

CONSERVATION BANK ENABLING INSTRUMENT
Table of Contents

RECITALS 1

AGREEMENT 2

Section I: Purpose and Authorities 2

 A. Purpose 2

 B. Authorities 2

Section II: Definitions 3

Section III: Stipulations 6

 A. Baseline Condition 6

 B. Disclaimer 7

 C. Exhibits 7

Section IV: Bank Evaluation 8

 A. Bank Site Assessment by the IRT 8

 B. Phase I Environmental Site Assessment 8

 C. Permits 8

 D. Subsequent Phases 8

 E. Property Assessment and Warranty 8

Section V: Bank Establishment Date 9

Section VI: Financial Assurances 9

 A. Interim Management Security 9

 B. Endowment Funds 9

Section VII: Credit Release 10

 A. Covered Species and Covered Habitat Credit Release 10

Section VIII: Operation of the Bank 11

 A. Service Area 11

 B. Transfer of Credits 11

 C. Interim and Long-term Management and Monitoring 12

 D. Bank Closure Plan 13

 E. Financial Operations 13

 F. Remedial Action Plan 15

Section IX: Reporting 16

 A. Annual Inflation Adjustments to Endowment Funds Report 16

 B. Annual Report 16

 C. Credit Transfer Reporting 17

 D. Reporting Compliance Measures 17

Section X: Responsibilities of the Bank Sponsor and Property Owners 18

 A. Bank Sponsor and Property Owner Responsibilities 18

 B. Technical Problems and Unanticipated Costs 19

 C. Time Extension 19

Section XI: Responsibilities of the IRT 19

 A. IRT Oversight 19

 B. IRT Review 19

 C. Compliance Inspections 19

Section XII: Other Provisions 20

A.	Force Majeure.....	20
B.	Dispute Resolution	20
C.	Conveyance of Bank Property or Other Interests.....	21
D.	Modification and Termination of the CBEI	21
E.	Default	22
F.	Controlling Language	23
G.	Entire Agreement.....	23
H.	Reasonableness and Good Faith	23
I.	Successors and Assigns	23
J.	Partial Invalidity	24
K.	Notices	24
L.	Counterparts.....	25
M.	No Third Party Beneficiaries.....	25
N.	Availability of Funds	25
O.	No Partnerships.....	26
P.	Governing Law	26
Section XIII: Execution.....		26

Appendix 1 –Required Exhibits

Exhibit A - Bank Location Maps

- A-1 General Vicinity Map
- A-2 Bank Property Boundary Map
- A-3 Property In Aerial View

Exhibit B - Service Area Maps and Description, Goals and Objectives

- B-1 Service Area
- B-2 Narrative Description of the Bank’s Service Area
- B-3 Goals and Objectives

Exhibit C - Bank Management and Operation Documents

- C-1 Interim Management Security Analysis and Schedule
- C-2 Endowment Funds Analysis and Schedule
- C-3 Instructions and Forms for Submission or Disbursement of Funds
- C-4 Interim Management Plan
- C-5 Long-term Management Plan
- C-6 Bank Closure Plan

Exhibit D - Real Estate Records and Assurances

D-1 Preliminary Title Report, Legal Description, and Parcel Map(s)

D-2 Property Assessment and Warranty

D-3 Plat Maps

D-4 Approved-as-to-form Conservation Easement Deeds or Grant Deeds

Exhibit E - Bank Crediting and Credit Transfers

E-1 Credit Evaluation and Credit Table

E-2 Credit Purchase Agreement and Payment Receipt Templates

E-3 Credit Transfer Ledger Template

Exhibit F - Phase I Environmental Site Assessment

Exhibit G - Biological Resources Survey

Exhibit H - Cultural Resources

Exhibit I – Ownership Documentation, Permits, Amendments or Revisions

CONSERVATION BANK ENABLING INSTRUMENT WILLOW ROAD CONSERVATION BANK

This Conservation Bank Enabling Instrument (“CCBEI”), dated this _____ day of _____, 20__, is made by and among Paul Bertram (“Bank Sponsor”); Paul Bertram, Connie Bertram, and Faith Mountain Pentecostal Church (“Property Owners”); and the California Department of Fish and Wildlife South Coast Region (“CDFW”). The CDFW comprises and is referred to as the Interagency Review Team (“IRT”). The Bank Sponsor, Property Owners, and the IRT are hereinafter referred to jointly as the “Parties”. This CBEI sets forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Willow Road Conservation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsor is responsible for establishing and operating the Bank.
- B. The Property Owners are the owners of real property containing approximately 71.06 acres (the “Property”), located north of Willow Road in the Lakeside community of the unincorporated area of San Diego County, State of California, designated as Assessor’s Parcel Numbers 319-060-05 and 319-060-07. The Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit D**) attached hereto.
- C. Paul Bertram, as Bank Sponsor and Property Owners Paul Bertram, Connie Bertram, and Faith Mountain Pentecostal Church desire to create the Bank over the 71.06-acre Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Conservation Easement (**Exhibit D-4**) attached hereto. The Bank Property is to be conserved in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V.
- D. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code § 1802.
- E. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.
- F. The goals and objectives for the Bank are set forth in **Exhibit B-3** and the Bank Management and Operation Documents (**Exhibit C**).
- G. Initially-capitalized terms used and not defined elsewhere in this CBEI are defined in Section II.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this CBEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and to conserve and protect Covered Species and Covered Habitat. The Bank Sponsor and Property Owners shall preserve, and then manage and maintain Covered Species and Covered Habitat in accordance with this CBEI, the Goals and Objectives (**Exhibit B-3**), Interim Management Plan (**Exhibit C-4**), and Long-term Management Plan (**Exhibit C-5**).

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

- a. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
- b. Endangered Species Act (16 U.S.C. § 1531 *et seq.*) (“ESA”), particularly including impacts to federally listed threatened or endangered species under § 7 and 10 of ESA and/or occupied habitat;
- c. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*).

2. State

- a. California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3);
- b. California Endangered Species Act (“CESA”) (Fish and Game Code § 2050 *et seq.*);
- c. California Natural Community Conservation Planning (“NCCP”) Act (Fish and Game Code § 2800 *et seq.*);
- d. California State Office of Historical Preservation (“SHPO”) (Public Resources Code § 5020 *et seq.*) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097 *et seq.*) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1);
- e. Conservation of Wildlife Resources (Fish and Game Code § 1800 *et seq.*);

- f. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600 *et seq.*);
- g. Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act of 1993 (Fish and Game Code § 1775 *et seq.*; 1784 *et seq.*; and 1790 *et seq.*);
- h. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly;
- i. Supplemental Policy Regarding Conservation Banks within the NCCP Area of Southern California, January 24, 1996, by U.S. Fish and Wildlife Service and California Department of Fish and Game; and
- j. Conservation Bank and Mitigation Bank Applications and Fees (Fish and Game Code § 1797, *et seq.*).

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this CBEI are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Bank Sponsor and/or the Property Owners, as appropriate, based upon Bank annual report results and IRT review of overall Bank performance and compliance.
2. “Bank Establishment Date” is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.
3. “Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsor nor the Property Owners have control.
4. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit D-4** attached hereto.
5. “Covered Habitat” means habitat of concern or habitat upon which the Covered Species depend for their continued viability that the IRT determines will be adequately conserved in accordance with this CBEI. Covered Habitat Credits are identified in **Exhibit E**.
6. “Covered Species” means the species for which the Bank has been established and for which Credits have been allocated as set forth in **Exhibit G**.
7. “Credits” are units of measure representing the accrual, attainment, or protection of the Covered Species or Covered Habitat on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit G**.

8. “Credit Release” means an action by the IRT to make specified Credits available for Transfer pursuant to this CBEI.
9. “Endowment Agreements” means the documents attached as **Exhibit C-3** and shall include any mitigation agreement with the meaning of California Government Code 65965(f)(1), that is the agreement establishing the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Amounts in the Endowment Funds.
10. “Endowment Amounts” are the amounts, determined in **Exhibit C-2**, that are required to be provided, in accordance with Section VI B, by the Bank Sponsor to the Endowment Holder to fund the Endowment Funds.
11. “Endowment Deposits” are the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Funds. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Funds, held in trust, and administered in strict accordance with the Government Code Sections 65965-65968, Probate Code sections 18501-18510, and the Endowment Agreements.
12. “Endowment Funds” is a sum of money in a long-term stewardship account, held in trust in a fund designated by the Endowment Agreements. There are two Endowment Funds. The Long-term Management Endowment Fund will fund the operation of the Bank. The Conservation Easement Endowment Fund will fund the site visit and reporting by the Conservation Easement Holder. The Endowment Funds are to be maintained and managed in perpetuity in strict accordance with government Code Sections 65965-65968, Probate Code sections 18501-18510, the CBEI, and the Endowment Agreements in order to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. The term “Endowment Funds” as used in this CBEI shall comprise the Endowment Amounts and all interest, dividends, gains, other earnings, additions, and appreciation thereon, as well as any additions thereto.
13. “Endowment Holder” means either CDFW or another entity qualified to hold the Endowment Funds pursuant to Government Code sections 65965-65968. In this case the endowment holder will be the San Diego Foundation.
14. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which neither the Bank Sponsor nor the Property Owners have control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where “flood” refers to a runoff event; (iii) an earthquake shall constitute an event of Force

Majeure only if the ground motion it generates at the Bank Property is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.

15. "Grantee" means the entity accepting fee or easement of certain real property within the Bank.
16. "HCP" means a Habitat Conservation Plan prepared pursuant to § 10(a)(2)(A) of the ESA (16 U.S.C. § 1539(a)(2)(A)).
17. "Implementation Fee" is a fee to pay for all or a portion of the CDFW's bank implementation and compliance costs.
18. "Interim Management Period" means the period from the Bank Establishment Date until the third anniversary of the full funding of the Endowment Funds.
19. "Interim Management Plan" means the document attached as **Exhibit C-4** that describes the management, monitoring, Adaptive Management, reporting, and other activities to be implemented by the Bank Sponsor during the Interim Management Period.
20. "Interim Management Security" is the financial assurance specified in Section VI A and **Exhibit C-1**, to be provided by the Bank Sponsor to guarantee the implementation of the Interim Management Plan.
21. "Long-term Management Period" means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored, and maintained pursuant to the Long-term Management Plan.
22. "Long-term Management Plan" means the document attached as **Exhibit C-5** that is intended to ensure the Bank Property is managed, monitored, and maintained in perpetuity to conserve and protect its Covered Species and Covered Habitat.
23. "NCCP" is a Natural Community Conservation Plan created pursuant to Fish and Game Code § 2800, *et seq.*
24. "Phase I Environmental Site Assessment" (**Exhibit F**) is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," or any successor to such ASTM Standard which is active at the time of the assessment.

25. “Preservation” means the protection of existing ecologically important wildlife, habitat, or other ecosystem resources in perpetuity.
26. “Preservation Credit” means the increment of credit granted in exchange for the protection of the existing Covered Species or Covered Habitat on the Bank Property in conformance with the CBEI, Interim Management Plan, Long-term Management Plan, and Conservation Easements. One Credit is equivalent to one acre, and a credit may be as small as 0.01 acre.
27. “Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owners and attached as **Exhibit D-2**.
28. “Property Owners” means the owners of fee simple title to the Bank Property.
29. “Remedial Action” means any corrective measures which the Bank Sponsor or Property Owners are required to take to ameliorate any injury or adverse impact to the Bank Property as preserved, restored, or enhanced, or as a result of a failure to achieve the Performance Standards.
30. “RIBITS” means the Regulatory In-lieu Fee and Bank Information Tracking System.
31. “Service Area” means the geographic areas within which impacts to Covered Species or Covered Habitat that occur may be mitigated or compensated through Credits from the Bank, as shown on **Exhibit B**.
32. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.
33. “Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsor.
34. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Bank Sponsor or Property Owners and shall include an event or series of events, such as the intentional release within the Bank Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation, or permit, which event or series of events has a material and detrimental impact on the Bank Property.

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Interim Management Security Analysis and Schedule, Section 1 (**Exhibit C-1**) and the Biological Resources Survey (**Exhibit G**).

B. Disclaimer

This CBEI does not in any manner limit the legal authorities or responsibilities of the IRT, or of any IRT agency, but is, instead, an implementation of such authorities and responsibilities.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this CBEI:

1. "Exhibit A" - Bank Location Maps

A-1 General Vicinity Map

A-2 Bank Property Boundary Map

A-3 Property In Aerial View

2. "Exhibit B" - Service Area Maps and Description, Goals and Objectives

B-1 Service Area

B-2 Narrative Description of the Bank's Service Area

B-3 Goals and Objectives

3. "Exhibit C" - Bank Management and Operation Documents

C-1 Interim Management Security Analysis and Schedule

C-2 Endowment Funds Analysis and Schedule

C-3 Instructions and Forms for Submission or Disbursement of Funds

C-4 Interim Management Plan

C-5 Long-term Management Plan

C-6 Bank Closure Plan

4. "Exhibit D" - Real Estate Records and Assurances

D-1 Preliminary Title Report, Legal Description, and Parcel Map(s)

D-2 Property Assessment and Warranty

D-3 Plat Maps

D-4 Approved-as-to-form Conservation Easement Deed or Grant Deed

5. “Exhibit E” - Bank Crediting and Credit Transfers
 - E-1 Credit Evaluation and Credit Table
 - E-2 Credit Purchase Agreement and Payment Receipt Templates
 - E-3 Credit Transfer Ledger Template
6. “Exhibit F” - Phase I Environmental Site Assessment
7. “Exhibit G” - Biological Resources Survey
8. “Exhibit H” - Cultural Resources
9. “Exhibit I” – Ownership Documentation, Permits, Amendments or Revisions

Section IV: Bank Evaluation

A. Bank Site Assessment by the IRT

Representatives of the IRT have inspected and evaluated the Bank’s Covered Species and Covered Habitat and have agreed upon the assignment of Credits set forth in **Exhibit E-1**.

B. Phase I Environmental Site Assessment

Bank Sponsor or Property Owners have provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit F**, showing that the Bank Property is not subject to any recognized environmental conditions as defined by the American Society for Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (i.e., the presence or likely presence of any Hazardous Substances or petroleum products). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Bank Sponsor and Property Owners represent and warrant to the IRT that all appropriate assessment, clean-up, remedial, or removal action has been completed.

C. Permits

The Bank Sponsor will obtain all appropriate permits and other authorizations needed to construct and maintain the Bank. This CBEI does not constitute or substitute for any such approval.

D. Subsequent Phases

No subsequent phases of the Bank are proposed.

E. Property Assessment and Warranty

Property Owners shall notify the IRT of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit D-2**) discovered subsequent to Property Owners’ signing of this CBEI. The IRT shall evaluate any impacts of the errors or discrepancies on the Bank Property and the Conservation Easement, and may reduce the number of available Credits as a result of such impacts according to the policies of the IRT in effect at the time of notice to the IRT.

Section V: Bank Establishment Date

The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:

1. The CBEI has been fully executed by all of the Parties,
2. The Conservation Easement has been accepted by a Grantee approved by the IRT and recorded in the Official Records of the county in which the Bank Property is located, and;
3. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI.

Within 30 days of the Bank Establishment Date, the Bank Sponsor shall provide an electronic copy of the final, signed CBEI, including all of its Exhibits, to each member of the IRT.

Section VI: Financial Assurances

The Bank Sponsor is responsible for providing financial assurances for the performance, management, monitoring, and Remedial Action in accordance with this CBEI, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII E. The Bank Sponsor shall notify each member of the IRT in accordance with Section XII K upon furnishing each of the following financial assurances:

A. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to CDFW Interim Management Security in the amount specified in **Exhibit C-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Plan during the first three years of the Interim Management Period. That amount is \$ 51,750, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit C-1**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars. The Interim Management Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Interim Management Security shall remain in effect until the end of the Interim Management Period.

B. Endowment Funds

1. Two Endowment funds shall be created and shall be known as the Long-term Management Endowment Fund and the Conservation Easement Monitoring Endowment Fund (referred to individually by name or collectively as the Endowment Funds). The Long-term Management Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan (**Exhibit C-5**), and the Endowment Funds Analysis and Schedule (**Exhibit C-2**). The Conservation Easement Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the Conservation Easement (**Exhibit D-4**), specifically site visits and

- reporting by the holder of the Conservation Easement as detailed in **Exhibits C-2 and C-5**. Cost estimates for both should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.
2. The Endowment Funds shall be held in trust in designated long-term stewardship accounts, and shall be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-65968, Probate Code sections 18501-18510, the CBEI, and the Endowment Agreements (**Exhibit C-3**). The Bank Sponsor shall fund the Endowment Amounts through Endowment Deposits according to the schedule below and consistent with Section VII. The Endowment Amounts shall be funded as follows:
 - a. A minimum of 15% of the Endowment Amounts shall be funded prior to the second Covered Species and Covered Habitat Preservation Credit Release;
 - b. A minimum of 40% of the Endowment Amounts shall be funded prior to the third Covered Species and Covered Habitat Preservation Credit Release;
 - c. A minimum of 70% of the Endowment Amounts shall be funded prior to the fourth Covered Species and Covered Habitat Preservation Credit Release;
 - d. 100% of the Endowment Amounts shall be funded prior to the fifth Covered Species and Covered Habitat Preservation Credit Release.
 3. Until the Endowments are fully funded, the amount of the Endowment Amounts shall be adjusted by the Bank Sponsor annually, by January 15 of each year following the Bank Establishment Date (each such date is referred to as an “Adjustment Date”), by a percentage equal to the percentage increase, if any, in the California Consumer Price Index, All Items (1982-1984 = 100), for All Urban Consumers for California (the “CPI”), published by the California Department of Industrial Relations, Division of Labor Statistics and Research. Adjustment of the Endowment Principals is the percentage increase of the CPI published most immediately preceding the Adjustment Date, as compared to the CPI published most immediately preceding the date of this CBEI. The adjustment shall be applied to the amount of the initial Endowment Principals.
 4. The Bank Sponsor shall notify each member of the IRT of each Endowment Deposit made, within 30 days of such deposit.

Section VII: Credit Release

Each Credit Release must be approved in writing by the IRT.

A. Covered Species and Covered Habitat Credit Release

1. Credits for Covered Species and Covered Habitat shall be determined and released as described in this Section VII B and the Credit Table (Exhibit E-1). Anticipated Credits have been assigned to the Bank based upon Credit methodologies developed by the IRT.
2. Upon the Bank Sponsor’s submittal of all documentation required under this CBEI by the Bank Sponsor, and approval by the IRT, the IRT will release Credits for Covered

Species and Covered Habitat as described below. The actual number of Credits released shall be determined by the IRT, based upon funding of the Endowment Amounts in accordance with Section VI B. No Credit Transfer shall occur until the applicable Credit Release has occurred.

- a. Preservation Credits described in the Credit Table (**Exhibit E-1**) for Covered Species and Covered Habitat shall be released as follows:
 - 1) 15% of the total anticipated Preservation Credits upon the Bank Establishment Date.
 - 2) 25% of the total anticipated Preservation Credits upon funding the Endowment Principals according to Section VI B 2 a.
 - 3) 15% of the total anticipated Preservation Credits upon funding the Endowment Principals according to Section VI B 2 b.
 - 4) 15% of the total anticipated Preservation Credits upon funding the Endowment Principals according to Section VI B 2 c.
 - 5) The remaining Preservation Credits upon full funding of the Endowment Principals according to Section VI B 2 d.
- b. The Bank Sponsor shall pay to CDFW the Implementation Fee. This sum shall be payable to CDFW and may be paid in installments which shall be due following each Credit release and no later than the due date for submission of the Bank's annual report covering the period in which the associated Credit release occurs (**Exhibit E**). The Credit Release Fee shall be paid in full by the Bank Closure Date.
- c. The CDFW may require the Bank to cease selling Credits and may stop Credit Releases until the fees payable under this Section VII are paid in full. The CDFW shall assess, and the Bank Sponsor shall pay to CDFW upon demand, a penalty of 10 percent of the amount of fees due under this section if the Bank Sponsor fails to remit the amount payable when due.

Section VIII: Operation of the Bank

A. Service Area

The Service Area is described and shown in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon the Bank Establishment Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum Credit unit that may be Transferred is 0.01 Credit.
2. In no case shall the number of Credits of any particular type Transferred or obligated exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval of the IRT.

3. Use of Credits at the Bank to mitigate or compensate impacts to Covered Habitat must be authorized by the appropriate IRT agency or agencies on a case-by-case basis.
 4. Bank Sponsor shall notify all members of the IRT upon any Credit Transfer in accordance with Section IX C of this CBEI.
 5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs habitat values on such damaged Bank Property, and such damage is not related to Catastrophic Events, Force Majeure, or Unlawful Acts, as specific in Section XII A, then the IRT may, at its discretion, direct Bank Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the IRT.
 6. If any member(s) of the IRT approve(s) an NCCP and/or HCP covering all or any part of the Service Area, and that plan uses habitat categories different from those set forth in **Exhibit E-1**, then, at the request of the Bank Sponsor, the remaining Credits for Covered Species or Covered Habitat may be reallocated at the discretion of the IRT to conform to the habitat categories in the approved NCCP or HCP, as applicable.
 7. Credit modifications due to expansion, restoration, or other means that have been approved in writing by the IRT, shall be set forth in an amendment to this CBEI according to Section XII D 1.
- C. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of Exhibit E-2. Interim and Long-term Management and Monitoring
1. Interim Management and Monitoring

The Bank Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan (**Exhibit C-4**) until the Long-term Management Endowment Fund has been fully funded for three years. In addition, the Bank Sponsor shall be responsible for funding the cost of conservation easement monitoring until the Conservation Easement Monitoring Endowment Fund has been fully funded for three years.
 2. Long-term Management and Monitoring

Once the Endowment Funds have been fully funded for three years, the Property Owners shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owners shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this CBEI, the Conservation Easement and the Long-term Management Plan (**Exhibit C-5**). Such activities shall be funded through the Endowment Funds according to Section VIII E 2 b. Property Owners and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period Property Owners shall be responsible for submitting annual reports to each member of the IRT in accordance with Section IX B of this

CBEI. Notwithstanding the above, the Property Owners, with the consent of the IRT, may transfer the Bank Property and assign its obligations for long-term management to an entity approved by the IRT.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon occurrence of all of the following:
 - a. Either:
 - 1) The last authorized Credit has been Transferred; or
 - 2) The Bank Sponsor requests bank closure by written notice to the IRT and IRT provides written approval of the closure; and
 - b. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Funds for not less than three years, and payment to CDFW of the full CDFW Implementation Fee.

E. Financial Operations

All financial transactions shall be reported in accordance with Section IX.

1. Securities

a. Interim Management Security

- 1) The holder shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the IRT determines that during any 12-month period the Bank Sponsor has not performed all tasks as required under the Interim Management Plan.
- 2) In the event that the Interim Management Security is drawn upon pursuant to this section, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in **Exhibit C-1** within 90 days after written notice from the holder.
- 3) Provided that the Bank Property has been managed in accordance with the Interim Management Plan, the Interim Management Security (or any portion of such security then remaining) shall be released to the Bank Sponsor three years after the Endowment Funds have been fully funded.

2. Endowment Funds

a. Endowment Funds Deposits

The Endowment Deposits the Endowment Holder receives are to be deposited into funds held in trust and designated in the Endowment Agreements with the San Diego Foundation, included in **Exhibit C-3**, Instructions and Forms for Submission or Disbursement of Funds.

b. Endowment Funds Management

The Endowment Amounts should not decrease in value through expenditure or investment strategy. The Endowment Amounts are intended to increase in value to keep up with inflation. Therefore a portion of the interest and earnings on the Endowment Funds balance shall be reinvested into the Endowment Funds as required to adjust the Endowment Amounts using the same CPI adjustment formula as set forth in Section VI B 3. After the Endowment Amounts are fully funded, even if interest earnings are insufficient to increase the Endowment Funds to keep up with inflation, no additional Endowment monies will be required from the Property Owners or the Bank Sponsor.

- 1) Interest earnings beyond those necessary to provide for Endowment Funds growth commensurate with inflation will be made available to fund annual management of the Bank Property in accordance with the terms of this CBEI and the Long-term Management Plan.
- 2) In accordance with the Endowment Agreements, any Endowment Funds revenues (including earnings and interest) remaining after the Endowment Amounts are adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property shall be retained in the Endowment Funds and may be made available to fund unexpected expenses and Adaptive Management needs.
- 3) If there is not sufficient funding available from the Endowment Funds interest and earnings, or as determined by the San Diego Foundation, in its role as Endowment Holder, or if Long-term Management expenses exceed those estimated in the Endowment Funds Analyses and Schedule (**Exhibit C-2**), the Bank Sponsor or Property Owners shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the IRT, the Bank Sponsor or Property Owners shall submit the resulting proposal in writing to the IRT within 60 days after completion of its consultation with the IRT. Upon written approval of the IRT, the Bank Sponsor or Property Owners shall implement the approved management measures and tasks. Should sufficient funding become available from the Endowment Funds revenues to fund the originally anticipated annual long-term management costs, the original Long-term Management Plan shall be restored in full force and affect.

3. Financial Records and Auditing

The Bank Sponsor and/or Property Owners, as appropriate, shall maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting methods, principles, and practices consistently applied. The financial operation of the Bank includes all financial assurances received or expended during the establishment and operation of the Bank. At the request of the IRT, no more frequently than annually, the Bank Sponsor and/or Property Owners, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the IRT upon completion.

The signatory agencies or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this CBEI. Bank Sponsor and Property Owners agree to maintain such records for possible audit for a minimum of three years after Bank Closure, or three years after the date of performance, whichever is later. Bank Sponsor and Property Owners agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsor and Property Owners agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this CBEI.

F. Remedial Action Plan

Prior to Bank closure, if any Party discovers any injury or adverse impact to the Bank Property as preserved, restored, or enhanced, the Party making the discovery shall notify the other Parties. The IRT may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX B shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 90 days of the date of written notice from the IRT, the Bank Sponsor shall develop a Remedial Action plan and submit it to the IRT for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Bank Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the IRT members deems necessary. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the IRT deemed necessary, then the holder of the Performance Security may draw upon that security to undertake Remedial Action on the Bank Property.
2. If the IRT determines that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this CBEI), then the IRT shall notify the Bank Sponsor. Upon the IRT giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The IRT will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Funds Report

By January 15th of each year following the Bank Establishment Date and until the Endowment Funds are fully funded, the Bank Sponsor shall report to the IRT, in hard copy and in editable electronic format, the following values:

1. The adjusted Endowment Amounts, determined in accordance with Section VI B 3 and
The resulting adjusted Endowment Deposit amounts.

B. Annual Report

Bank Sponsor or Property Owners, as appropriate, shall submit an annual report to each member of the IRT, in hard copy and in editable electronic format, on or before August 15th of each year following the Bank Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the current year (the "Reporting Period"). The Bank Sponsor shall be responsible for the reporting tasks described below until Bank closure. After Bank closure, the Property Owners shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan, including the following:

- a. The time period covered, i.e. the dates "from" and "to";
- b. A description of each management task conducted, the dollar amount expended and time required;
- c. The total dollar amount expended for management tasks conducted during the reporting period;
- d. A description of management and maintenance activities proposed for the next year;
- e. The overall condition of the Bank, including documenting the status of the Bank;
- f. Observations from the general biological surveys;
- g. A conservation easement monitoring report (to be prepared by the easement holder); and
- h. Proposed work plan for next year.

2. Transfer of Credits

The annual report shall include an updated Credit Transfer Ledger (**Exhibit E-3**) showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

3. Financial Operation

The annual report shall provide Endowment Funds data, deposits, disbursements, Implementation Fee payment status, annual Consumer Price Index (CPI) adjustments to principal, interest earned, annual expenses (as accrued) and reimbursements, and the running balance.

C. Credit Transfer Reporting

Within 10 working days of each and every Transfer of Credit the Bank Sponsor shall submit to each member of the IRT:

1. A copy of the fully executed Credit Purchase Agreement in the form provided at **Exhibit E-2** and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit E-3**.

D. Reporting Compliance Measures

The Bank Sponsor or Property Owners, as appropriate, shall submit all reports as outlined in A-C of this section. Failure to submit complete reports in a timely manner shall result in the Bank being subject to the IRT suspending all credit sales or decreasing the number of available credits.

1. Extension requests:

Requests to extend report deadlines shall be submitted to the IRT no later than 30 days prior to the original deadline. The IRT will have 15 calendar days to approve or deny the extension request.

2. Reports not received by the IRT in a timely manner:

Missing reports will result in automatic credit suspension beginning at 0800 hours on the 30th day that the report is late, given that there has been no approved extension request. The suspension will be lifted within 5 days after the report has been received by the IRT.

3. Incomplete reports:

The IRT will have 30 days to notify the Bank Sponsor that the report is incomplete, in which the Bank Sponsor or Property Owner will be given a new deadline for complying with the requirements set forth in this CBEI and its attachments. This deadline is at the discretion of the IRT based on the amount of time it should reasonably take to complete the report. The IRT may:

- a. Temporarily decrease the number of available credits until the report has been properly submitted, and

- b. Automatically suspend all credit sales beginning at 0800 hours on the day after the new deadline has passed, given the report has not been received by the IRT, and there has been no approved extension request.

Full release of all available credits will be granted within 5 days after the report has been received by the IRT.

If the Bank Sponsor or Property Owner have not been notified of incompleteness as of 0800 hours on the 45th day past the report due date, the report shall be deemed complete.

Section X: Responsibilities of the Bank Sponsor and Property Owners

A. Bank Sponsor and Property Owner Responsibilities

Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owners each hereby agrees and covenants that:

1. If the entity proposed to hold the Conservation Easement is not an IRT agency, Bank Sponsor and Property Owners shall, prior to the execution of the Conservation Easement at **Exhibit D-4** hereof, provide the IRT with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is authorized to do so pursuant to California Civil Code § 815.3 and Government Code § 65965, and has agreed to hold said Conservation Easement.
2. Bank Sponsor shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to Remedial Action, documentation, maintenance, management, monitoring, and reporting, until the Endowment Amounts have been fully funded for three years.
3. The Property Owners shall not discharge or release to or from the Bank Property, or permit others to discharge or release to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any federal, state, or local environmental law or regulation (each a “Hazardous Substance”).
4. Property Owners shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and Warranty (**Exhibit D-2**) approved by the IRT, and Property Owners shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the IRT.
5. Property Owners shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is not consistent with and in accordance with this CBEI and its Exhibits.
6. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with this CBEI and its Exhibits.

7. Property Owners shall allow, or otherwise provide for, access to the Bank Property by Bank Sponsor, Grantee, the IRT agencies and third parties, as described in the Conservation Easement (**Exhibit D-4**).

The Property Owners shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this CBEI.

B. Technical Problems and Unanticipated Costs

Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this CBEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this CBEI or extensions for the performance of the requirements of this CBEI.

C. Time Extension

An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsor or Property Owners must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the IRT

A. IRT Oversight

The IRT agrees to provide appropriate oversight in carrying out provisions of this CBEI.

B. IRT Review

The IRT will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 90 days from the date of complete submittal. If the IRT is unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsor or Property Owners.

C. Compliance Inspections

The IRT shall conduct compliance inspections as necessary:

1. To verify the Credits currently available in the Bank; and/or
2. Recommend Remedial Action as needed; or
3. For any other purpose determined by the IRT as necessary to assess compliance with this CBEI.

Section XII: Other Provisions

A. Force Majeure

1. The Bank Sponsor and Property Owners shall be responsible to maintain the Bank Property and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Bank Sponsor and Property Owners shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsor, Property Owners, and any person or entity under the direction or control of the Bank Sponsor or Property Owners, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owners, including its employees, agents, contractors, and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.

The Bank Sponsor and Property Owners shall notify the IRT within 24 hours of becoming aware of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsor, Property Owners, and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsor and Property Owners shall continue to manage and maintain the Bank Property to the full extent practicable.

B. Dispute Resolution

1. The members of the IRT, the Bank Sponsor, and the Property Owners agree to work together in good faith to resolve disputes concerning this CBEI, but any of the Parties may seek any available remedy. Unless any of the Parties has initiated legal action, any Party may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such other Parties may seek clarification of the initial notice;
 - c. Within 45 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution; and
 - d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property or Other Interests

1. All transfers of any interest in the Bank Property or the Conservation Easement are subject to the applicable provisions of the Conservation Easement.
2. The Property Owners shall have the right to sell, assign, transfer or convey (each a “transfer”) its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this CBEI must be made in accordance with this CBEI and the Conservation Easement, and shall be subject to written concurrence by the IRT and Bank Sponsor. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owners’ obligations pursuant to this CBEI and the Conservation Easement. From and after the date of any transfer by Property Owners of their interest in the Bank Property, the transferor shall have no further obligations hereunder and all references to Property Owners in this CBEI shall thereafter refer to such transferee, except that the transferor’s liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owners’ interest in the Bank Property made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this CBEI according to Section XII D 2 c.
3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that Bank Sponsor is in full compliance with all requirements of this CBEI (including all financial assurance requirements), and subject to the prior written approval of the IRT. If any of the financial assurances required under this CBEI are not completely funded at the time the Bank Sponsor requests IRT approval of a sale or conveyance, then the IRT shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsor shall provide to each member of the IRT a written agreement signed by the replacement Bank Sponsor in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsor under the CBEI. Any such sale or conveyance made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this CBEI according to Section XII D 2 c.

D. Modification and Termination of the CBEI

1. Amendment and Modification

This CBEI, including its Exhibits, may be amended or modified only with the written approval of the Parties. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this CBEI. Pursuant to Fish and Game Code Section 1798.6 (a), any person seeking to amend any CDFW bank shall submit to the CDFW the appropriate Review Fee, a complete bank amendment package containing each of the original bank agreement package

documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment.

2. Termination

- a. The Bank Sponsor and Property Owners may jointly withdraw the entire Bank Property and terminate this CBEI at any time prior to any Credit Transfer, provided that habitat values existing on the Bank Property are in a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the Conservation Easement may require.
- b. In the event this CBEI is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.
- c. The IRT may terminate this CBEI if the Bank Sponsor or Property Owners sell or conveys the Bank or the Bank Property without the prior written concurrence of the IRT, as required by Section XII C.
- d. The CDFW may each terminate its participation in this CBEI upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:
 - 1) Bank Sponsor and/or Property Owners have/has breached one or more covenants, terms or conditions set forth herein;
 - 2) Bank Sponsor and/or Property Owners, as applicable, have/has received notice of such breach from the terminating IRT Agency in accordance with paragraph XII B, if applicable, and XII K; and
 - 3) Bank Sponsor and/or Property Owners, as applicable, have/has failed to cure such breach within 45 days after such notice; provided that in the event such breach is curable in the judgment of the terminating IRT agency, but cannot reasonably be cured within such 45 day period, the terminating IRT agency shall not terminate this CBEI so long as Bank Sponsor or Property Owners have commenced the cure of such breach and is diligently pursuing such cure to completion.
- e. Nothing in this Section XII D 2 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the CDFW in the event of a threatened or actual breach of this CBEI.

E. Default

The Bank Sponsor and/or Property Owners shall be in default if that/those Party(ies) fail(s) to observe or perform any obligations or responsibilities required of them/it by this CBEI. In the event either the Bank Sponsor or Property Owners realize(s) it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsor and/or Property Owners are/is in default, the Parties may elect to either pursue informal dispute resolution consistent with Section XII B or may cause the holder to draw upon and expend the appropriate financial security as necessary to continue Bank development, management, or operation, as provided in Section VI and VIII E. In

the event the informal dispute resolution process is invoked, the IRT shall not draw upon financial securities until such time as the informal dispute resolution process has been terminated. This Section XII E shall not be construed to modify or limit any specific right, remedy, or procedure in any section of this CBEI or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this CBEI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this CBEI conflicts with specific language in any document that is incorporated into this CBEI by reference, the specific language within the CBEI shall be controlling. The captions and headings of this CBEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This CBEI, and all exhibits, appendices, schedules, and agreements referred to in this CBEI, constitute the final, complete, and exclusive statement of the terms of the agreement between and among the IRT and the Bank Sponsor and Property Owners pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings, or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this CBEI, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII D 1. Each of the Parties acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this CBEI, whenever this CBEI requires Bank Sponsor, Property Owners, or the IRT to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Bank Sponsor, Property Owners, or the IRT disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This CBEI and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this CBEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this CBEI to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this CBEI would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this CBEI shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsor:

Paul Bertram
12443 Woodside Ave.
Lakeside, CA 92040
Telephone: 619-851-3777
Email: pastbertram@aol.com

Property Owners:

Paul Bertram
12443 Woodside Ave.
Lakeside, CA 92040
Telephone: 619-851-3777
Email: pastbertram@aol.com

Connie Bertram
12443 Woodside Ave.
Lakeside, CA 92040
Telephone: 619-851-3777

Faith Mountain Pentecostal Church
12443 Woodside Ave.
Lakeside, CA 92040
Telephone: 619-851-3777

IRT Member:

California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: David Lawhead
Telephone: 858-467-4201
Fax: 858-467-4299

California Department of Fish and Wildlife
Habitat Conservation Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief
Telephone: 916-653-4875
Fax: 916-653-2588

L. Counterparts

This CBEI may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This CBEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage, or enforcement pursuant to the provisions of this CBEI. The duties, obligations, and responsibilities of the Parties to this CBEI with respect to third parties shall remain as otherwise provided by law in the event this CBEI had never been executed.

N. Availability of Funds

Implementation of this CBEI by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in

this CBEI may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this CBEI to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

O. No Partnerships

This CBEI shall not make or be deemed to make any Party to this CBEI an agent for or the partner or joint venturer of any other Party.

P. Governing Law

This CBEI shall be governed by and construed in accordance with the Federal Endangered Species Act, 16 U.S.C. § 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f) *et seq.*, Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the laws of the State of California, including but not limited to the Fish and Game Code, and other applicable federal and State of California laws and regulations.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this CBEI. This CBEI shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this CBEI as follows:

Bank Sponsor

By: _____
Name: Paul Bertram
Title: Bank Sponsor
Date: _____

Property Owners

By: _____
Name: Paul Bertram
Title: Property Owner
Date: _____

By: _____

Name: Connie Bertram

Title: Property Owner

Date: _____

By: _____

Name: _____ on Behalf of Faith Mountain Pentecostal Church

Title: Property Owner

Date: _____

California Department of Fish and Game:

Regional Manager
South Coast Region
California Department of Fish and Wildlife

Date

Appendix 1 –Required Exhibits

Exhibit A - Bank Location Maps

- A-1 General Vicinity Map
- A-2 Bank Property Boundary Map
- A-3 Property In Aerial View

Exhibit B - Service Area Maps and Description, Goals and Objectives

- B-1 Service Area
- B-2 Narrative Description of the Bank's Service Area
- B-3 Goals and Objectives

Exhibit C - Bank Management and Operation Documents

- C-1 Interim Management Security Analysis and Schedule
- C-2 Endowment Funds Analysis and Schedule
- C-3 Instructions and Forms for Submission or Disbursement of Funds
- C-4 Interim Management Plan
- C-5 Long-term Management Plan
- C-6 Bank Closure Plan

Exhibit D - Real Estate Records and Assurances

- D-1 Preliminary Title Report, Legal Description, and Parcel Map(s)
- D-2 Property Assessment and Warranty
- D-3 Plat Maps
- D-4 Approved-as-to-form Conservation Easement Deed or Grant Deed

Exhibit E - Bank Crediting and Credit Transfers

- E-1 Credit Evaluation and Credit Table
- E-2 Credit Purchase Agreement and Payment Receipt Templates
- E-3 Credit Transfer Ledger Template

Exhibit F - Phase I Environmental Site Assessment

Exhibit G - Biological Resources Survey

Exhibit H - Cultural Resources

Exhibit I – Ownership Documentation, Permits, Amendments or Revisions