management Plans, as further described in Section 10.3 of this Agreement and Chapter 5 and Chapter 7 of the HCP/NCCP;
- Preparing the Annual Report; and
- Administering a Neighboring Landowner Agreement program in accordance with Section 13.2.3.

#### **13.1.1 Projects Implemented by Permittees**

Most Covered Activities are likely to be implemented by Third Party Participants in accordance with Section 13.2, below. However, some projects, such as rural road projects, certain infrastructure projects, and certain operation and maintenance activities, will be implemented directly by the Permittees. Before implementing a Covered



Activity, a Permittee must comply with the terms of this Agreement, the HCP/NCCP and the Permits, including as applicable payment of the development fee, the rural road fee, the wetland fee and temporary impact fee set forth in Chapter 9 of the HCP/NCCP. Where a Covered Activity implemented by a Permittee falls within the category of activities subject to one of the HCP/NCCP implementation fees, the Permittee shall calculate the fee payment as described in Chapter 9 of the HCP/NCCP and shall transfer the payment to the Implementing Entity before initiating the Covered Activity. Permittees may use any applicable fee payment option provided in the HCP/NCCP including, but not limited to, providing land in lieu of some or all fees, as described in Section 13.2.2.2 of the Agreement and Chapter 8.6.7 of the HCP/NCCP. Each Permittee shall be responsible for ensuring its own compliance with the terms of this Agreement, the HCP/NCCP and the Permits with regard to any Covered Activity it implements. To document its compliance, each Permittee shall complete an application substantially in accordance with Chapter 8.7 of the HCP/NCCP for each Covered Activity it implements, shall provide a copy of the application to the Implementing Entity, and shall retain the application in its files for not less than three (3) years.

### **13.2 Extension of Take Authorization to Third Party Participants**

#### **13.2.1 General Provisions**

As further provided by this Agreement, the HCP/NCCP and the Permits, the Implementing Entity, County and Cities are authorized to extend the Take authorization to Third Party Participants, including developers and other project proponents, Neighboring Landowners, Participating Special Entities and other persons or entities that agree to comply with all applicable conservation measures and other terms and conditions of this Agreement, the HCP/NCCP and the Permits. The Implementing Entity, County and Cities shall each be responsible for determining whether an application from a potential Third Party Participant complies with all applicable terms and conditions and must make findings supporting such determination before extending Take authorization to the Third Party Participant. Prior to extending Take authorization to any Third Party Participant, the County and Cities must have adopted an HCP/NCCP implementing ordinance pursuant to Section 13.3 of this Agreement.

#### **13.2.2 Project Proponents**

The proponent of any project that is a Covered Activity shall be eligible for Take authorization in accordance with the HCP/NCCP and the Permits. To receive Take authorization under the Permits, the project's proponent must enter into an agreement with a Permittee that has approval authority over the project and assume the obligation to comply with all terms and conditions of this Agreement, the HCP/NCCP and the Permits that apply to the project, or the Permittee must impose such terms and conditions as conditions of project approval. Provided the project proponent is obligated under an agreement or conditions of project approval to comply with such terms and conditions, the Permittee shall extend the Take authorization to the project proponent upon issuance of a grading permit for the project or, if a grading permit is not required, issuance of the



first construction permit. The project proponent thereafter shall be a Third Party Participant.

Once the Take authorization has been extended to the project, it shall remain in effect with regard to the project, even if the Permits are suspended or revoked, for as long as the Third Party Participant fully complies with the applicable terms and conditions of this Agreement, the HCP/NCCP, and the Permits; provided, however, that if either or both of the Permits are suspended or revoked, the USFWS or CDFG may suspend or revoke the extension of Take authorization to the Third Party Participant if the USFWS or CDFG determines that implementation of the project would likely jeopardize the continued existence of a Covered Species. Before making such a determination, the USFWS and CDFG will meet and confer with the Third Party Participant and the Permittee to discuss the threat of jeopardy and possible ways to avoid it short of suspending or revoking the extension of Take authorization to the project.

#### **13.2.2.1 Early Extension of Take Authorization**

A project proponent may receive an early (i.e., before issuance of a grading permit or first construction permit) extension of Take authorization from a Permittee by paying all HCP/NCCP related fees that apply to the proposed project, or by providing land in lieu of some or all fees as described in Section 13.2.2.2, and by agreeing in writing to all other applicable terms and conditions of this Agreement, the HCP/NCCP, and the Permits upon, or at any time after, the Permittee's approval of the project. Upon receiving such Take authorization, the project proponent shall become a Third Party Participant and Take resulting from the project shall be authorized under the Permits. The Implementing Entity may, by written notice to the Permittees, suspend early extensions of take authorization if it determines such extensions are hindering its ability to implement or administer the HCP/NCCP (for example, by accumulating fee revenues faster than they can be spent, thereby diminishing the value of these funds in the likely event that costs continually increase). Any such prohibition by the Implementing Entity shall apply to subsequent early extensions of Take authorization only and shall not apply retroactively, where fees or in-lieu land dedications were made before the prohibition is communicated in writing to the other Permittees.

A project proponent seeking an early extension of Take authorization shall be required to pay the fees at the rates in effect for the calendar year in which the project proponent pays them, including any subsequent fee adjustments that occur during that calendar year (for example, after March 15 under the automatic fee adjustment or after a periodic audit). This calendar-year adjustment applies only to early extensions of Take authorization, and shall not apply to payments that coincide with a grading permit or first construction permit so long as that grading permit or first construction permit is issued before the calendar-year adjustment occurs. The project proponent shall not have to provide any supplemental payment for fee increases in subsequent calendar year(s), even if such increases occur before the grading permit or first construction permit is issued for the project. Unless otherwise mutually agreed upon by the Permittee, Implementing Entity, and the Wildlife Agencies, the fees may not be paid for and Take authorization



may not be extended to a particular project until the Permittee has approved a tentative subdivision map or similarly detailed project plan for the project.

#### **13.2.2.2 Land Dedication In-Lieu of Development Fee**

As an incentive to expedite assembly of the Preserve System, a project proponent may propose to dedicate land to the Preserve System in lieu of all or part of the fees ordinarily required under the HCP/NCCP, as further described in Chapter 8.6.7. Any and all in-lieu land dedications and fee reductions shall be subject to the approval of the Implementing Entity and, if applicable, the Permittee with land use authority over the project. The Implementing Entity shall negotiate and evaluate in-lieu land dedication proposals on a case-by-case basis using the criteria identified in Chapter 8.6.7. The details of an in-lieu land dedication, as well as the Implementing Entity's approval and the project proponent's written commitment to implement the proposal, shall be reflected in a written agreement between the Implementing Entity, the project proponent, and the Permittee that has approval authority over the project. The project proponent shall be permitted to use the alternative measures reflected in the in-lieu land dedication agreement, including alternative fee arrangements, to meet the requirements of this Agreement, the HCP/NCCP and the Permits. All applicable terms of the HCP/NCCP shall apply to the project, except as expressly provided in the agreement. Land use approvals issued to a project proponent by a Permittee shall incorporate the requirements of the in-lieu agreement, and shall not impose requirements for HCP/NCCP compliance that are expressly excepted in the agreement. The Implementing Entity shall make each in-lieu agreement available for public review.

#### **13.2.3 Neighboring Landowners**

The Implementing Entity shall administer a Neighboring Landowner Agreement ("NLA") Program, to provide Take authorization on neighboring lands that are actively being used for agricultural purposes as of the Effective Date and that are within 1.0 mile of land dedicated to the Preserve System. Take authorization for Neighboring Landowners shall only be valid for those Neighboring Landowners that request a Certificate of Inclusion from the Implementing Entity, which shall be issued only to those Neighboring Landowners that meet the criteria provided in Chapter 10.2.9 of the HCP/NCCP and in a form approved by the Wildlife Agencies.

Take authorization through the NLA Program shall not apply to individual animals or populations of Covered Species and natural communities on neighboring lands that exist prior to the establishment of the nearby portion of the Preserve System, as identified in a baseline survey conducted at the time of the issuance of the Certificate of Inclusion. Take authorization shall only apply to those Covered Species that may disperse onto the neighboring lands after the dedication of the nearby portion of the Preserve System.



### **13.2.4 Participating Special Entities**

The Implementing Entity may extend Take authorization to Participating Special Entities, which may include but are not limited to school, water, irrigation, transportation, park and other districts and utilities, pursuant to a contractual agreement that defines any and all planning, implementation, management, enforcement and funding responsibilities necessary for the entity to comply with this Agreement, the HCP/NCCP, and the Permits. The Implementing Entity may enter into such an agreement with a Participating Special Entity only after the Participating Special Entity provides documentation showing how it will comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits in an application satisfying the criteria detailed in Chapter 8.4 of the HCP/NCCP. Among other things, the agreement must adequately address the legal and equitable remedies available to the Implementing Entity if the Participating Special Entity fails to perform its contractual obligations. As provided in Chapter 8.5 of the HCP/NCCP, after execution of such an agreement and the payment of all fees specified by the Implementing Entity, including development fees, wetland fees, and temporary impact fees, if applicable, the Implementing Entity shall issue a Certificate of Inclusion to the Participating Special Entity that specifically describes the authorized Take and required conservation measures. The Implementing Entity shall enforce the terms of this Agreement, the HCP/NCCP, and the Permits with regard to any such Participating Special Entity and shall withdraw the Certificate of Inclusion and terminate any Take authorization extended to the Participating Special Entity if the Participating Special Entity fails to comply with such terms.

### **13.3 HCP/NCCP Implementing Ordinance**

No later than ninety (90) days after the Effective Date, the County and the Cities shall each consider the adoption of an HCP/NCCP implementing ordinance substantively similar to the model ordinance attached to this Agreement as **Exhibit C** that sets forth the process by which the jurisdiction will review applications from potential Third Party Participants that wish to carry out a Covered Activity, impose HCP/NCCP related mitigation fees, and extend Take authorization to eligible applicants. Each HCP/NCCP implementing ordinance must further establish the development fee and wetlands fee in accordance with Chapter 9 of the HCP/NCCP and provide an alternative for a qualified dedication of land in lieu of the development fee, in accordance with Section 13.2.2.2 of this Agreement and Chapter 8.6.7 of the HCP/NCCP. Neither the County nor any of the Cities shall extend Take authorization to a Third Party Participant prior to its adoption of an HCP/NCCP implementing ordinance substantively similar to Exhibit C.

#### **13.3.1 Application Requirements**

Each HCP/NCCP implementing ordinance must include, among other things, application requirements in accordance with Chapter 6.2 of the HCP/NCCP. At a minimum, each implementing ordinance must require each Third Party Participant to submit the following to the County or City with jurisdiction over the proposed project:



- Definition of project area, including project footprint, extent of construction, and extent of ongoing maintenance activities.
- Written description of project, including maps.
- Results of planning surveys, in accordance with Chapter 6 of the HCP/NCCP.
- Evidence of compliance with avoidance and minimization measures, in accordance with Chapter 6 of the HCP/NCCP.
- Quantification of anticipated direct and indirect impacts on HCP/NCCP land-cover types, Covered Species habitat, and other HCP/NCCP resources.
- Proposed conservation measures (e.g., land dedication, acquisition, fee).

### **13.3.2 Conditions of Take Authorization**

Each HCP/NCCP implementing ordinance must enable the County or City, as applicable, to include all necessary terms and conditions of this Agreement, the HCP/NCCP and the Permits into the development agreement, permit approval, or other instrument that extends the Take authorization to the Third Party Participant.

### **13.3.3 Adaptation of Model Ordinance by Permittees**

The model ordinance attached to this Agreement as **Exhibit C** is intended to exemplify the necessary substantive terms of an HCP/NCCP implementing ordinance; it is not intended to dictate the precise terms of each such ordinance. The County and each City may adapt the model ordinance to reflect its independent findings, to maximize administrative efficiency, or for other reasons, provided the substance of the operative terms in the model ordinance are reflected in each implementing ordinance.

### **13.3.4 Application to Covered Activities**

The implementing ordinances will apply only to Covered Activities for which a grading permit, construction permit, or other approval is required from the County or City that has adopted the ordinance.

## **13.4 Conservation Easements**

In addition to acquiring lands for the Preserve System by fee title, the Implementing Entity may negotiate conservation easements. All conservation easements shall be recorded in perpetuity pursuant to Civil Code section 815 et seq. and subject to all of the terms and conditions of Chapter 8.6.3 of the HCP/NCCP. Conservation easements shall be dedicated to the Implementing Entity, CDFG or another entity approved by the Wildlife Agencies, including but not limited to land trusts, parks agencies, and other qualified nonprofit organizations. CDFG and USFWS shall be named as third party beneficiaries on all conservation easements. The Parties intend to develop a template conservation easement document that may be used for Preserve System lands.



### **13.5 Enforcement**

The Wildlife Agencies shall enforce this Agreement by ensuring that the Permittees comply with all terms and conditions of this Agreement, the HCP/NCCP and the Permits. The Wildlife Agencies shall enforce this Agreement in accordance with Section 21, below. To the extent consistent with Section 21, and without limiting the Wildlife Agencies' rights or obligations under Section 21, if a Wildlife Agency concludes that an action or inaction of a Permittee violates the terms or conditions of this Agreement, the HCP/NCCP or the Permits, the Wildlife Agency shall focus its enforcement effort on that Permittee. The Permittees shall be responsible for complying with all applicable terms and conditions of this Agreement and shall enforce this Agreement by ensuring that all Third Party Participants comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits.

### **13.6 Collaboration between Implementing Entity and Park District**

The Parties agree that effective collaboration between the Implementing Entity and the Park District will likely make it possible to create and manage the Preserve System in a more cost-efficient manner, allow for better integration of the Preserve System with existing Park District lands in the Plan Area, and help to coordinate implementation of the HCP/NCCP with the Park District's current and future activities. For these purposes, the Implementing Entity and Park District shall develop a mutually agreeable programmatic strategy to collaborate on land acquisition and management in the Plan Area. The programmatic strategy may include, without limitation, standard terms and conditions for real property transactions and management plans, a joint acquisition planning process, a process for developing joint grant applications, and a strategy for coordinating the long-term management of the Preserve System with the long-term management of other Park District lands. As part of the programmatic strategy, the Permittees expect to enter into an agreement establishing the terms under which one or more Preserve Management Plans will be prepared for lands acquired by the Park District within the Plan Area since November 19, 2003 (the effective date of the Planning Agreement) and to take other steps as necessary to credit those lands toward the obligations set forth in Conservation Measure 1.1, in accordance with Section 9.4 of this Agreement. To facilitate this collaboration, the Implementing Entity and Park District shall create a liaison committee under mutually agreeable terms that will make recommendations to the Implementing Entity and the Park District regarding potential joint land acquisitions, land management and monitoring, grant applications and other actions to create or manage the Preserve System. Notwithstanding the foregoing, nothing in this Agreement is intended to prohibit or prevent the Implementing Entity or the Park District from collaborating with other public agencies or private entities to help to create and manage the Preserve System or for any other purpose. The Parties do not expect the programmatic land acquisition and management strategy to implement all of the HCP/NCCP and anticipate that other independent or collaborative actions by the Implementing Entity will be necessary to implement the HCP/NCCP in its entirety. Notwithstanding the foregoing, nothing in this Agreement is intended to prohibit or prevent the Implementing Entity from proceeding independently of the Park District with



an acquisition or land management activity within the Plan Area. Similarly, this Agreement does not prevent or prohibit the Park District from proceeding independently of the Implementing Entity with an acquisition or land management activity within the Plan Area. The Park District and the Implementing Entity each agree that it will not oppose or obstruct the other should it pursue an independent land acquisition or land management activity within the Plan Area.

### **13.7 Collaboration between Implementing Entity and Flood Control District**

The Parties agree that effective collaboration between the Implementing Entity and the Flood Control District will help to coordinate implementation of the HCP/NCCP with the Flood Control District's current and future activities. The Implementing Entity and the Flood Control District may enter into separate agreements to facilitate coordination with regard to such activities.

## **14.0 FUNDING**

### **14.1 General Commitment**

The Implementing Entity, County, Cities and Flood Control District shall ensure that all required mitigation, conservation, monitoring, reporting and adaptive management measures are adequately funded throughout the term of this Agreement, and that monitoring, reporting and adaptive management measures are adequately funded in perpetuity. The Permittees do not intend to use funds from their respective general funds to implement the Conservation Strategy; rather they intend to obtain sufficient funds through a comprehensive strategy further described in Chapter 9.3 of the HCP/NCCP, primarily depending on mitigation fees, dedications, and real estate transfer fees from future developments, federal and state grants pursuant to Section 9.1.2 of this Agreement, and maintenance of existing conservation efforts by local and state agencies that have a demonstrated record of acquiring and managing lands for recreational and conservation purposes in Contra Costa County. The Permittees may use or establish other local funding measures, including, but not limited to, utility surcharges, special taxes or assessments, or bonds. Each of the Permittees is responsible to seek all feasible increases in revenues that are necessary to keep pace with rising costs, as described in Chapter 9.3.1 of the HCP/NCCP. Each Permittee will promptly notify the Wildlife Agencies of any material change in the Permittee's financial ability to fulfill its obligations under this Agreement. In addition to providing any such notice, the Implementing Entity will include in its Annual Report to the Wildlife Agencies such reasonably available financial information to demonstrate the Permittees' ability to fulfill their obligations.

### **14.2 Private Funding of No-Take Plant Management Plans**

Consistent with Section 8.4.1 of this Agreement, if a no-Take plant population is found on a site of a Permittee's Covered Activity, the Permittee shall ensure that the population is adequately preserved (e.g., link to existing public lands, provide adequate buffers),



prepare a long-term management and monitoring plan, and fund the implementation of the plan. For Third Party Participant Covered Activities, the Implementing Entity, County, or applicable City shall obligate the Third Party Participant to preserve the population, prepare a long-term management and monitoring plan, and fund the implementation of the plan before conferring Take authorization to the Third Party Participant. Land that meets HCP/NCCP goals and objectives may be transferred to the Implementing Entity to implement long-term management (and to meet some HCP/NCCP goals and objectives) as long as the Permittee or Third Party Participant, as the case may be, fully funds preparation of the required plan and addresses the management needs of the no-Take plant population.

### **14.3 Long-Term Management Funding**

The Implementing Entity shall develop and begin to implement a detailed plan for long-term funding of the administration and management of the Preserve System beyond the Term of the Permits, and shall secure all necessary commitments to collect such funding before developing 7,259 acres (fifty percent [50%] of the Maximum Urban Development Area as provided in Table 4-3 of the HCP/NCCP) or within fifteen (15) years of the Effective Date, whichever comes first.

### **14.4 Effect of Inadequate Funding**

In the event there is inadequate funding to implement the HCP/NCCP, USFWS and CDFG will assess the impact of the funding deficiency on the scope and validity of the Permits. Unless the Permittees exercise the authority to withdraw pursuant to Section 20.0 of this Agreement or the Wildlife Agencies revoke the Permits pursuant to Section 19.0 of this Agreement, the Parties agree that they will meet and confer to cooperatively develop a strategy to address the funding shortfall, and to undertake all practicable efforts to maintain the level of conservation and Take authorization afforded by the Permits until the funding situation can be remedied.

## **15.0 RIGHTS, OBLIGATIONS & ASSURANCES**

### **15.1 Rights & Obligations of the Permittees**

#### **15.1.1 Rights**

As of the Effective Date, the Permittees may Take the Covered Species while carrying out Covered Activities in the Permit Area, as further authorized by and subject to the conditions of this Agreement, the HCP/NCCP, and the Permits. The Covered Activities include all activities listed in Chapter 2.3 of the HCP/NCCP.

The Take authority issued to the Permittees applies to all of their respective elected officials, officers, directors, employees, agents, subsidiaries, and contractors who engage in any Covered Activity. The Implementing Entity shall periodically conduct an educational program to fully inform all such persons and entities of the terms and



conditions of the Permits, and the Implementing Entity and other Permittees shall be responsible for supervising such persons' and entities' compliance with those terms and conditions. All contracts between Permittees and such persons and entities regarding the implementation of any Covered Activity or the HCP/NCCP shall require their compliance with the Permits.

#### **15.1.2 General Obligations**

The Permittees will fully and faithfully perform all obligations assigned to them collectively, and to each of them respectively, under this Agreement, the HCP/NCCP, and the Permits, including but not limited to the obligations assigned in the following chapters of the HCP/NCCP: Chapter 5.0 (Conservation Strategy), Chapter 6.0 (Conditions on Covered Activities), Chapter 7.0 (Monitoring and Adaptive Management Program), Chapter 8.0 (Plan Implementation), and Chapter 9.0 (Funding).

The Implementing Entity, County and Cities shall extend Take authorization to Third Party Participants only in accordance with this Agreement, the Permits and the HCP/NCCP. Each Permittee shall ensure that its own Covered Activities comply with this Agreement, the Permits and the HCP/NCCP. The mitigation fees for Covered Activities implemented by Third Party Participants or the Permittees themselves shall be transferred to the Implementing Entity, which shall comply with all applicable provisions of the Mitigation Fee Act (Gov. Code §66000, et seq.) as to the deposit, accounting, expenditure and reporting of such fee revenues.

#### **15.1.3 Obligations In The Event of Suspension or Revocation**

In the event that USFWS and/or CDFG suspend or revoke the Permits pursuant to Sections 19.0 and 21.0 of this Agreement, the Permittees will remain obligated to fulfill their mitigation, enforcement, management, and monitoring obligations, and their other HCP/NCCP obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all Covered Activities authorized for Take prior to the suspension or revocation.

#### **15.1.4 Assurances for Third Party Participants**

Pursuant to the "No Surprises" regulations described below at Section 15.2.2, in the event of a finding of Unforeseen Circumstances, the USFWS cannot require the commitment of additional land, water or financial compensation without the consent of the affected Permittee or Third Party Participant. Likewise, as set forth below in Section 15.3.2, CDFG shall not require any Permittee or Third Party Participant to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Covered Species with respect to Covered Activities, even in the event of Unforeseen Circumstances, provided the Permittees are properly implementing this Agreement, the HCP/NCCP and the terms and conditions of the State Permit.



The Permittees will not impose on any Third Party Participants any mitigation, compensation, or other requirement in excess of those required by this Agreement, the HCP/NCCP and the Permits, for the impacts of Covered Activities on Covered Species without the consent of the Third Party Participant. Nothing in this Agreement shall preclude the Permittees from imposing on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by this Agreement, the HCP/NCCP and the Permits for impacts other than impacts of Covered Activities on Covered Species. Such other impacts may include, but are not limited to, impacts on parks, recreational facilities, and agriculture.

#### **15.1.5 Interim Obligations upon a Finding of Unforeseen Circumstances**

If the Wildlife Agencies make a finding of Unforeseen Circumstances with regard to a Federal Listed Covered Species, during the period necessary to determine the nature and location of additional or modified mitigation, the Permittees will avoid contributing to an appreciable reduction in the likelihood of the survival and recovery of the affected species. As described below at Section 15.2.2 and Section 15.3.2, the Wildlife Agencies shall be responsible for implementing such additional measures or modifications, unless the Permittees consent to do so.

### **15.2 USFWS Obligations and Assurances**

#### **15.2.1 General Obligations**

Concurrent with its execution of this Agreement, and satisfaction of all other applicable legal requirements, USFWS will issue Permittees a Federal Permit under Section 10(a)(1)(B) of FESA, authorizing incidental Take by the Permittees of each Federal Listed Covered Species resulting from Covered Activities in the Permit Area. USFWS shall monitor the Permittees' implementation of the HCP/NCCP and compliance with the Federal Permit. USFWS will also provide technical assistance and timely review, collaboration and consultation to the Permittees regarding implementation of the HCP/NCCP, as provided in this Agreement and the HCP/NCCP, throughout the duration of the Federal Permit. USFWS will also contribute to the conservation and recovery goals of the Covered Species pursuant to Section 9.1.2 of this Agreement.

#### **15.2.2 No Surprises Assurances**

Provided that the Permittees have complied with their obligations under this Agreement, the HCP/NCCP and the Federal Permit, USFWS cannot require any Permittee or Third Party Participant, without its consent, to provide additional mitigation beyond that provided for in the HCP/NCCP under Unforeseen Circumstances, in accordance with the "No Surprises" regulations at 50 Code of Federal Regulations section 17.22(b)(5) and section 17.32(b)(5).



Changed Circumstances, as described in 50 Code of Federal Regulations section 17.22(b)(5)(i), are adequately addressed in Chapter 7 and Chapter 10 of the HCP/NCCP, and Permittees shall implement any measures for such circumstances as called for in the HCP/NCCP, as described in Section 12.2 of this Agreement.

### **15.2.3 Critical Habitat Designations in the Plan Area**

Provided that the Permittees have complied with their obligations under this Agreement, the HCP/NCCP and the Federal Permit, USFWS agrees that, to the maximum extent allowable after public review and comment, lands within the “Inventory Area” described in the HCP/NCCP will not be designated as critical habitat for any Covered Species that is federally listed, including but not limited to California red-legged frog, California tiger salamander and Alameda whip snake. Subject to available funding, USFWS agrees, unless otherwise required by law after public review and comment, to reassess and revise the boundaries of any existing designated critical habitat of Covered Species to exclude the HCP/NCCP Inventory Area, including but not limited to critical habitat designated for vernal pool fairy shrimp, longhorn fairy shrimp, and Contra Costa goldfields. This Section 15.2.3 shall not apply to lands within the city limits of the City of Antioch or within the “action area” used for purposes of any consultation pursuant to Section 7 of FESA regarding any proposed expansion of Los Vaqueros Reservoir.

## **15.3 CDFG Obligations and Assurances**

### **15.3.1 General Obligations**

Concurrent with its execution of this Agreement, and after satisfaction of all other applicable legal requirements, CDFG will issue Permittees a State Permit under Section 2835 of the California Fish and Game Code authorizing Take by the Permittees of each State Listed and Non-listed Covered Species resulting from Covered Activities in the Permit Area, to the extent permitted by law. CDFG shall monitor the Permittees’ implementation of the HCP/NCCP and compliance with the State Permit. CDFG shall also provide technical assistance and timely review, collaboration and consultation to the Permittees regarding implementation of the HCP/NCCP, as provided in this Agreement and the HCP/NCCP, throughout the duration of the State Permit. CDFG will also contribute to the conservation and recovery goals of the Covered Species pursuant to Section 9.1.2 of this Agreement.

### **15.3.2 Long-Term Assurances**

Except as otherwise provided in this subsection or required by law, CDFG shall not require any Permittee or Third Party Participant to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Covered Species with respect to Covered Activities, even in the event of Unforeseen Circumstances, provided the Permittees are properly implementing this Agreement, the HCP/NCCP and the terms and conditions of the State Permit. The provisions of this Agreement and the HCP/NCCP that



address adaptive management and Changed Circumstances, including changes to the legal status of Fully Protected Species and non-Covered Species, are not Unforeseen Circumstances and therefore are not subject to these assurances. However, CDFG acknowledges that such adaptive management and Changed Circumstances provisions are not intended to require modifications to the HCP/NCCP's mitigation program that would require additional funding or to impose significant additional burdens on Permittees or Third Party Participants.

## **16.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES**

### **16.1 Section 7 Consultations with USFWS**

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult USFWS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittees or an existing or prospective Third Party Participant and a proposed public or private development project in the Permit Area that may adversely affect one or more Covered Species that are Federal Listed Species, USFWS shall ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP/NCCP and the Federal Permit, provided that the proposed project is consistent with the HCP/NCCP and the Federal Permit. Unless otherwise required by law or regulation, USFWS shall not impose measures on a Permittee or an existing or prospective Third Party Participant in excess of those that have been or will be required by this Agreement, the HCP/NCCP, and the Permits. Before completing a Section 7 consultation for a Covered Activity in which the USFWS proposes to require a measure in excess of the requirements of this Agreement, the HCP/NCCP, or the Permits, the USFWS shall meet and confer with the affected Permittee and, if there is one, the existing or prospective Third Party Participant to discuss alternatives to the imposition of the measures that would meet the applicable legal or regulatory requirements. If the USFWS, Permittee and (if there is one) Third Party Participant cannot agree on an alternative, the Permittee may refer the matter for resolution in accordance with Section 21.0.

### **16.2 Consultations by CDFG**

Except as otherwise required by law, CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding impacts of Covered Activities on Covered Species within the Permit Area that are in excess of those that have been or will be required by this Agreement, the HCP/NCCP, and the Permits.



## **17.0 AMENDMENTS TO THE HCP/NCCP AND THE FEDERAL AND STATE PERMITS**

### **17.1 Clerical Changes**

Clerical changes to the HCP/NCCP shall be made by the Implementing Entity on its own initiative or in response to a written request submitted by any Permittee or Wildlife Agency, which includes documentation supporting the proposed clerical change. Clerical changes shall not require any amendment to this Agreement, the HCP/NCCP or the Permits. Clerical changes include corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning, and corrections of any maps or exhibits to correct insignificant errors in mapping. Annual Reports shall include a summary of clerical changes made to the HCP/NCCP during the preceding calendar year.

### **17.2 Changes in Boundaries of Urban Limit Line and Jurisdictional Limits of the Cities**

#### **17.2.1 General Land Use Authority of the County and Cities**

The Parties acknowledge that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances, and the granting of land use entitlements by the County or Cities are matters within the sole discretion of the County or Cities and shall not require amendments to this Agreement or the approval of other Parties to this Agreement. However, no such action by the County or Cities shall alter or diminish their obligations under this Agreement, the HCP/NCCP or the Permits.

#### **17.2.2 Amending the Urban Limit Line or Jurisdictional Limits of the Cities**

The impact analysis in Chapter 4.0 of the HCP/NCCP and the accompanying environmental analyses pursuant to NEPA and CEQA contemplated the possible changes of the Urban Development Area due to amendments of the ULL or jurisdictional limits of the Cities. Figure 2.3 of the HCP/NCCP reflects the Initial Urban Development Area as of the date the final HCP/NCCP was published; however the Parties acknowledge that a formal amendment to the governmental boundaries that define the Urban Development Area is foreseeable within the term of this Agreement, the HCP/NCCP and the Permits. Therefore, the Conservation Strategy incorporates a more aggressive set of acquisition targets should the Urban Development Area increase, to a potential Maximum Urban Development Area described in Chapter 2.3.1 of the HCP/NCCP. In the event that the Urban Development Area is expanded consistent with the assumptions supporting the Maximum Urban Development Area provided in Chapter 2.3.1 of the HCP/NCCP, the Implementing Entity, County, Cities and Flood Control District shall be obligated to meet the acquisition targets provided in Tables 5-7 and 5-8 in accordance with the procedures for incrementally adjusting the acquisition targets that are described in Conservation



Measure 1.1 in the subsection entitled “Land Acquisition under Different Urban Development Areas.” All changes to the Urban Development Area and the acquisition targets shall be reported in the Annual Report. In the event that the ULL or jurisdictional limits of the Cities are expanded beyond the assumptions supporting the Maximum Urban Development Area provided in the HCP/NCCP, and the County or a City seeks Take authorization for development in the expanded areas, the Permittees shall be required to seek a Major Amendment to this Agreement, the HCP/NCCP and the Permits, as further provided in this Section 17.0; provided, however, that a Major Amendment shall not be required if Permittees can demonstrate to the Wildlife Agencies’ reasonable satisfaction that such modification will not result in adverse effects to Covered Species beyond that analyzed in the HCP/NCCP and the associated biological opinion. Until such amendment is approved, the Take authorization provided by the Permits shall not be available for development in the expanded areas.

### **17.3 Fully Protected Species**

If at any time there is a change in state law such that CDFG may authorize the Take of any Fully Protected Species subject to California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515, and which species are also a Covered Species, the Implementing Entity may apply for an amendment of the HCP/NCCP and State Permit, or a new permit, for such species. In reviewing any such application, CDFG shall give good faith consideration to the impact analysis in the NEPA and CEQA review of the HCP/NCCP that concluded that the HCP/NCCP will incidentally and substantially benefit these species, and the Take avoidance measures, and mitigation and conservation measures, already provided in the HCP/NCCP. Provided that there are no changed circumstances or new information relevant to these species that would require supplemental review under NEPA and CEQA, and if the Take avoidance and conservation measures in the HCP/NCCP are being fully and successfully implemented, CDFG shall process the application as a minor amendment pursuant to Section 17.6.3 of this Agreement and shall issue the amendment or new permit under the same terms and conditions as the existing State Permit, to the extent permitted by law.

### **17.4 Inability to Obtain Regional Wetland Permits**

The Parties acknowledge that certain elements of Conservation Measures 1.7, 1.19, and 2.12 were included in the HCP/NCCP to address state and federal requirements that pertain to water quality impacts to Jurisdictional Wetlands and Waters, rather than to address species, habitat, or natural community conservation needs. If the Permittees are unable to obtain regional wetland permits, authorizations or permit program assurances based on the HCP/NCCP, the Parties agree that neither the Permittees nor Third Party Participants should be required to comply with such elements of those Conservation Measures. In the event that the Permittees are unable to obtain regional wetland permits, authorizations, or permit program assurances that are satisfactory to the Permittees within two (2) years of the Effective Date the Parties shall, at that time or such later time as the Permittees may request, amend the HCP/NCCP and, if necessary, the Permits to remove such elements of Conservation Measures 1.7, 1.10, and 2.12. No measures included in the



HCP/NCCP based on their value for conserving Covered Species or achieving the HCP/NCCP's species, habitat, or natural community related conservation goals or objectives shall be removed pursuant to this Section 17.4. Following a written notice from the Permittees to the Wildlife Agencies indicating that the Permittees were unable to obtain regional wetland permits, authorizations, or permit program assurances that were satisfactory to the Permittees within two (2) years of the Effective Date, the Wildlife Agencies will, on a project-by-project basis, based on a written request and adequate supporting information from any Permittee, waive the requirement to implement any elements of Conservation Measures 1.7, 1.10, and 2.12 that do not address species, habitat, or natural community conservation needs and waive the requirement to pay any portion of the wetlands mitigation fee that would be used to fund measures that are unnecessary to mitigate impacts to any Covered Species and are unnecessary to achieve the conservation goals or objectives for any Covered Species.

### **17.5 Exceptions to the Conservation Strategy**

Nothing in the Adaptive Management or Changed Circumstances provisions of this Agreement or the HCP/NCCP, nor any other provision that provides for an exception for the application of any measure included in the Conservation Strategy, authorizes an increase in the amount of Take, or an increase of the impacts of Take, of Covered Species beyond that authorized by the Permits. Any modification that would result in such an increase in Take beyond that authorized by the Permits must be approved as a Major Amendment under Section 17.6.4 of this Agreement.

### **17.6 Amendments**

#### **17.6.1 Amendment of this Agreement**

This Agreement may be amended only with the written consent of all of the Parties; provided, however, that any amendment or portion thereof pertaining to Third Party Participants, the implementing ordinances, or any other provision of this Agreement pertaining to the land use decisions of the Cities or County shall not require the consent of the Flood Control District or Park District.

#### **17.6.2 Amendment of the HCP/NCCP**

The HCP/NCCP may be amended only with the written consent of all of the Parties; provided, however, that any amendment or portion thereof pertaining to Third Party Participants, implementing ordinances, or any other provision of the HCP/NCCP pertaining to the Cities' or County's application of conservation measures to private urban development projects shall not require the consent of the Flood Control District or Park District.



### **17.6.3 Minor Amendments**

#### **17.6.3.1 Scope of Minor Amendments**

The Wildlife Agencies may not propose or approve as a Minor Amendment any revision to this Agreement or the HCP/NCCP if either of the Wildlife Agencies determines that such amendment would result in adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP/NCCP, or additional Take not analyzed in connection with the original HCP/NCCP. Minor Amendments to the Agreement, the HCP/NCCP, and, as may be required by applicable regulations, the Permits, may include the following:

- (a) Minor changes to survey, monitoring or reporting protocols;
- (b) Changes to any measure(s) in the Conservation Strategy to respond to the Adaptive Management Plan or Changed Circumstances identified in Section 12.0 of this Agreement;
- (c) Correction of any tables or appendices in the HCP/NCCP to reflect previously approved amendments to the HCP/NCCP or the Permits;
- (d) Changes listed in Chapter 10.3.1 of the HCP/NCCP as examples of administrative changes, or changes substantially similar to those examples;
- (e) Changes listed in Chapter 10.3.2 of the HCP/NCCP as examples of minor modifications; and
- (f) Other changes that do not result in adverse effects to Covered Species beyond that analyzed in the HCP/NCCP and the associated biological opinion, and do not limit the ability of the Implementing Entity to achieve the biological goals and objectives of the HCP/NCCP.

#### **17.6.3.2 Processing Minor Amendments**

##### **17.6.3.2.1 Notice and Response of Approval or Objection**

Any Party may propose a Minor Amendment to this Agreement, the HCP/NCCP or the Permits by providing written notice to all other Parties. Such notice shall include the proposed Minor Amendment and a statement of the reason for the proposed amendment and an analysis of its environmental effects, if any, including any effects on Covered Activities and on Covered Species under the HCP/NCCP. Each Party shall respond in writing to the proposed amendment within sixty (60) days of receipt of such notice, indicating whether that Party approves or objects to the proposal. Only proposals that are approved by all Parties will become effective as minor amendments, although no approval may be unreasonably withheld.



#### **17.6.3.2.2 Objection by a Wildlife Agency**

A Wildlife Agency may object to a proposed Minor Amendment by providing written notice to the Party proposing the amendment on the grounds that the HCP/NCCP, after giving effect to such amendment, would not meet the requirements of Section 10(a)(2)(B) of FESA or of the NCCPA.

Where possible, before objecting to a proposed Minor Amendment, the Wildlife Agency shall first consult with the Implementing Entity and other Permittees and suggest reasonable conditions or alterations to the proposal which, if agreed to by the Implementing Entity and other Permittees, would permit the Wildlife Agency to approve the proposed Minor Amendment.

#### **17.6.3.2.3 Objection by a Permittee**

Any Permittee may object to a proposed Minor Amendment upon any reasonable basis. Where possible, before objecting to a proposed Minor Amendment, the objecting Permittee shall first consult with the Wildlife Agencies and the other Permittees and suggest reasonable conditions or alterations to the proposal which, if agreed to by the Wildlife Agencies, would permit the Permittee to approve the proposed Minor Amendment.

#### **17.6.3.2.4 Unresolved Objections**

If either of the Wildlife Agencies reasonably objects to a Minor Amendment proposed pursuant to this Section 17.6.3, and the objection is not resolved by any conditions or alterations pursuant to Section 17.6.3.2.2 or the Plan Implementation and Interpretation resolution process in Section 21.1, the proposed amendment must be processed as a Major Amendment of the permit in accordance with Section 17.6.4 of this Agreement.

#### **17.6.3.2.5 Date that a Minor Amendment Becomes Effective**

A Minor Amendment shall become effective, if at all, on the last date on which each of the Parties has provided written approval. Written approval may be in the form of a written proposed amendment that includes a concurrence signature from all Parties.

### **17.6.4 Major Amendment**

Any change to this Agreement, the HCP/NCCP or the Permits that does not qualify as a Minor Amendment under Section 17.6.3 of this Agreement may be processed as a Major Amendment in accordance with all applicable laws and regulations, including but not limited to FESA, NEPA, NCCPA and CEQA. The Party proposing the Major Amendment shall provide a statement of the reasons and an analysis of its environmental effects, if any, including its effects on the effectiveness of the HCP/NCCP and on



Covered Species. The Wildlife Agencies shall process the proposed Major Amendment in an expeditious manner, commensurate with the level of environmental review appropriate to the magnitude of the proposed Major Amendment. Any Permittee may, in its sole discretion, reject any Major Amendment proposed by the Wildlife Agencies; however, the Permittee will use reasonable efforts to explain in writing its rationale for any such rejection within thirty (30) days of communicating such rejection to the Wildlife Agencies.

## **18.0 TERM OF AGREEMENT**

### **18.1 Effective Date**

This Agreement shall be effective upon execution by all Parties and issuance of the Permits.

### **18.2 Term of the Agreement**

This Agreement shall run for a term of thirty (30) years from the Effective Date, unless extended pursuant to Section 18.4 of this Agreement, or unless both Permits are permanently terminated pursuant to Section 19.0 of this Agreement, in which case this Agreement shall automatically terminate. This Agreement may also be terminated by mutual written agreement of the Parties.

### **18.3 Term of the Permits**

The Permits shall run for a term of thirty (30) years from the Effective Date unless terminated as provided in this Agreement, provided the requirements of Section 19.0 of this Agreement have been met.

### **18.4 Extension of the Permits**

Upon agreement of the Parties and in compliance with all applicable laws and regulations in force at the time, the Wildlife Agencies may, with respect to the Permits under their respective jurisdictions, extend the Permits beyond their initial terms. If the Permittees desire to extend the Permits, they will so notify the Wildlife Agencies at least six (6) months before the then-current term is scheduled to expire. Extension of the Permits constitutes extension of this Agreement and the HCP/NCCP for the same amount of time, subject to any modifications agreed to by the Parties at the time of extension.

## **19.0 REVOCATION, SUSPENSION OR TERMINATION BY USFWS OR CDFG**

### **19.1 Federal Permit**

USFWS agrees that that it will revoke or terminate the Federal Permit, in whole or in part, pursuant to 50 Code of Federal Regulations sections 13.28-13.29 and 50 Code of



Federal Regulations sections 17.22(b)(8) and 17.32(b)(8) only after completing the meet and confer process set forth in Section 21.1, unless immediate revocation is necessary to avoid the likelihood of jeopardy to a listed species. USFWS agrees that it will not revoke or terminate the Federal Permit, in whole or in part, to avoid the likelihood of jeopardy to a listed species, without first notifying the Permittees of those measures, if any, that the Permittees may undertake to prevent jeopardy to the listed species and maintain the Federal Permit and giving Permittees a reasonable opportunity to implement such measures.

## **19.2 State Permit**

CDFG may revoke or terminate the State Permit for a material violation of the State Permit or material breach of this Agreement by the Permittees if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFG under CESA and/or NCCPA.

CDFG agrees that it will not revoke or terminate the State Permit without first (a) requesting that the Permittees take appropriate remedial action, and (b) providing the Permittees with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than forty-five (45) days) to demonstrate or achieve compliance with CESA, NCCPA, the State Permit and this Agreement.

However, in the event that CDFG has determined that the Permittees have failed to meet the rough proportionality standard provided in Section 9.3 of this Agreement, and if the Permittees have failed to cure the default or to enter into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFG shall revoke the State Permit in whole or in part in accordance with California Fish and Game Code section 2820.

## **19.3 Continuing Obligations**

In the event of revocation or termination of the Permits, or of suspension of the Permits pursuant to Section 21.0 of this Agreement, consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and 17.22(b)(7), the Permittees will remain obligated to fulfill any existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permits for any Take that occurs prior to such revocation, termination, or suspension until the Wildlife Agencies determine that all Take of Covered Species that occurred under the Permits has been mitigated to the maximum extent practicable in accordance with the HCP/NCCP. Regardless of whether the Permits are terminated, suspended, or revoked, the Permittees acknowledge that lands dedicated to the Preserve System must be protected, managed and monitored in perpetuity.



## **20.0 WITHDRAWAL**

Upon ninety (90) days written notice to USFWS, CDFG, the Implementing Entity and all other Permittees, any Permittee except for the Implementing Entity may unilaterally withdraw from this Agreement. As a condition of withdrawal, the Permittee shall remain obligated to ensure implementation of all existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permits for any Take that the Permittee itself caused and any Take by Third Party Participants that the Permittee authorized prior to withdrawal. If a Permittee withdraws before causing or authorizing any Take under the Permits, the Permittee shall have no obligation to ensure implementation of any minimization or mitigation measures. Such withdrawal of a Permittee from this Agreement shall be deemed to constitute a surrender of the Permittee's authorization under the Permits.

Withdrawal by a Permittee shall not diminish or otherwise affect the obligations of the remaining Permittee's under this Agreement, the HCP/NCCP, or the Permits. The Permittees acknowledge that if one or more Permittees withdraws from this Agreement and, as a result of the withdrawal, it is no longer feasible or practicable to implement the HCP/NCCP successfully, it may be necessary to amend the HCP/NCCP and/or to amend the Permits in response to the withdrawal.

Upon ninety (90) days written notice to USFWS and CDFG, Permittees collectively may withdraw from this Agreement. As a condition of such withdrawal, the Permittees shall be obligated to ensure implementation of all existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permits for any Take that occurred prior to such withdrawal until the Wildlife Agencies determine that all Take of Covered Species that occurred under the Permits has been mitigated to the maximum extent practicable in accordance with the HCP/NCCP. Permittees shall further be obligated to ensure that the Rough Proportionality standard has been met in accordance with Section 9.3 of this Agreement and Chapter 8.6.1 of the HCP/NCCP with regard to Take that occurred prior to withdrawal.

If the Permittees collectively notify the USFWS in writing that they plan to withdraw from this Agreement or to discontinue the Covered Activities, they shall surrender the Federal Permit pursuant to the requirements of 50 Code of Federal Regulations Part 13.26. Regardless of withdrawal and surrender of the Permits, the Permittees acknowledge that lands dedicated to the Preserve System must be protected, managed and monitored in perpetuity.

## **21.0 HCP/NCCP IMPLEMENTATION AND INTERPRETATION, REMEDIES AND ENFORCEMENT**

### **21.1 HCP/NCCP Implementation and Interpretation**

The Parties recognize that disputes concerning implementation or interpretation of this Agreement, the HCP/NCCP, and the Permits may arise from time to time. The Parties



agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this section or such other procedures upon which the Parties may later agree. Any Party may seek any available remedy without regard to this Section 21.1 if the Party concludes that circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

#### **21.1.1 Notice of Dispute; Meet and Confer**

If the USFWS or CDFG objects to any action or inaction by any Permittee on the basis that the action or inaction is inconsistent with the HCP/NCCP, the Permits, or this Agreement, it shall so notify the Permittee and the Implementing Entity in writing, explaining the basis of such objection. The Permittee or Implementing Entity shall respond to the notice within thirty (30) days of receiving it, stating what actions the Permittee or Implementing Entity proposes to take to resolve the objection or, alternatively, explaining why the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting agency, the agency shall so notify the Permittee and the Implementing Entity, and the Permittee or Implementing Entity, as appropriate, shall implement the actions, if any, proposed in the response to the agency. If the response does not resolve the objection to the agency's satisfaction, the agency shall notify the Permittee or Implementing Entity accordingly, and the agency, the Permittee and the Implementing Entity shall meet and confer to attempt to resolve the dispute. The meeting shall occur within 30 (days) after the Permittee or Implementing Entity receives the objecting agency's response, or at such later time as the Permittee, the Implementing Entity and the agency may agree. A representative of the Implementing Entity shall take notes at the meeting, summarize the outcome, and distribute meeting notes to each Party in attendance.

The Implementing Entity or any other Permittee shall use the same procedure to raise and to resolve objections to any action or inaction of the USFWS or CDFG, and the USFWS and CDFG shall respond in the same manner to notices delivered by any Permittee.

If a dispute arises among the Permittees regarding the action or inaction of a Permittee, the Permittees shall use the same procedure to raise and to resolve objections to the Permittee's action or inaction, but shall not be required to provide notice to the USFWS or CDFG, and the USFWS and CDFG shall not be required to meet and confer with the Permittees.

##### **21.1.1.1 Disputes Regarding Specific Projects**

If the dispute among the Parties pertains to a specific project, the proponent of the project shall be allowed to provide input into the dispute resolution process by reviewing the initial notice of objection and submitting its own response and, if applicable, by participating in the meeting referenced in Section 21.1.1 among the Permittee(s), the



Implementing Entity and the USFWS and/or CDFG. For purposes of this provision, a dispute pertains to a specific project if the USFWS or CDFG objects to an action or inaction by a Permittee with regard to a specific project, such as the Permittee's determination of appropriate mitigation requirements for the project, or a Permittee objects to an action or inaction by the USFWS or CDFG with regard to a specific project.

#### **21.1.1.2 Elevation of Dispute**

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 21.1.1, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, "chief executive" shall mean the city manager of a city, the county administrator of the County, the chief engineer of the Flood Control District, the general manager of the Park District, the executive director of the Implementing Entity, the CDFG Regional Manager, and the USFWS Field Supervisor. Each Party shall be represented in person by its chief executive at the meeting, and the meeting shall occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

### **21.2 Remedies in General**

Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the HCP/NCCP and the Permits, and to seek redress and compensation for any breach or violation thereof, except that none of the Parties shall be liable in damages to any other Party or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement. Nothing in this Agreement is intended to limit the authority of the Federal and State governments to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under FESA, CESA or other applicable law.

### **21.3 Federal Permit**

#### **21.3.1 Permit Suspension**

USFWS may suspend the Federal Permit, in whole or in part, for cause in accordance with 50 Code of Federal Regulations section 13.27 and other applicable laws and regulations in force at the time of such suspension. Except where USFWS determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend the Federal Permit without first (1) requesting the Permittees to take appropriate remedial actions, and (2) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted.



### **21.3.2 Reinstatement of Suspended Permit**

In the event USFWS suspends the Federal Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, USFWS shall meet and confer with the Permittees concerning how the suspension can be ended. At the conclusion of any such conference, USFWS shall identify reasonable, specific actions, if any, necessary to effectively redress the suspension. In making this determination, USFWS shall consider the requirements of FESA and its regulations, the conservation needs of the Covered Species, the terms of the Federal Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, USFWS shall send the Permittees written notice of any available, reasonable actions, necessary to effectively redress the deficiencies giving rise to the suspension. Upon performance or completion, as appropriate, of such actions, USFWS shall immediately reinstate the Federal Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Federal Permit, all Parties shall act expeditiously and cooperatively to reinstate the Federal Permit.

## **21.4 The State Permit**

### **21.4.1 Permit Suspension**

In the event of any material violation of the State Permit or material breach of this Agreement by the Permittees, CDFG may suspend the State Permit in whole or in part; provided, however, that it shall not suspend the State Permit without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the HCP/NCCP or this Agreement in accordance with Section 21.1, (2) requesting the Permittees to take appropriate remedial actions, and (3) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

### **21.4.2 Rough Proportionality**

As provided in Section 9.2, in the event that CDFG has determined that the Permittees have failed to meet the rough proportionality standard provided in Section 9.3 of this Agreement, and if the Permittees have failed to cure the default or entered into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFG shall suspend the State Permit in whole or in part in accordance with California Fish and Game Code section 2820.

### **21.4.3 Reinstatement of Suspended Permit**

In the event CDFG suspends the State Permit, as soon as possible but no later than ten (10) days after such suspension, CDFG shall confer with the Permittees concerning



how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination, CDFG shall consider the requirements of NCCPA, the conservation needs of the Covered Species, the terms of the State Permit and this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, CDFG shall send the Permittees written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon performance of such actions, CDFG shall immediately reinstate the State Permit. It is the intent of the Parties that in the event of any suspension of the State Permit, all Parties shall act expeditiously and cooperatively to reinstate the State Permit.

### **21.5 Circumstances Likely to Constitute Jeopardy to Species**

In the event of circumstances which appreciably reduce the likelihood of survival and recovery of a species in the wild, USFWS or CDFG may suspend the Permits on an emergency basis, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than ninety (90) days. Prior to extending the suspension beyond ninety (90) days, the USFWS and CDFG shall comply with Section 21.3 and Section 21.4 of this Agreement. During such 90-day period, USFWS shall comply with 50 Code of Federal Regulations section 13.27.

### **22.0 FORCE MAJEURE**

In the event that the Permittees are wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittees ("Force Majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Permittees shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize any Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within fifteen (15) days after the occurrence of the Force Majeure, affected Permittees shall give the Wildlife Agencies written notice describing the particulars of the occurrence;
- Permittees shall use their best efforts to remedy their inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest); and
- When Permittees are able to resume performance of their obligations, the affected Permittees shall give the Wildlife Agencies written notice to that effect.



## **23.0 LEGAL AUTHORITY OF THE WILDLIFE AGENCIES**

### **23.1 Legal Authority of USFWS**

USFWS enters into this Agreement pursuant to FESA, the Fish and Wildlife Coordination Act, and the Fish and Wildlife Act of 1956. Section 10(a)(2)(B) of FESA expressly authorizes USFWS to issue a Section 10(a) Permit to allow the incidental Take of animal species listed as threatened or endangered under FESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that USFWS would approve a habitat conservation plan that protects non-listed species as if they were listed under FESA, and that in doing so, USFWS would provide assurances for such non-listed species.

### **23.2 Legal Authority of CDFG**

CDFG enters into this Agreement pursuant to its separate and independent authority under NCCPA. CDFG may authorize the Take of Covered Species pursuant to California Fish and Game Code section 2835.

## **24.0 MISCELLANEOUS PROVISIONS**

### **24.1 Calendar Days**

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified.

### **24.2 Response Times**

Except as otherwise set forth herein or as statutorily required by CEQA, NEPA, CESA, FESA, NCCPA or any other laws or regulations, the Wildlife Agencies and the Permittees shall use reasonable efforts to respond to written requests from a Party within a forty-five (45) day time period. The Parties acknowledge that the Cities, the County, and the Flood Control District are subject to the Permit Streamlining Act and that nothing in this Agreement shall be construed to require them to violate that Act. In addition, the Wildlife Agencies will provide timely review of proposals for Covered Activities to be implemented directly by the Permittees, where such review is required by this Agreement, the HCP/NCCP, or the Permits.

#### **24.2.1 Review of Third Party Participant Applications**

Various conservation measures in the HCP/NCCP require Third Party Participants to submit applications, plans or reports for approval by the County, a City, the Implementing Entity or the Wildlife Agencies prior to carrying out a Covered Activity. In all such circumstances, no later than sixty (60) days after receiving the application, the point of contact for the relevant Party as identified in Section 24.3 of this Agreement or



his or her designee will provide either of the following in writing: (1) an approval of the application, plan or report; (2) a conditional approval of the application, plan or report subject to specifically identified additional information; or (3) a denial of the application, plan or report with a written explanation of what changes can be made to receive approval if the application, plan or report is resubmitted. For situations where approval is required from two or more Parties to this Agreement, those Parties shall use reasonable efforts to provide a joint and/or consistent response within the same time period.

### **24.3 Notices**

The Implementing Entity shall maintain a list of individuals responsible for ensuring HCP/NCCP compliance for each of the Parties, along with addresses at which those individuals may be notified ("Notice List"). The Notice List as of the Effective Date is provided below. Each Party shall report any changes of names or addresses to the Implementing Entity and the other Parties in writing.

Any notice permitted or required by this Agreement shall be in writing, and delivered personally, by overnight mail, or by United States mail, certified and postage prepaid, return receipt requested. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery shall be to the name and address of the individual responsible for each of the Parties, as stated on the most current Notice List.

Notices shall be transmitted so that they are received within deadlines specified in this Agreement, where any such deadlines are specified. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service. Notice delivered via certified mail, return receipt requested, shall be deemed received as of the date on the return receipt or five (5) days after deposit in the United States mail, whichever is sooner. Notices delivered via non-certified mail shall be deemed received seven (7) days after deposit in the United States mail. Notices delivered by facsimile or other electronic means shall be deemed received on the date they are received.

The following Notice List contains the names and notification addresses for the individuals currently responsible for overseeing and coordinating HCP/NCCP compliance:

Ms. Donna Landeros, City Manager  
City of Brentwood  
708 Third Street  
Brentwood, CA 94513



Mr. Gary Napper, City Manager  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Mr. Bryan Montgomery, City Manager  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Mr. Marc Grisham, City Manager  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

Mr. John Cullen, County Administrator  
County of Contra Costa  
651 Pine Street, 11th Floor  
Martinez, CA 94553

Mr. Dennis M. Barry, Secretary (pending formation of the Implementing Entity)  
Implementing Entity  
651 Pine Street, North Wing, 4<sup>th</sup> Floor  
Martinez, CA 94553

Mr. Maurice M. Shiu, Chief Engineer  
Contra Costa County Flood Control and Water Conservation District  
255 Glacier Drive  
Martinez, CA 94553

Mr. Pat O'Brien, General Manager  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381

Mr. Paul Henson, Assistant Manager, Ecological Services  
California/Nevada Operations Office  
United States Fish & Wildlife Service  
2800 Cottage Way, Rm. W-2606  
Sacramento, CA 95825-1846

Ms. Susan Moore, Field Supervisor  
Sacramento Field Office  
United States Fish and Wildlife Service  
2800 Cottage Way, W-2605  
Sacramento, CA 95825-1846



Mr. Sonke Mastrup  
Deputy Director, Resources Management and Policy Division  
California Department of Fish and Game  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Regional Manager, Central Coast Region  
California Department of Fish and Game  
P.O. Box 47  
Yountville, CA 94599

With a copy to:

Mr. Silvano Marchesi, County Counsel  
Contra Costa County  
651 Pine Street, 9<sup>th</sup> Floor  
Martinez, CA 94553

Mr. Damien Brower, City Attorney  
City of Brentwood  
708 Third Street  
Brentwood, CA 94513

Mr. Dan Adams, City Attorney  
City of Clayton  
6000 Heritage Trail  
Clayton, CA 94517

Mr. Sky Woodruff, City Attorney  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Ms. Ruthann Ziegler, City Attorney  
City of Pittsburg  
65 Civic Avenue  
Pittsburg, CA 94565

Mr. Ted Radosevich, District Counsel  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605-0381



Ms. Ann Malcolm, General Counsel  
California Department of Fish and Game  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Regional Solicitor  
Pacific Southwest Region  
U.S. Department of the Interior  
2800 Cottage Way, Rm. E-1712  
Sacramento, CA 95825-1890

#### **24.4 Entire Agreement**

This Agreement, together with the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

#### **24.5 Defense**

Upon request, CDFG shall, to the extent authorized by California law, cooperate with the Permittees in defending, consistent with the terms of the HCP/NCCP, lawsuits arising out of the Permittees' adoption of this Agreement and the HCP/NCCP.

#### **24.6 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable federal law.

#### **24.7 Elected Officials Not to Benefit**

No member of, or delegate to, the California State Legislature, the United States Congress, the Contra Costa County Board of Supervisors, the city councils of the respective Cities, or the governing boards of the other Permittees shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

#### **24.8 Availability of Funds**

Implementation of this Agreement and the HCP/NCCP by USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation,



appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge and agree that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Implementation of this Agreement and the HCP/NCCP by CDFG is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that CDFG shall not be required under this Agreement to expend any state appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

Implementation of this Agreement and the HCP/NCCP by the Permittees is subject to the availability of their respective appropriated funds, including but not limited to the special purpose revenues dedicated to implement the HCP/NCCP. Nothing in this Agreement will be construed to require the obligation, appropriation, or expenditure of any money without express authorization by the County Board of Supervisors, appropriate City Councils and/or governing boards of the Implementing Entity, Flood Control District or Parks District. Notwithstanding these requirements and limitations, the Permittees are required to fund their respective obligations under this Agreement, the HCP/NCCP and the Permits pursuant to Section 14.1 of this Agreement. The Parties acknowledge that if the Permittees fail to provide adequate funding for their respective obligations under this Agreement, the HCP/NCCP and the Permits, the Permits may be suspended or revoked pursuant to Sections 19.0 and 21.0 of this Agreement.

#### **24.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

#### **24.10 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

#### **24.11 Relationship to the FESA, CESA, NCCPA and Other Authorities**

The terms of this Agreement are consistent with and shall be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of the USFWS and CDFG to seek penalties or otherwise fulfill its responsibilities under FESA, CESA and NCCPA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government or CDFG as an agency of the State of California.



#### **24.12 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to FESA, CESA, NCCPA or other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

#### **24.13 References to Regulations**

Any reference in this Agreement, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

#### **24.14 Applicable Laws**

All activities undertaken pursuant to this Agreement, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

#### **24.15 Severability**

In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one does not automatically cause revocation of the other.

#### **24.16 Due Authorization**

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

#### **24.17 Assignment**

Except as otherwise provided herein, the Parties shall not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity. The Implementing Entity may assign its rights and obligations to a joint exercise of powers agency with powers sufficient to carry out the Implementing Entity's obligations under this Agreement, the Permits and the HCP/NCCP. Thereafter, such assignee shall be the Implementing Entity for all purposes under this Agreement.



#### 24.18 Headings

Headings are used in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

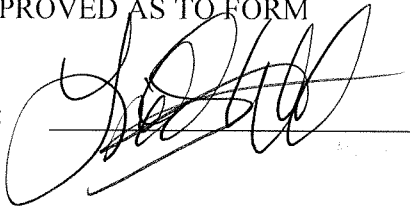
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

Dated: May 4, 2007

COUNTY OF CONTRA COSTA

By:   
John Cullen, County Administrator

APPROVED AS TO FORM

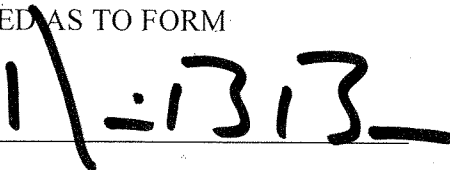
By: 

Dated: April 26, 2007

CITY OF BRENTWOOD

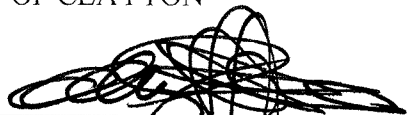
By:   
Donna Landeros, City Manager

APPROVED AS TO FORM

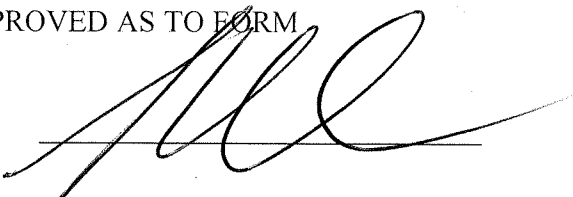
By: 

Dated: 02 MAY, 2007

CITY OF CLAYTON

By:   
Gary Napper, City Manager

APPROVED AS TO FORM

By: 



Dated: April 25, 2007

CITY OF OAKLEY

By: Bryan Montgomery  
Bryan Montgomery, City Manager

APPROVED AS TO FORM

By: William R. Carls

Dated: May 1, 2007

CITY OF PITTSBURG

By: Marc Grisham  
Marc Grisham, City Manager

APPROVED AS TO FORM

By: Dennis M. Barry

Dated: July 31, 2007

IMPLEMENTING ENTITY

By: Dennis M. Barry  
Dennis M. Barry, Secretary

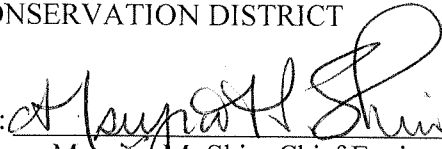
APPROVED AS TO FORM

By: Joe

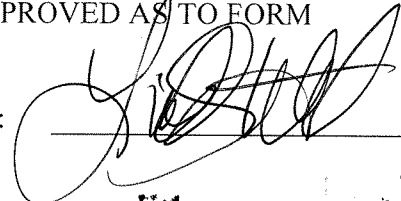


Dated: 5/10, 2007

CONTRA COSTA COUNTY FLOOD  
CONTROL AND WATER  
CONSERVATION DISTRICT

By:   
Maurice M. Shiu, Chief Engineer

APPROVED AS TO FORM

By: 

Dated: 5-07, 2007

EAST BAY REGIONAL PARK DISTRICT

By:   
Pat O'Brien, General Manager

APPROVED AS TO FORM

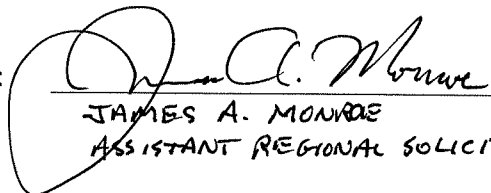
By: 

Dated: 5-24, 2007

CALIFORNIA/NEVADA OPERATIONS  
OFFICE, UNITED STATES FISH &  
WILDLIFE SERVICE

By:   
Paul Henson, Assistant Manager,  
Ecological Services

APPROVED AS TO FORM

By:   
JAMES A. MONROE  
ASSISTANT REGIONAL SOLICITOR



Dated: 7/22, 2007

SACRAMENTO FIELD OFFICE, UNITED  
STATES FISH & WILDLIFE SERVICE

By: Susan K Moore  
Susan Moore, Field Supervisor

APPROVED AS TO FORM

By: James A. Monroe  
JAMES A. MONROE  
ASSISTANT REGIONAL SOLICITOR

Dated: 7/25, 2007

CALIFORNIA DEPARTMENT OF FISH  
AND GAME

By: Banky Curtis  
Banky Curtis, Deputy Director,  
Habitat Conservation Division *Deputy Director  
Resource Management and  
Policy Div*

APPROVED AS TO FORM

By: Steph A. Adams  
Dep. Gen. Counsel

Dated: 7/25, 2007

CALIFORNIA DEPARTMENT OF FISH  
AND GAME

By: Rob Floerke  
Rob Floerke, Regional Manager,  
Central Coast Region

APPROVED AS TO FORM

By: Steph A. Adams



**Exhibit A**

**Reproduction of Figure 1-1 from the ECCC HCP/NCCP**



Figure 1-1: Inventory Area

The map displays the Inventory Area, which is outlined by a dashed black line. The area includes several cities: Pittsburg, Antioch, Oakley, Clayton, Brentwood, Concord, Walnut Creek, Danville, and San Ramon. The map also shows major highways (Interstates 4, 580, 680, and State Routes 160, 4, J4) and various parks and restricted open spaces, which are shaded in green. The city limits are indicated by solid black lines. The map is oriented with North at the top, as indicated by the north arrow. A scale bar shows distances in miles (0 to 2). The map is dated 07/14/2006 and is prepared by Jones & Stokes.

Legend

- Inventory Area
- Non-urban Parks, Public Watershed Lands, and Deed Restricted Open Space in the Inventory Area
- City Limits

North Arrow

Miles

2 1 0 2

Jones & Stokes

07/14/2006

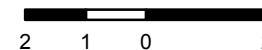
 Inventory Area

Non-urban Parks,  
Public Watershed  
Lands, and Deed  
Restricted Open  
Space in the  
Inventory Area

City Limits



Miles



Jones & Stokes



07/14/2006



## Exhibit B

### Reproduction of Table 3-9 from the ECCC HCP/NCCP

Common Name	Scientific name	Status <sup>1</sup>	
		State	Federal
<b>Mammals</b>			
1. Townsend's western big-eared bat	<i>Corynorhinus townsendii townsendii</i>	CSC	–
2. San Joaquin kit fox	<i>Vulpes macrotus mutica</i>	ST	FE
<b>Birds</b>			
3. Tricolored blackbird	<i>Agelaius tricolor</i>	CSC-1	–
4. Golden eagle	<i>Aquila chrysaetos</i>	FP	BGEPA
5. Western burrowing owl	<i>Athene cunicularia hypugea</i>	CSC-1	–
6. Swainson's hawk	<i>Buteo swainsoni</i>	ST	–
<b>Reptiles</b>			
7. Silvery legless lizard	<i>Anniella pulchra pulchra</i>	CSC	–
8. Alameda whipsnake	<i>Masticophis lateralis euryxanthus</i>	ST	FT
9. Giant garter snake	<i>Thamnophis gigas</i>	ST	FT
<b>Amphibians</b>			
10. California tiger salamander	<i>Ambystoma californiense</i>	CSC	FT
11. California red-legged frog	<i>Rana aurora draytonii</i>	–	FT
12. Foothill yellow-legged frog	<i>Rana boylei</i>	CSC	–
13. Western pond turtle	<i>Clemmys marmorata</i>	CSC	–
<b>Invertebrates</b>			
14. Longhorn fairy shrimp	<i>Brachinecta longiantenna</i>	–	FE
15. Vernal pool fairy shrimp	<i>Brachinecta lynchi</i>	–	FT
16. Midvalley fairy shrimp	<i>Brachinecta mesovallensis</i>	–	–
17. Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	–	FE
<b>Plants</b>		<b>CNPS</b>	
18. Mount Diablo manzanita	<i>Arctostaphylos auriculata</i>	1B	–
19. Brittscale	<i>Atriplex depressa</i>	1B	–
20. San Joaquin spearscale	<i>Atriplex joanquiniana</i>	1B	–
21. Big tarplant	<i>Blepharizonia plumosa</i>	1B	–
22. Mount Diablo fairy lantern	<i>Calochortus pulchellus</i>	1B	–
23. Recurved larkspur	<i>Delphinium recurvatum</i>	1B	–
24. Round-leaved filaree	<i>Erodium macrophyllum</i>	1B	–
25. Diablo helianthella	<i>Helianthella castanea</i>	1B	–
26. Brewer's dwarf flax	<i>Hesperolinon breweri</i>	1B	–
27. Showy madia	<i>Madia radiata</i>	1B	–
28. Adobe navarretia	<i>Navarretia nigelliformis</i> ssp. <i>nigelliformis</i>	1B	–
<sup>1</sup> Status:			
<b>Federal</b>			
FE	Federally Endangered		
FT	Federally Threatened		
BGEPA	Bald and Golden Eagle Protection Act		
<b>State</b>			



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SE	State Listed as Endangered
ST	State Listed as Threatened
CSC	California Special Concern Species
CSC 1	Bird Species of Special Concern; First Priority
FP	Fully Protected
<b>CNPS</b>	
1B	California Native Plant Society, Rare or Endangered in California and Elsewhere

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**Exhibit C**

**HCP/NCCP Model Implementing Ordinance**



**A MODEL ORDINANCE OF THE  
[CITY OF \_\_\_\_\_]  
[COUNTY OF CONTRA COSTA]  
TO IMPLEMENT THE  
EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN /  
NATURAL COMMUNITY CONSERVATION PLAN**

The [City Council of the City of \_\_\_\_\_][Board of Supervisors of the County of Contra Costa] does ordain as follows:

**SECTION I  
TITLE**

This Ordinance shall be known as the “East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan Implementation Policy.”

**SECTION II  
FINDINGS**

**[Note: the following findings exemplify the appropriate substance of the findings that the County and each city may make in support of this Ordinance, but the County and each city may adapt the findings as necessary to reflect its independent review of the facts.]**

**The [Council][Board] finds as follows:**

- A. The [City Council (“Council”)][Board of Supervisors (“Board”)] finds that there is a need to establish a comprehensive framework to protect and conserve species, wetlands, natural communities and ecosystems in East Contra Costa County, while improving and streamlining the environmental permitting process for impacts of future development on rare, threatened and endangered species.
- B. To meet the need identified in Section II-A, the [City of \_\_\_\_\_ (“City”)][County of Contra Costa (“County”)] participated as a member of the East Contra Costa County Habitat Conservation Planning Agency, a joint exercise of powers agency, to develop the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (“HCP/NCCP”) and the Implementing Agreement for the HCP/NCCP. The [Council][Board] finds that the HCP/NCCP, implemented in accordance with the Implementing Agreement, will: provide comprehensive species, wetlands, and ecosystem conservation and contribute to the recovery of endangered species within East Contra Costa County; balance open space, habitat, and urban development; reduce the cost and increase the clarity and consistency of federal and state permitting; consolidate and streamline these processes into one, locally controlled plan; encourage, where appropriate, multiple uses of protected areas; share the costs and benefits of the



HCP/NCCP as widely and equitably as possible; and protect the rights of private property owners.

- C. The [Council][Board] finds that adoption and implementation of this Ordinance will enable the [City][County] to promote the health, safety and welfare of all of its citizens by helping to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing Agreement executed by the [City][County] on \_\_\_\_\_, 200\_, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act, the California Environmental Quality Act, the Federal Endangered Species Act, the California Endangered Species Act, the California Natural Community Conservation Planning Act, and other applicable laws.
- D. The [Council][Board] finds that there is a reasonable relationship between the use of the HCP/NCCP implementation fees imposed by this Ordinance and the type of Development Project on which the fees are imposed. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to Chapter 9.3.1, and data and analyses referenced therein, the HCP/NCCP implementation fee referred to in Chapter 9.3.1 as the “Development Fee” will be used to implement the HCP/NCCP by funding actions to preserve, enhance, restore, create and manage habitat in order to mitigate for impacts to open space and covered species. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to Chapter 9.3.1, and data and analyses referenced therein, the HCP/NCCP implementation fee referred to in Chapter 9.3.1 as the “Wetland Mitigation Fee” will be used to implement the HCP/NCCP by funding actions to restore, create and manage jurisdictional wetlands and waters in order to mitigate for impacts to jurisdictional wetlands and waters and riparian areas. The HCP/NCCP implementation fees will apply only to Development Projects that impact open space, habitat suitable for one or more covered species, jurisdictional wetlands and waters or riparian areas. The HCP/NCCP implementation fees will therefore be used for purposes reasonably related to the Development Projects that will be subject to the fees.
- E. The [Council][Board] further finds that there is a reasonable relationship between the need for the public facilities to be funded by the HCP/NCCP implementation fees imposed by this Ordinance and the type of Development Project on which the fees are imposed. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to Chapter 9.3.1, and data referenced therein, the HCP/NCCP implementation fee referred to in Chapter 9.3.1 as the “Development Fee” will be used to fund actions to preserve, enhance, restore, create and manage open space and habitat in order to mitigate for impacts to open space and covered species. As set forth in the Implementing Agreement, the HCP/NCCP, including but not limited to in Chapter 9.3.1, and data and analyses referenced therein, the HCP/NCCP implementation fee referred to in Chapter 9.3.1 as the “Wetland Mitigation Fee” will be used to implement the HCP/NCCP by funding actions to restore, create and manage jurisdictional wetlands and waters in order to mitigate for impacts to jurisdictional wetlands and waters. The need for such mitigation actions arises from the Development Projects to which the fees will apply, i.e.,



Development Projects that disturb open space, habitat, jurisdictional wetlands and waters or riparian areas. The HCP/NCCP implementation fees will therefore be used to establish and manage mitigation areas that are reasonably related to the mitigation needs of the Development Projects that will be subject to the fees.

- F. The [Council][Board] finds that there is a reasonable relationship between the amount of the HCP/NCCP implementation fees imposed by this Ordinance and the cost of the public facilities or portion of the public facilities attributable to the Development Projects on which the fees will be imposed. As set forth in the Implementing Agreement and the HCP/NCCP, including but not limited to Chapters 2, 5, 9 and Appendix G of the HCP/NCCP, the costs for mitigation of cumulative impacts from Development Projects subject to the fees were estimated by projecting the extent of future development impacts, calculating the acres of mitigation required, and estimating the overall costs of mitigation. The method for calculating the Development Fee amount for individual Development Projects reflects the mitigation cost attributable to individual Development Projects based on:

- a. area, as the cost of acquiring sufficient open space or habitat land to mitigate for the impacts of development is directly proportional to the acreage of the development; and
- b. location, as the mitigation needed varies in proportion to the intrinsic habitat or open space value of the land impacted. Thus, fees are tiered so that the highest fee amounts are imposed in areas (Development Fee Zones) deemed to have the highest intrinsic value per acre, a fee equal to 50% of the highest fee amount is imposed in areas deemed to have substantial but lower intrinsic value per acre, and a fee equal to 25% of the highest fee amount is required in areas deemed to have the lowest intrinsic value per acre.

The method for calculating the Wetland Mitigation Fee amount for individual Development Projects reflects the mitigation cost attributable to individual Development Projects based on:

- a. type, as the cost of restoring or creating jurisdictional wetlands and waters depends on the type of jurisdictional wetlands and waters impacted and the specific construction tasks necessary to restore or create that particular type of jurisdictional wetlands and waters, and because the different types of jurisdictional wetlands and waters require different mitigation ratios to reflect differences in habitat value and function and differences in restoration and creation success rates among the various types of jurisdictional wetlands and waters; and
  - b. area, as the cost of restoring or creating jurisdictional wetlands and waters is directly proportional to the acreage being restored or created and thus to the acreage being impacted by the development.
- G. The findings set forth herein are based on the Implementing Agreement, the HCP/NCCP, and studies and data referenced therein, including data indicating the estimated cost to provide the facilities and services for which the HCP/NCCP implementation fees herein are levied, and the anticipated revenue sources, which have been available for public inspection and review in the office of the



[City][County] Clerk for more than ten (10) days prior to the date of this public hearing.

- H. At least fourteen (14) days prior to the public hearing at which this ordinance was adopted, [City][County] mailed notice of the time and place of the hearing and of the availability of data indicating the estimated cost required to provide the services and amenities for which the fees established herein are levied, and the anticipated revenue sources therefore, to all interested parties who filed written requests with the [Council][Board] for mailed notice of meetings on new or increased fees or service charges. Notice of this hearing was also given by publication in accordance with section 6062(a) of the California Government Code.

### **SECTION III APPLICATION OF ORDINANCE**

- A. This Ordinance shall apply to all Development Projects, within the [City's][County's] land use jurisdiction that are within the Urban Development Area shown on Figure 2-3 of the HCP/NCCP, attached as **Exhibit A**, as it may be amended, [OPTIONAL “, except for any in-fill project with a total footprint of less than one acre or any in-fill project where new development is replacing existing development”]. This Ordinance establishes an application procedure for the applicant for such Development Projects through which the applicant may receive authorization for the incidental take of certain Covered Species listed as threatened or endangered under state and federal law and identified in the HCP/NCCP, subject to the applicant's compliance with all terms and conditions required by the HCP/NCCP, the Implementing Agreement, and this Ordinance.
- B. This Ordinance shall not apply if the [City][County] determines its application requirements would result in the property owner being deprived of all reasonable economic use of the property in violation of federal or state constitutional prohibitions against taking of property without just compensation.

### **SECTION IV PROCEDURES**

**[Note: the Ordinance must contain application procedures substantially similar to those outlined in Section 13.3 of the Implementing Agreement and further described in Chapter 6.2 of the HCP/NCCP, but such procedures may be adapted for purposes of administrative efficiency based on each city's and the County's policies and procedures.]**

### **SECTION V HCP/NCCP IMPLEMENTATION FEES OR DEDICATION OF LAND IN LIEU OF FEES**

To help fund the acquisition, management and monitoring of the Preserve System, and all other implementation and administration of the HCP/NCCP by the Implementing



Entity, the [City][County] shall condition the approval of any and all Development Projects subject to this Ordinance, pursuant to Section III above, upon the collection of the HCP/NCCP implementation fees, and/or, on a case-by-case basis, a dedication of land in lieu of some or all of the fee, as follows: **[Note: the County and each city may also elect to establish through the Ordinance the amount and process for collecting additional fees to fund their costs in processing HCP/NCCP permit applications; these costs are not reflected in the calculation of the Development Fee or the Wetland Mitigation Fee.]**

A. Development Fee

1. The [City][County] shall determine in which of the three Development Fee Zones the project or activity is located, pursuant to Figure 9-1 in **Exhibit C**.
2. The Development Fee for each Development Project shall be calculated by multiplying the fee for the applicable Development Fee Zone by the number of acres that the [City Official][County Official] determines will be permanently disturbed by the Development Project, pursuant to Chapter 9.3.1.
3. As of the Effective Date, the Development Fee for each of the three Fee Zones is as follows: Zone I (Eastern Agricultural Zone) is \$11,919 per acre; Zone II (Natural Area Zone) is \$23,838 per acre; and Zone III (Infill) is \$5,960 per acre, as further described in Table 9-4 of the HCP/NCCP, attached as **Exhibit B**. **[Note: as applicable, the County and each city may also elect to set the amount of the fees by resolution and/or may incorporate the text of Exhibit B within the ordinance itself.]**
4. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the applicant shall either pay the entire Development Fee or, with the approval of the [County][City], shall pay at least 67% of the Development Fee and execute an agreement with the [County][City] to provide additional funding payments through assessments on the subject parcels or similar means, pursuant to the requirements of Chapter 9.3.1 of the HCP/NCCP.

B. Wetland Mitigation Fee

1. For any Development Project that will fill, dredge, or remove jurisdictional wetlands and waters, riparian woodland or scrub, or stream buffers, the applicant shall pay a Wetland Mitigation Fee in addition to the Development Fee.
2. Wetland Mitigation Fees varies by wetland type. The [City Official][County Official] shall determine which of the wetland types will be affected by the Development Project, according to Table 9-5 of the HCP/NCCP, attached as **Exhibit D**, and according to Chapter 9.3.1 of the HCP/NCCP, and shall determine the area affected by the Development Project and the total amount of the Wetland Mitigation Fee required for the Development Project.
3. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the applicant shall either pay the entire Wetland Mitigation Fee determined for the Development Project.



- C. The Development Fee and Wetland Mitigation Fees shall each be adjusted automatically for inflation or deflation. **[Note: If the ordinance is adopted after March 15, 2007, the initial fee amounts provided in the HCP/NCCP and this model ordinance must first be adjusted using the method described below.]**
1. The Development Fee established by this Ordinance shall automatically be increased or decreased effective March 15 of each year as provided in Table 9-7 of the HCP/NCCP, attached as **Exhibit E**, and based on the formula in **Exhibit F**, which are further explained in Chapter 9.3.1 of the HCP/NCCP. As shown in **Exhibit E** and **Exhibit F**, one portion of the fee amount in effect before March 15 of each year shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Office of Federal Housing Enterprise Oversight Annual Home Price Index for the Oakland-Fremont-Hayward, California Metropolitan Division for the preceding calendar year, and another portion of the fee shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Consumer Price Index for the San Francisco-Oakland-San Jose Combined Statistical Area (U.S. Bureau of Labor Statistics) for the preceding calendar year.
  2. The Wetland Mitigation Fees established by this Ordinance shall on March 15 of each year be automatically increased or decreased as provided in Table 9-7 of the HCP/NCCP, attached as **Exhibit E**. As shown in **Exhibit E**, the fee amount in effect before March 15 of each year shall be increased or decreased by the same percentage as the percentage of increase or decrease in the Consumer Price Index for the San Francisco-Oakland-San Jose Combined Statistical Area (U.S. Bureau of Labor Statistics) for the preceding calendar year.
- D. All fees collected hereunder shall be transmitted to the [City][County] Auditor-Controller quarterly, within thirty (30) days of the end of the quarter within which the fee was collected, for deposit into a separate account or fund, and for investment, accounting and expenditure in accordance with the provisions of this Ordinance and the Mitigation Fee Act.
- E. On a case-by-case basis, and upon a voluntary offer by the applicant, a dedication of land may be accepted in lieu of some or all of the Development Fee necessary for a Development Project. Upon any such offer, the [City Official][County Official] shall determine if the land dedication is consistent with the HCP/NCCP and Implementing Agreement, including Section 13.2.2.2 of the Implementing Agreement, and shall determine the amount of the Development Fee for which such dedication would substitute.
- F. On a case-by-case basis, and upon a voluntary offer by the applicant, restoration or creation of jurisdictional wetlands and waters or of riparian woodland and scrub may be accepted in lieu of some or all of the Wetland Mitigation Fee necessary for a Development Project. Upon any such offer, the [City Official][County Official] shall determine if the proposed restoration or creation is consistent with the HCP/NCCP and Implementing Agreement, including Chapter 9.3.1 and Conservation Measure 2.1 of the HCP/NCCP, and shall



determine the amount of the Wetland Mitigation Fee for which such dedication would substitute.

- G. On a case-by-case basis, an applicant that possesses separate and final approval from the United States Fish and Wildlife Service and/or California Department of Fish and Game for incidental take of all federally or state listed species that may be adversely affected by the project may apply to the [City][County] to pay a fee, the amount to be negotiated by the applicant with the [City][County], to support the conservation of habitat and open space under the HCP/NCCP instead of the standard HCP/NCCP implementation fees. If the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this ordinance, then the [City][County] may determine that no further fees are required for purposes of complying with the HCP/NCCP, in which case the HCP/NCCP implementation fees described herein shall not be required.

## **SECTION VI DEFINITIONS**

For purposes of this Ordinance, the following terms shall have the meaning set forth herein:

- A. “Applicant” means any individual or group that is pursuing a Development Project.
- B. “Development Fee” means the fee collected to fund actions to preserve, enhance, restore, create and manage habitat in order to mitigate for impacts to open space and covered species, and is further defined in Chapter 9.3.1 of the HCP/NCCP.
- C. “Development Fee Zones” means the areas defined in Exhibit C that are assigned different Development Fee amounts.
- D. “Development Project” means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate, as further described in Chapter 2.3.1 of the HCP/NCCP.
- E. “HCP/NCCP” means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan and the Federal and State Permits issued under the federal Endangered Species Act and the Natural Community Conservation Planning Act, as those documents may be amended from time to time.
- F. “HCP/NCCP implementation fees” means the Development Fee and the Wetland Mitigation Fee.
- G. “Implementing Agreement” means the Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan by and between East Contra Costa County Habitat Conservation Plan Implementing Entity, Contra Costa County, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water Conservation District, East Bay Regional Park District, United States Fish and Wildlife Service, and California Department of Fish and Game.



- H. "Implementing Entity" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency whose members are the cities participating in the HCP/NCCP and the County, or its successor, which is responsible for overseeing the implementation of the HCP/NCCP.
- I. "Jurisdictional Wetlands and Waters" means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. § 1251 et seq.), from the State Water Resources Control Boards under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act (California Water Code, § 13000 et seq.), or from CDFG under section 1602 of the California Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- J. "Urban Development Area" means the areas designated for urban development that are either within the area described as the "Initial Urban Development Area" in Exhibit A or are within an amended Urban Development Area established according to the procedures set forth in the Implementing Agreement.
- K. "Wetland Mitigation Fee" means the fee collected to fund actions to restore, create and manage jurisdictional wetlands and waters and riparian woodland or scrub in order to mitigate for impacts to jurisdictional wetlands and waters, riparian woodland or scrub and stream buffers, and is further defined in Chapter 9.3.1 of the HCP/NCCP.

## **SECTION VII EFFECTIVE DATE**

This Ordinance becomes effective sixty (60) days after passage, and within fifteen (15) days after passage shall be published once with the names of the [city council members][supervisors] voting for and against it in the [newspaper], a newspaper. [Note: As appropriate, the City or County may determine to publish a summary.]

PASSED AND ADOPTED on \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: [City][County] Clerk

By: \_\_\_\_\_



**Exhibit A**

**Figure 2-3  
Initial Urban Development Area**



Figure 2-3 : Initial Urban Development Area

The map displays the Initial Urban Development Area (pink) within the County Urban Limit Line (blue). Land use designations include Agricultural Core (cyan), Agriculture (olive), Development (tan), Open Space (Designated in General Plan) (light green), Parks, Public Watershed Lands, and Deed Restricted Open Space (dark green), Urban Parks & Open Spaces (in Inventory Area) (orange), Public Facilities (blue), Public Facilities with Undeveloped Land (dark red), and Water (light blue). The map also shows major roads (Interstates 680, 580, and State Routes 4, 160, J4) and a scale bar (0 to 2 miles). A north arrow is located in the bottom right corner.

**Legend**

- Inventory Area
- County Urban Limit Line
- Initial Urban Development Area

**Land Use Designations \*  
For Areas Outside  
Initial Urban Development Area**

- Agricultural Core
- Agriculture
- Development
- Open Space  
(Designated in  
General Plan)
- Parks, Public  
Watershed Lands,  
and Deed Restricted  
Open Space
- Urban Parks &  
Open Spaces  
(in Inventory Area)
- Public Facilities
- Public Facilities  
with Undeveloped  
Land
- Water

\* Land Use Designations were derived from County and City General Plan Maps. Designations were combined to create a simpler map.

07/12/2006

Inventory Area

County Urban Limit Line

Initial Urban Development Area

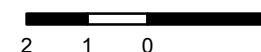
**Land Use Designations \*  
For Areas Outside  
Initial Urban Development Area**

- |   |  |
|---|--|
|  | Agricultural Core  |
|  | Agriculture  |
|  | Development  |
|  | Open Space<br>(Designated in<br>General Plan)                          |
|  | Parks, Public<br>Watershed Lands,<br>and Deed Restricted<br>Open Space |
|  | Urban Parks &<br>Open Spaces<br>(in Inventory Area)                    |
|  | Public Facilities  |
|  | Public Facilities<br>with Undeveloped<br>Land                          |
|  | Water  |

\* Land Use Designations were derived from County and City General Plan Maps. Designations were combined to create a simpler map.



Miles



07/12/2006



## Exhibit B

**Table 9-4  
HCP/NCCP Development Fee**

**Table 9-4.** HCP/NCCP Development Fee

	Fee Zone <sup>1</sup>			Total
	Zone I: Cultivated and Disturbed Lands	Zone II: Natural Areas	Zone III: Small Vacant Lots	
Development Fee per Acre at Start of Permit Term <sup>2</sup>	\$11,919	\$23,838	\$5,960	
Estimated Cost per Housing Unit <sup>3</sup>	\$2,980	\$5,960	\$1,490	
<b>Estimated Areas of Impact in Fee Zones (Excludes Rural Road Activities)<sup>5</sup></b>				
Initial Urban Dev. Area	6,212	2,306	166 <sup>4</sup>	8,685
Max. Urban Dev. Area	7,533	4,180	166 <sup>4</sup>	11,879
<b>Estimated Revenue (2006 Dollars)<sup>5</sup></b>				
Initial Urban Dev. Area	\$67,310,127	\$49,973,327	\$899,347	\$118,182,800
Max. Urban Dev. Area	\$80,027,657	\$88,813,383	\$881,760	\$169,722,800

**Notes:**

<sup>1</sup> As defined in Figure 9-1. Fee amounts are defined solely by a project's position in Figure 9-1. Zone names are provided only as a general guide to dominant land cover.

<sup>2</sup> See text and Appendix H for calculation methods. Development fees will be adjusted for inflation or deflation according to Table 9-7 and the terms of the HCP/NCCP; consult planning staff with your participating jurisdiction for the latest HCP/NCCP development fee.

<sup>3</sup> Assumes average housing density of 4.0 units per acre. This is an estimate only; fees will be charged on a per acre basis, not on a per unit basis.

<sup>4</sup> Projects less than 1 acre may be exempt depending on the jurisdiction.

<sup>5</sup> Estimated acres of impact in Fee Zones and revenue projections assume a 10% contingency (i.e., that up to 10% of the impact acres will not pay a fee due to development not occurring during the permit term). The initial fee will be set to reflect the cost and revenue projections associated with the initial urban development area as described in Appendix H. The cost and revenue projections associated with the maximum urban development area are reflected in the revenue projections for that development scenario.

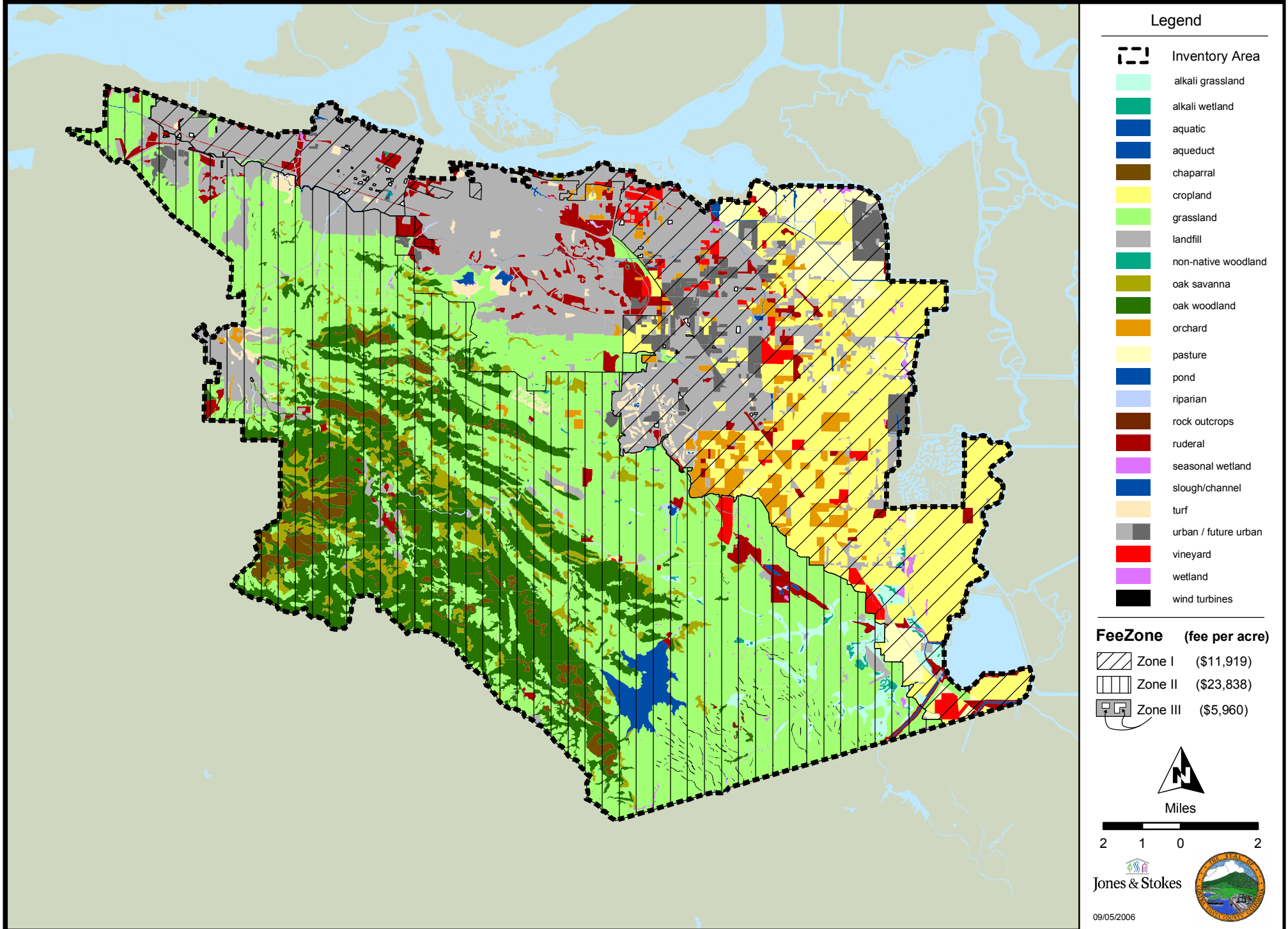


**Exhibit C**

**HCP/NCCP Figure 9-1  
Development Fee Zones**



Figure 9-1 : Development Fee Zones





## Exhibit D

**Table 9-5**  
**Wetland Mitigation Fee and Acreage Determination Methods**

**Table 9-5.** Wetland Mitigation Fee and Acreage Determination Methods

Land Cover Type	Fee per unit of Impact <sup>1</sup>	Required Compensation Ratio for Restoration/Creation <sup>1</sup>	Method for Determining Fee Boundary
Riparian woodland/scrub	\$58,140/acre	1:1	Limit of tree or shrub canopy (drip line)
Perennial wetlands	\$79,560/acre	1:1	Jurisdictional wetland boundary of state or federal government <sup>2</sup> , whichever is greater
Seasonal wetland	\$172,380/acre	2:1	Same as above
Alkali wetland	\$163,200/acre	2:1	Same as above
Ponds	\$86,700/acre	1:1	Jurisdictional waters boundary of state or federal government <sup>2</sup> , whichever is greater
Aquatic (open water)	\$86,700/acre	1:1	Wetted area during normal rainfall year or jurisdictional waters boundary, whichever is greater
Slough/channel	\$98,940/acre	1:1	Area of impact within banks
Streams			
Streams 25 feet wide or less	\$474/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.
Streams greater than 25 feet wide <sup>3</sup>	\$714/linear foot	1:1	Stream length measured along stream centerline. Stream width measured between top of bank.

<sup>1</sup> See Appendix G for calculation of fee by wetland type. Wetland fee takes required compensation ratio into account. Fees from Draft HCP/NCCP (in 2004 dollars) were updated for the Final HCP/NCCP using a 2005 CPI of 2.0% per Table 9-7.

<sup>2</sup> Using methods for determining state and federal jurisdictional wetlands and waters at the time of HCP/NCCP approval.

<sup>3</sup> Impact fee for wider streams is 1.5 times the base stream fee to account for higher construction costs on wider streams.



## Exhibit E

**Table 9-7**  
**Fee Adjustment Indices**

**Table 9-7.** Fee Adjustment Indices

Fee	Annual Adjustment Index <sup>1</sup>	Average Annual Rate (1991–2001) <b>Example</b>
Development Fee		
Portion for Land Acquisition <sup>2</sup> (60 % initially <sup>3</sup> )	Change in the annual Home Price Index (HPI) for the Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD) for the prior calendar year (Office of Federal Housing Enterprise Oversight) <sup>4</sup>	5.19%
Portion for Preserve System Operation, Restoration, and Maintenance (40% initially <sup>3</sup> )	Change in the Consumer Price Index for the San Francisco-Oakland-San Jose Combined Statistical Area for all urban consumers for the prior calendar year (U.S. Bureau of Labor Statistics) <sup>5</sup>	3.25%
Wetland Mitigation Fee	Same as above	3.25%

**Notes:**

<sup>1</sup> HCP/NCCP fees to be adjusted automatically by March 15 of every year based on the indices for the prior calendar year. See Appendix G of the HCP/NCCP for more details on methodology and sources.

<sup>2</sup> Direct land acquisition costs only. Excludes costs associated with land transaction, site improvements, and due diligence (e.g., pre-acquisition surveys).

<sup>3</sup> The portion of the Development Fee that will be adjusted according to the HPI and CPI will vary over time. For the first annual automatic adjustment, 60% of the initial fees will be adjusted according to the HPI and 40% will be adjusted according to the CPI. The apportionment in subsequent years will depend on the relative values of the indices, in accordance with the formula provided in Exhibit F.

<sup>4</sup> See <http://www.ofheo.gov/HPI.asp>. Data for the prior calendar year are published in March. For the first annual automatic adjustment, the change in the HPI from the end of the third quarter of 2005 through the end of fourth quarter of 2006 will be used. In all subsequent automatic adjustments, the change in the HPI for the prior calendar year will be used. The exception for the first automatic annual adjustment is needed because estimated land acquisitions costs from the Draft HCP/NCCP were adjusted for the Final HCP/NCCP by the change in the HPI during the first three quarters of 2005 because data for the fourth quarter of 2005 were not available in time.

<sup>5</sup> Consumer Price Index, All Items, with base data year of 1982-1984 (i.e., 1982-1984 = 100), for all urban consumers (CPI-U), not seasonally adjusted. See [http://www.bls.gov/eag/eag.ca\\_sanfrancisco\\_msa.htm](http://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm)



## Exhibit F

### Automatic Development Fee Increase Formula

$$\text{Fee}_n = [[L_{n-1} * (\text{HPI}_{n-1}/\text{HPI}_{n-2})] + [(S_{n-1} * (\text{CPI}_{n-1}/\text{CPI}_{n-2}))] ] * Z$$

Where:

n= year of HCP/NCCP Implementation [year 1 (n=1) is 2006, the first calendar year in which HCP/NCCP Implementation occurs; year 2 (n = 2) is 2007; etc. Year 0 (n=0) is 2005.]

Fee<sub>n</sub> = Development Fee for year n (the Development Fee for year n applies from March 15 of year n through March 14 of the following year)

Fee<sub>1</sub> = \$23,838 for Zone II, \$11,919 for Zone I, and \$5,960 for Zone III

L<sub>n-1</sub> = Land acquisition portion of development fee for the year prior to year n

L<sub>1</sub> = 60% of \$23,838 = \$14,303

HPI<sub>n-1</sub> = Home Price Index (HPI) for the Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD) at the end of the calendar year prior to year n as published by the Office of Federal Housing Enterprise Oversight

S<sub>n-1</sub> = Non-land acquisition portion of development fee for the year prior to year n

S<sub>1</sub> = 40% of \$23,838 = \$9,535

CPI<sub>n-1</sub> = Consumer Price Index for the San Francisco-Oakland-San Jose Combined Statistical Area for all urban consumers at the end of the calendar year prior to year n as published by U.S. Bureau of Labor Statistics

Z = Fee zone factor (based on which fee zone the project is in (see Figure 9-1 in the HCP)). The fee zone factors for the three zones are as follows:

Z =1 for Zone II, the Natural Lands Zone;

Z=0.5 for Zone I, the agricultural lands zone;

Z=0.25 for Zone III, the infill zone

The above formula applies for every fee adjustment except for the first fee adjustment to calculate the fees for Year 2. Because the Year 1 fees were calculated without access to Home Price Index data for the fourth quarter of 2005, the fee adjustment for Year 2 will rely on a different formula. The following formula will be used to calculate the fee adjustment for year 2 and will be used to calculate the fees that apply from March 15, 2007 through March 14, 2008:

$$\text{Fee}_{2007} = [\$14,303 * (\text{HPI}_{2006}/\text{HPI}_x)] + [(\$9,535 * (\text{CPI}_{2006}/\text{CPI}_{2005}))] ] * Z$$

Where:

HPI<sub>x</sub> = Home Price Index (HPI) for the Oakland-Fremont-Hayward, CA Metropolitan Division (MSAD) through the third quarter of 2005 as published by the Office of Federal Housing Enterprise Oversight