

1 **CONSERVATION BANK AGREEMENT**

2 **Table of Contents**

3

4 Section I: Recitals .....1

5 A. Purpose.....1

6 B. Bank Sponsor's Performance Under the CBA .....1

7 C. Authorities and Permits .....1

8 D. Location and Sponsorship of Parcel.....3

9 E. Project Elements.....3

10 F. Modification of the CBA Template.....3

11 Section II: Definitions .....4

12 Section III. Stipulations .....7

13 A. Baseline Condition .....7

14 B. Disclaimer .....7

15 C. Exhibits and Appendices .....7

16 Section IV: Bank Evaluation and Acceptance .....8

17 Section V: Bank Establishment.....9

18 Section VI: Financial Assurances.....9

19 Section VII. Credit Release Schedule For Covered Species and Covered Habitat Types.....9

20 Section VIII: Operation of the Bank .....9

21 A. Service Area .....9

22 B. Establishment and Use of Credits .....10

23 C. Interim and Long-term Monitoring and Management.....11

24 D. Bank Closure.....12

25 E. Financial Operations.....12

26 Section IX: Reporting .....13

27 A. Long-term Bank Management, Maintenance and Monitoring.....13

28 B. Credit Sales Accounting .....13

29 C. Credit Sales Reporting .....13

30 Section X: Responsibilities of the Bank Sponsor .....13

31 Section XI: Responsibilities of the Wildlife Agencies.....14

32 A. Wildlife Agency Oversight .....14

33 B. Wildlife Agency Review .....14

34 C. Evaluation of Bank Progress.....14

35 D. Compliance Inspections.....14

36 Section XII: Other Provisions .....15

37 A. Force Majeure .....15

38 B. Dispute Resolution .....16

39 C. Transfer.....17

40 D. Execution, Modification and Termination of the CBA .....17

41 E. Specific Language of Bank Enabling Instrument Shall be Controlling .....19

42 F. Entire Agreement .....19

43 G. Reasonableness and Good Faith.....19

44 H. Successors and Assigns .....20

45 I. Partial Invalidity .....20

46 J. Notices .....20

1	K. Restriction on Benefit .....	21
2	L. Counterparts .....	21
3	M. No Third Party Beneficiaries .....	21
4	N. Attorney Fees .....	22
5	O. Availability of Funds .....	22
6	P. No Partnerships .....	22
7	Q. Governing Law .....	22
8	R. Continued Authority of Wildlife Agencies.....	22
9	S. Elected Officials .....	22
10	Section XIII: Execution.....	23
11		

1 **ALTON SOUTH CONSERVATION BANK**

2  
3 This Conservation Bank Agreement (hereinafter referred to as "CBA") regarding the  
4 establishment, use, operation and maintenance of the Alton South Conservation Bank  
5 (hereinafter referred to as the "Bank") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and  
6 among Alton South Conservation Preserve, LLC (hereinafter referred to as the "Bank Sponsor"),  
7 the Sacramento Field Office of the U.S. Fish and Wildlife Service ("USFWS"), and the State of  
8 California, Department of Fish and Game (hereinafter "CDFG"). These agencies are referred to  
9 jointly as the Wildlife Agencies, and the Bank Sponsor and the Wildlife Agencies are hereinafter  
10 referred to jointly as the "Parties," with reference to the following:

11  
12 **Section I: Recitals**

13  
14 A. Purpose

15 The purpose of this CBA is to establish guidelines and responsibilities for the  
16 establishment, use, operation and maintenance of the Bank. The Parties have determined  
17 the establishment of this Bank will provide compensation, conservation and protection  
18 for Covered Species and Covered Habitat Types and any additional species and habitat  
19 types the Parties determine will be adequately conserved as a result of implementation of  
20 this CBA. Goals and objectives for the Bank are set forth in the Interim Monitoring and  
21 Management Plan and Long-term Monitoring and Management Plan ("Management  
22 Plan"), Exhibit C. A general baseline description of the Bank's resources may be found  
23 in the Biological Assessment, Exhibit B.

24  
25 B. Bank Sponsor's Performance Under the CBA

26 The Bank Sponsor agrees to perform all necessary work, in accordance with the  
27 provisions of this CBA, and specifically the Interim Monitoring and Management Plan  
28 (Exhibit C), to establish, to maintain and to protect the Covered Habitat Types and  
29 Covered Species as proposed in this CBA and, to the satisfaction of the Wildlife  
30 Agencies, complying in all respects with all conditions contained herein including, but  
31 not limited to, funding fully all interim management cost and the Management  
32 Endowment Fund.

33  
34 C. Authorities and Permits

35 The Bank is available to be used for off-site compensatory mitigation for unavoidable  
36 impacts to Covered Species and Covered Habitat Types as regulated by the following,  
37 provided the Bank meets all requirements applicable for mitigation or conservation with  
38 respect to a particular project and that mitigation or conservation through use of a bank is  
39 authorized by the appropriate authority.

- 40  
41 1. Federal: The USFWS has jurisdiction over the conservation, protection, restoration,  
42 enhancement and management of fish, wildlife, native plants and habitat necessary  
43 for biologically sustainable populations of those species pursuant to the provisions

1 of various Federal laws including the Endangered Species Act, 16 USC § 661-666c,  
2 and the Fish and Wildlife Act of 1956, 16 USC § 742(f) et seq.

- 3
- 4 a. National Environmental Policy Act (42 USC 4321 et seq.);
- 5
- 6 b. Endangered Species Act (ESA) (16 USC 1531 et seq.), particularly including  
7 impacts to Federally-listed threatened or endangered species under §§7 and 10a  
8 of the Endangered Species Act (hereinafter "§7" and "§10" respectively) and/or  
9 occupied habitat;
- 10
- 11 c. Fish and Wildlife Coordination Act (16 USC 661 et seq.);
- 12
- 13 d. National Historic Preservation Act (16 USC 470);
- 14
- 15 e. Guidance for the Establishment, Use and Operation of Conservation Banks  
16 (United States Department of Interior Memorandum, dated May 2, 2003)

17  
18 2. State: Under the California Endangered Species Act, California Fish and Game  
19 Code § 2050 et seq. ("CESA"), the California Fish and Game Code § 1802, and  
20 other State laws, CDFG has jurisdiction over the conservation, protection,  
21 restoration, enhancement and management of fish, wildlife, native plants and habitat  
22 necessary for biologically sustainable populations of those species. CDFG is also  
23 the manager and trustee of fish and wildlife resources and their habitat pursuant to  
24 Fish and Game Code § 1802.

- 25
- 26 a. California Environmental Quality Act (CA Pub. Res. Code § 21000 et seq.  
27 regulations for implementation at CA Code of Regulations, Title XIV, Section  
28 15000 et seq.), including all regulations promulgated pursuant to that Act;
- 29
- 30 b. California Endangered Species Act (Fish & Game Code § 2050 et seq.);
- 31
- 32 c. California Natural Community Conservation Planning Act (Fish & Game Code  
33 § 2800 et seq.);
- 34
- 35 d. Streambed Alteration Agreements (Fish & Game Code §§ 1600 et seq.);
- 36
- 37 e. Official Policy on Conservation Banks, April 7, 1995, by California Resources  
38 Agency and California Environmental Protection Agency, jointly;
- 39
- 40 f. Mitigation for significant impacts to wetland and wildlife resources under the  
41 applicable sections of the California Environmental Quality Act, Public

1 Resources Code Sections 21000 et seq. (hereinafter "CEQA"); and

- 2  
3 g. The establishment and/or preservation of habitat associated with the Natural  
4 Communities Conservation Planning program, Fish and Game Code §2800 et  
5 seq. (hereinafter "NCCP").

6  
7 D. Location and Sponsorship of Parcel

8 The Bank Sponsor is the Optionor of real property located at 2779 Piner Road, Santa  
9 Rosa, Sonoma County, California ("Bank Property"). The Bank Property is more  
10 completely described in Bank Location Maps (Exhibit A) and in Real Estate Records and  
11 Assurances (Exhibit D) attached hereto. The existing 14.07-acre parcel shall be split into  
12 two parcels. One parcel shall be 5.96 acres and be retained by the current property  
13 owners. The remaining 8.11-acre parcel shall comprise the Bank and will be acquired by  
14 CDFG in fee title. The Bank will be established, and Credits can be sold upon the Bank  
15 Establishment Date, in accordance with the requirements in Section V.

16  
17 E. Project Elements

18 Whereas, under this CBA, the Bank Sponsor may preserve, restore, create, enhance  
19 and/or establish, and then manage and maintain any or all of the following types of  
20 habitat in accordance with Interim Monitoring and Management Plan (Exhibit C):

- 21  
22 1. Habitat(s) of Endangered and Threatened Species listed under the ESA, or any other  
23 species deemed to be of concern or special importance to the USFWS;  
24  
25 2. Habitat(s) of Endangered and Threatened Species listed under the CESA;  
26  
27 3. Habitat(s) of special status species or other species impacted by projects under  
28 CEQA;  
29  
30 4. Habitat(s) impacted through activities to substantially divert or obstruct the natural  
31 flow or substantially change the bed, channel or bank of any river, stream or lake  
32 designated by the CDFG; and

33  
34  
35 F. Modification of the CBA Template

36 This section is not applicable to the Bank.  
37  
38

1 **Section II: Definitions**

2  
3 The terms used in this CBA are defined as set forth below.  
4

- 5 1. "Adaptive Management" means changes to the Long-term Monitoring and Management  
6 Plan, including any management practices or corrective actions as determined to be  
7 necessary by the Wildlife Agencies in discussion with the Bank Sponsor. Bank Sponsor,  
8 at Bank Sponsor's expense, is responsible for implementation of any Adaptive  
9 Management prior to Bank Sponsor's transferring the Bank Property to CDFG and to any  
10 Adaptive Management agreed to in writing by Wildlife Agencies and Bank Sponsor after  
11 transfer to CDFG.  
12
- 13 2. "Bank Closure Plan" is a plan designed to ensure that the Bank is managed and  
14 maintained, in perpetuity, consistent with the conservation purposes of the Bank. The  
15 Bank Closure Plan describes actions required to close the Bank. This Plan should include  
16 proposed entities for long-term ownership, long-term management, and their agreement  
17 to assume all of the ongoing obligations thereof.  
18
- 19 3. "Bank Establishment Date" is the date when the Bank is officially considered open for  
20 operation and Credit sales may begin. The date occurs when all the requirements of  
21 Section V are met.  
22
- 23 4. "Bank Sponsor" means the legal optionor of the Bank Property, and the Bank operator,  
24 unless otherwise specified herein.  
25
- 26 5. "Conservation Bank Agreement" (CBA) means this document and all Exhibits, Addenda  
27 and Amendments  
28
- 29 6. "CDFG" means the California Department of Fish and Game, a subdivision of the  
30 California Resources Agency.  
31
- 32 7. "CEQA" means the California Environmental Quality Act (California Public Resources  
33 Code Sections 21000 et seq.; guidelines for implementation at California Public  
34 Resources Code Sections 15000 et seq.), including all regulations promulgated pursuant  
35 to that Act.  
36
- 37 8. "CESA" means the California Endangered Species Act (California Fish and Game Code  
38 Sections 2050 et seq.), including all regulations promulgated pursuant to that Act.  
39
- 40 9. "Covered Habitat Types" means the habitat upon which the Covered Species depend for  
41 their continued viability and any other habitat types which the Parties determine will be  
42 adequately conserved as a result of implementation of this CBA as set forth in the  
43 Recitals and the Long-term Monitoring and Management Plan.  
44
- 45 10. "Covered Species" means the species for which the Bank has been established and for  
46 which Credits have been allocated. These may include endangered and threatened

1 species and any additional species which the Parties determine will be adequately  
2 conserved as a result of implementation of the CBA and as set forth in the Recitals and  
3 the Long-term Monitoring and Management Plan.  
4

5 11. "Preservation / CTS (California tiger salamander) Credits" are defined by a measure of  
6 habitat function relative to a given unit of aerial measurement (i.e., acres), such that one  
7 Preservation / CTS Credit is equal to one unit (or fraction thereof) of the given aerial  
8 measurement at full habitat function.  
9

10 12. "Credit" is a unit of measure representing the accrual or attainment of habitat functions  
11 and/or special status species habitat at a conservation bank; the measure of function is  
12 typically indexed to the number of special status species habitat acres restored, enhanced,  
13 created or preserved. One Credit here is equivalent to one acre. Credits serve as  
14 mitigation or compensation for agency-approved projects, and possibly for other impacts,  
15 in the Service Area  
16

17 13. "Endowment Deposit" means monies to be deposited in the Management Endowment  
18 Fund in order to fully fund the endowment principal and will be funded fully with the  
19 transfer of the Bank Property to CDFG. This amount will be agreed upon by the Bank  
20 Sponsor and the Wildlife Agencies, and will be stated in the Financial Assurances  
21 Section of Exhibit E.  
22

23 14. "ESA" means the Federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.), including  
24 all regulations promulgated pursuant to that Act.  
25

26 15. "Financial Assurances Analysis and Schedule" means the spreadsheet or other tool, and  
27 the assumptions used to identify the expected annual expenses for the long-term  
28 management endowment fund amount needed to generate the interest necessary to fund  
29 the Long-term Monitoring and Management Plan annually, in perpetuity. The schedule  
30 will contain the endowment interest availability.  
31

32 16. "Habitat Conservation Plan" (HCP) means a conservation plan prepared pursuant to  
33 Section 10(a)(2)(A) of the ESA (16 U.S.C. Section 1539(a)(2)(A)).  
34

35 17. "Interim Management Period" means the period of time following the transfer of the  
36 Bank and the funding fully of the Management Endowment Fund to CDFG. This period  
37 pertains to those specific activities described in the Interim Monitoring and Management  
38 Plan, which will be implemented and reported by the Bank Sponsor.  
39

40 18. "Long-term Monitoring and Management" means management of the Bank lands  
41 pursuant to the Long-term Monitoring and Management Plan, and incorporation of any  
42 subsequent amendments or Adaptive Management related to the Long-term Monitoring  
43 and Management Plan. The Long-term Monitoring and Management Plan (Management  
44 Plan) means a specific plan developed for the Bank to ensure that the Bank is managed  
45 and maintained, in perpetuity, consistent with the conservation purposes of the bank. The  
46 Management Plan is the document approved by the Wildlife Agencies that governs the

1 maintenance, management, monitoring, Adaptive Management, and reporting of the  
2 special-status species habitat and other habitats in perpetuity beyond meeting  
3 establishment success criteria, after Bank closure and as funded through the Management  
4 Endowment Fund.  
5

- 6 19. "Management Endowment Fund" (Endowment Fund) means an investment fund  
7 maintained in trust by the CDFG and is described in Section VIII.E. The Endowment  
8 Fund shall be non-wasting, and a portion of the interest and earnings on the principal  
9 balance (minus inflation and re-investment contingency %) shall be used exclusively as  
10 an endowment from which the interest earned on the principal balance is to be used  
11 exclusively for the management of the Bank's lands in accordance with the terms of the  
12 CBA and Long-term Monitoring and Management Plan. "Non-wasting Endowment"  
13 means an endowment fund principal amount which does not decrease in value through  
14 expenditure, inflation or investment strategy.  
15
- 16 20. "NCCP" (Natural Community Conservation Plan) is a conservation plan created pursuant  
17 to Fish and Game Code, Section 2801, et seq. An NCCP is a plan developed in  
18 accordance with the NCCP Act which provides comprehensive management and  
19 conservation of multiple wildlife species, and which identifies and provides for the  
20 regional or area-wide protection and perpetuation of natural wildlife diversity while  
21 allowing compatible and appropriate development and growth.  
22
- 23 21. "Phase I Environmental Site Assessment" is an evaluation of the environmental  
24 conditions of the property performed as outlined by the American Society of Testing and  
25 Materials (ASTM) 1527 "Standard Practice for Environmental Site Assessments: Phase I  
26 Environmental Assessment Process."  
27
- 28 22. "Bank Property" or "Property" means Bank Sponsor's real property on which a Bank  
29 shall be established by this CBA, fee title transfer to CDFG will be recorded, and  
30 protection and management will occur in perpetuity.  
31
- 32 23. "Property Assessment" means a written evaluation and maps depicting the number of  
33 acres on the Bank Property that Bank Sponsor intends to convey for conservation  
34 purposes in accordance with California Civil Code Section 815 and this CBA, and which  
35 describe any portion of the Bank Property subject to any recorded or unrecorded rights of  
36 way, easements, liens or other encumbrances that may prevent establishment of a  
37 Conservation Easement on that portion of the Property for conservation purposes in  
38 accordance with California Civil Code Section 815 and this CBA, and which shall be  
39 attached hereto in Exhibit D.  
40
- 41 24. "Property Assessment Acknowledgement" means a Property Assessment that is signed  
42 and dated by the Bank Sponsor, a copy to be attached hereto as Exhibit D.  
43
- 44 25. "Remediation" means corrective measures taken to ameliorate injury, impact to, or lack  
45 of success in accordance with the Management Plans, Conservation Easement or any  
46 other portion of this CBA.



- 1  
2 26. "Service Area" means the geographic area(s) within which impacts that occur may be  
3 mitigated or compensated through the sale or use of Credits in accordance with this CBA.  
4  
5 27. "USFWS" means the United States Fish and Wildlife Service, an agency of the United  
6 States Department of Interior.  
7  
8 28. "Wildlife Agencies" means the USFWS and CDFG.  
9

### 10 **Section III. Stipulations**

#### 11 A. Baseline Condition

12  
13 Whereas, the Bank Property is currently as described in the Long-term Monitoring and  
14 Management Plan (Exhibit C) and Biological Assessment (Exhibit B).

#### 15 B. Disclaimer

16  
17 Whereas, this CBA does not in any manner limit the statutory authorities and  
18 responsibilities of the signatory parties, but is, instead, an implementation of such  
19 statutory authorities and responsibilities.

#### 20 C. Exhibits and Appendices

21  
22 Whereas, the following Exhibits, and all subsequent revisions and addenda to the  
23 Exhibits hereto, are attachments incorporated into this CBA:

24 Appendix I – Description of the Exhibits necessary for CBA review and Bank Approval

- 25  
26 1. "Exhibit A" - Bank Location, Legal Description of the Parcel, Geographic  
27 Service Area  
28  
29 2. "Exhibit B" – Biological Assessment  
30  
31 3. "Exhibit C" – Interim Monitoring and Management Plan, Bank Closure Plan,  
32 Long-term Monitoring and Management Plan  
33  
34 4. "Exhibit D" – Real Estate Records and Assurances, Certified Copy of "Grant  
35 Deed" granting fee title to the State, Preliminary Title Report, Legal  
36 Description, Parcel Map, Easements on each Bank Parcel  
37  
38 5. "Exhibit E" – Financial Assurances and Processes: Management Endowment  
39  
40 6. "Exhibit F" – Table of Credits and Calculations: California Tiger Salamander  
Credits and Plant Preservation Credits  
7. "Exhibit G" – Phase I Environmental Site Assessment  
8. "Exhibit H" – Agreement to Purchase California Tiger Salamander /  
Preservation Habitat Credits, Mitigation Payment Transmittal Form,  
Agreement For Sale Of California Tiger Salamander / Preservation Mitigation

1 Credits

- 2 9. "Exhibit I" – Results for Two-year Survey for Special-Status Plant Species  
3 10. "Exhibit J" – Evaluation of Cultural and Historic Resource Significance

4  
5 NOW, THEREFORE, in consideration of the forgoing Recitals and Stipulations and other good  
6 and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the  
7 Parties agree to the following:

8  
9 **Section IV: Bank Evaluation and Acceptance**

10  
11 Representatives of the Wildlife Agencies have inspected and generally evaluated the  
12 Property's conservation and protection of Covered Species and Covered Habitat Types for the  
13 purpose of determining its biological functions and values in connection with the sale of Credits.  
14 As a result of benefits accruing to biological resources, upon the establishment of the Bank for  
15 conservation purposes, the Wildlife Agencies acknowledge and agree that the Bank Property  
16 possesses biological functions and values sufficient for the issuance of the Credits as  
17 acknowledged in this CBA.

18  
19 Notwithstanding anything to the contrary in this CBA, in the event that the Bank Property  
20 is evaluated and the Wildlife Agencies reasonably determine that portions of the Bank Property  
21 have been damaged subsequent to the Bank Establishment Date and: (1) the effect of such  
22 damage has been to materially impair the habitat values on such damaged Bank Property; and (2)  
23 Bank Sponsor has not reasonably restored habitat value to such damaged Bank Property or  
24 provided the Wildlife Agencies with reasonable evidence that habitat value will be restored, then  
25 the Wildlife Agencies may, at their discretion, either reduce the number of Credits allocated to  
26 the Bank in proportion to the damaged area or, if the Wildlife Agencies determine that habitat  
27 values on the Bank Property have been so impaired as to render the Bank Property unsuitable for  
28 use as a Bank, the Wildlife Agencies may terminate this CBA.

29  
30  
31 Bank Sponsor's Performance Under the CBA

32 The Bank Sponsor agrees to perform all necessary work, in accordance with the  
33 provisions of this CBA and the Interim Monitoring and Management Plan, to establish and  
34 protect special-status species habitats, as proposed in Exhibit C, until it is demonstrated to the  
35 satisfaction of the Wildlife Agencies that the Bank complies in all respects with all conditions  
36 contained herein. Bank Sponsor agrees to be responsible for all costs as defined in the Interim  
37 Monitoring and Management Plan (Exhibit C), including installation of fencing and gates,  
38 demolition of existing buildings, as needed, and removal of debris and trash. Bank Sponsor  
39 agrees to fund fully the Management Endowment Fund. Any deviation from the Interim  
40 Monitoring and Management Plan may reduce the number of Credits available, as determined by  
41 CDFG and/or USFWS, as appropriate. The Bank Sponsor shall revise the Credit Table as  
42 directed by CDFG and/or USFWS, to reflect a reduction, if any, in the available Credits.  
43

1 **Section V: Bank Establishment**

2  
3 Signature of the CBA will begin when the Exhibits and their associated supporting  
4 documents have been filed with, reviewed by and approved substantially in the form attached  
5 hereto by the Wildlife Agencies. Required documents for review and establishment of the Bank  
6 shall include and adhere to those Exhibits listed in Section III and as fully described in Appendix  
7 1 attached to this CBA. The Bank will be considered established and Credit sales may begin  
8 only upon the following:

- 9 A. The CBA has been executed fully by all of the signatory parties;
- 10 B. The Bank Sponsor has complied with its obligation to furnish financial assurances  
11 in accordance with Section VI; and
- 12 C. Fee Title has been granted to CDFG and has been recorded in the Official  
13 Records of the county in which the Bank Property is located.

14  
15 **Section VI: Financial Assurances**

16  
17 The Bank Sponsor shall fund fully the Management Endowment Fund in the amount  
18 specified in Exhibit E. Prior to payment into the Management Endowment Fund by Bank  
19 Sponsor, CDFG shall establish a dedicated interest bearing account for the purpose of holding  
20 the "Endowment Fund".

21  
22 **Section VII. Credit Release Schedule For Covered Species and Covered Habitat Types**

23  
24 Credits for Covered Species and Covered Habitat Types shall be determined as described  
25 in this CBA and Exhibit F. Credits have been assigned to the Bank based upon Credit  
26 methodologies developed by the Wildlife Agencies.

27 Upon submittal of all appropriate documentation by the Bank Sponsor, and subsequent  
28 approval by the Wildlife Agencies, it is agreed that Credits for Covered Species and Covered  
29 Habitat Types will be released by the Wildlife Agencies in accordance with the Table of Credits,  
30 Exhibit F.

31  
32 **Section VIII: Operation of the Bank**

33  
34 A. Service Area

- 35 1. The Bank is established to provide mitigation to compensate for unavoidable  
36 impacts to threatened, endangered and sensitive species habitat within the Service  
37 Area of the Bank shown in Exhibit A, as described in Exhibit B. Decisions  
38 authorizing use of Credits from the Bank for project compensation will be made by  
39 the appropriate authority on a case-by-case basis in accordance with applicable  
40 requirements. In general, it is agreed that use of Credits from the Bank will be  
41 authorized whenever the appropriate authority determines that: (i) the particular

1 project requiring compensation/mitigation may purchase Bank Credits; and, (ii) the  
2 Bank has available for sale Credits of the type required for the particular project, and  
3 in an appropriate location, and (iii) the Bank Sponsor is in compliance with this  
4 CBA. Covered Habitat Types and Covered Species Credits at the Bank are intended  
5 to provide "in-kind" compensation/mitigation.

- 6 2. The Bank shall not be used to mitigate impacts to any State or Federal listed or  
7 special status species which does not occur and/or whose habitat does not occur on  
8 the Bank Property.

9  
10 B. Establishment and Use of Credits

- 11 1. Upon Bank Establishment, the Bank shall have an initial total of Credits to sell or  
12 convey as specified in Exhibit F and the Credit release schedule. In no case shall the  
13 Credits sold or expended exceed the total number of Credits which have been  
14 allocated to the Bank for each Covered Habitat or Covered Species or as released by  
15 written verification by the Wildlife Agencies prior to the proposed date of sale. All  
16 Credit releases subsequent to this CBA shall be substantiated in writing signed by  
17 the Wildlife Agencies, with a copy sent to all Parties, prior to any Credit sales.
- 18 2. Subject to Bank Sponsor's obligations under this CBA, Bank Sponsor shall have the  
19 exclusive right to determine the price for any and all Credits offered for sale or use  
20 at this Bank.
- 21 3. Upon determination by the Wildlife Agencies that the purchase of Credits is an  
22 appropriate form of compensation, a project applicant will be referred by the  
23 appropriate Wildlife Agencies to acceptable Wildlife Agency-approved Banks so  
24 that the applicant may determine where the applicant would like to purchase Credits,  
25 if the applicant should decide to do so. Bank Sponsor shall follow the agency-  
26 specific methodology for selling Credits as detailed in Exhibits F and H.
- 27 4. In the event that the Wildlife Agencies reasonably determine that portions of the  
28 Bank have been damaged subsequent to the Bank Establishment Date, and the effect  
29 of such activity has been to materially impair habitat values on such damaged  
30 Property, and Bank Sponsor has not reasonably restored habitat value to such  
31 damaged area or provided the Wildlife Agencies with reasonable evidence that  
32 habitat value will be restored, then the Wildlife Agencies may, at their discretion,  
33 suspend Credit sales and/or reduce the number of Credits allocated to the Bank in  
34 proportion to such damaged area.
- 35 5. If any member(s) of the Wildlife Agencies approve(s) an NCCP and/or HCP  
36 covering all or any part of the Service Area, and that plan uses habitat categories  
37 different from those set forth herein, then, at the request of the Bank Sponsor, the  
38 remaining Credits may be reallocated by the Wildlife Agencies in accordance with  
39 such different habitat categories.
- 40 6. All Credit sales shall be reported to the Wildlife Agencies in accordance with  
41 reporting requirements described in the Reporting Section of this CBA.
- 42 7. Credit modifications due to Bank expansion, restoration or other proposed means  
43 shall be amended to this CBA according to the Modification Section.

- 1 8. Credit sales agreements are contracts strictly between the Bank Sponsor and project  
2 applicant detailing the sale and purchase of Bank Credits by a specific project  
3 applicant.
- 4 9. Nothing contained in this Agreement shall be deemed to limit the Wildlife  
5 Agencies' respective jurisdiction over impacts and applicable mitigation of  
6 endangered, threatened and sensitive species and biological resources, or to restrict  
7 the ability of the Wildlife Agencies to fully discharge their respective  
8 responsibilities under applicable law, including, without limitation, CESA and ESA,  
9 respectively; provided, however, that subject to Section IV, the Wildlife Agencies  
10 will not object to the use of Credits as set forth in Exhibit F. When discharging their  
11 responsibilities, the Wildlife Agencies will utilize common conservation biology  
12 principles to compare the species and habitat aspects of a development site within  
13 the Service Area with those at a Conservation Bank. Considered factors may  
14 include, but are not limited to, project habitat composition, project size and shape,  
15 habitat use patterns by the species, core habitat areas, linkages, adjacent land uses,  
16 relationship to other conserved areas, relationship to HCPs and NCCPs and other  
17 regional conservation strategies, and other factors. If a development site is  
18 determined to provide specific and important species needs or habitat characteristics  
19 that are not provided at a bank site, the Wildlife Agencies may, through their  
20 approval or oversight role, at their discretion, not authorize or recommend certain  
21 projects to mitigate at the Bank.

22  
23 C. Interim and Long-term Monitoring and Management

24 1. Interim Management

25 Interim management shall be implemented by the Bank Sponsor according to the  
26 Interim Monitoring and Management Plan in Exhibit C. These interim management  
27 measures will be implemented once the Bank Property has been transferred in fee  
28 title to CDFG.

29 2. Long-term Monitoring and Management

30 a. After the first anniversary of the full funding of the Management Endowment  
31 Fund, long-term maintenance, management and monitoring of the Bank shall be  
32 implemented by CDFG as per Exhibit C.

33 b. The Long-term Monitoring and Management Plan prepared for the Bank shall  
34 provide the basis for the implementation of the specific management measures  
35 and tasks and identify the priority of the various measures and tasks.

36 c. Any amendments to the Long-term Monitoring and Management Plan which  
37 cost more than the anticipated costs estimated for the endowment will only be  
38 carried out when there is sufficient funding available in the Management  
39 Endowment Fund.

1           3.   Long-term Monitoring

2           Long-term monitoring shall be performed as described within the Long-term  
3           Monitoring and Management Plan. The Long-term Monitoring and Management  
4           Plan shall include specific measures for regular and on-going perpetual monitoring  
5           of the Bank and the biological resources, to be conducted by a monitoring entity or  
6           entities approved by the Wildlife Agencies.

7  
8       D. Bank Closure

9           1.   The Bank shall be deemed closed upon the following:

- 10           a.   For habitat creation, restoration and/or enhancement, all performance criteria as  
11           defined in the Alton South Conservation Bank Table of Credits (Exhibit F) have  
12           been met; and  
13           b.   Either:  
14                1) The last authorized Bank Credit has been transferred; or  
15                2) The Bank Sponsor requests bank closure by written notice to the Wildlife  
16                Agencies, and the Wildlife Agencies provide written approval of the closure;  
17                and  
18           c.   All financial responsibilities have been met, including full funding of the  
19           Management Endowment Fund.

20           2.   Deviation from the approved Bank Closure Plan is subject to review and written  
21           approval by the Wildlife Agencies.

22  
23       E. Financial Operations

24  
25           1.   Management Endowment Fund

26           a.   Endowment Fund Trustee

- 27                1) CDFG shall hold the Management Endowment Fund principal and interest  
28                monies as required by existing law in the Special Deposit Fund or  
29                subsequent State authorized trustee fund, which consists of moneys that are  
30                paid into it in trust pursuant to law, and is appropriated to fulfill the purposes  
31                for which payments into it are made. CDFG shall manage these monies as  
32                required by Fish and Game Code Section 13014 and Section 16370 of the  
33                Government Code and use the interest monies to fund long-term  
34                management, enhancement, and monitoring activities on habitat lands in a  
35                manner consistent with the terms of this CBA, including the Long-term  
36                Monitoring and Management Plan and any amendments to the Long-term  
37                Monitoring and Management Plan approved by the Wildlife Agencies.

- 38           b.   A portion of the interest and earnings from the Management Endowment Fund  
39           shall be used for the long-term management, monitoring, maintenance and  
40           reporting of the Bank and Bank related activities. The Management Endowment

1 Fund shall be determined through an economic analysis as provided in Exhibit C  
2 of this CBA.

- 3 c. Interest earnings on the Endowment Funds available from the Endowment  
4 Account, beyond those necessary to provide for Endowment Principal growth  
5 commensurate with inflation and a re-investment contingency, may be used by  
6 CDFG for management of the Bank Property in accordance with the Long-term  
7 Monitoring and Management Plan.
- 8 d. If there is not sufficient funding available from the Endowment Fund interest  
9 and earnings or if long-term Bank Property management expenses exceed those  
10 estimated in the Financial Analysis and Schedule, Bank Sponsor shall have no  
11 responsibility. Any endowment fund revenues (including earnings and interest)  
12 as adjusted for inflation that may be determined to be generated in excess of the  
13 anticipated annual expenditures shall be retained to address unexpected  
14 expenses, including but not limited to, Adaptive Management needs and other  
15 unexpected events.

16  
17 **Section IX: Reporting**

18  
19 A. Long-term Bank Management, Maintenance and Monitoring

20 The reporting requirements for long-term management, maintenance and monitoring are  
21 fully described in the Long-term Monitoring and Management Plan.

22 B. Credit Sales Accounting

23 Bank Sponsor is responsible for reporting, separately and in writing, to each of the  
24 Wildlife Agencies any additional crediting awarded to the Bank after completion of the  
25 CBA. Bank Sponsor shall include a full ledger in the annual reports to the Wildlife  
26 Agencies showing all transactions at the Bank to date. Bank Sponsor shall be responsible  
27 for entering all required Bank information into electronic databases and tracking systems  
28 approved by the Wildlife Agencies and as amended to this Agreement.

29 C. Credit Sales Reporting

30 Upon the sale or debit of each and every Credit, regardless of the agency initiating the  
31 Credit sale or debit, or under whose jurisdiction the purchase is made, notification in the  
32 form of a Credit sale invoice or receipt using the templates in Exhibit H, and a full and  
33 complete updated ledger shall be sent to the Wildlife Agencies within ten (10) days of  
34 each Credit sale or debit.

35  
36 **Section X: Responsibilities of the Bank Sponsor**

37  
38 A. Bank Sponsor, prior to the transfer of the Bank Property to CDFG, hereby agrees and  
39 covenants to the following:

- 40 1. Bank Sponsor shall not discharge or release to the Bank Property, or permit others to  
41 discharge or release to the Property, any material or substance deemed hazardous or

1 toxic under any Federal, State, or local environmental law;

2 2. Bank Sponsor shall not create any encumbrance to the title of the Property other  
3 than those set forth in Exhibit D and accounted for in the Property Assessment in  
4 Exhibit D, and Bank Sponsor shall not execute, renew or extend any lien, license or  
5 similar interest without the prior written consent of the Wildlife Agencies;

6 3. Bank Sponsor shall not construct any structure or engage in any activity or use of  
7 the Property, including mineral exploration, excavating, draining, dredging or other  
8 alteration of the Bank Property, that is not consistent with and in accordance with  
9 this CBA and the Long-term Monitoring and Management Plan, without the prior  
10 written consent of the Wildlife Agencies; and

11 4. Bank Sponsor shall ensure that the Bank Property is maintained to ensure its  
12 suitability as a Bank consistent and in accordance with this CBA and the Long-term  
13 Monitoring and Management Plan.

14 5. The Bank Sponsor shall allow, or otherwise provide for, access to the Bank Property  
15 by all signatory Parties, as necessary, for the purpose of inspection and compliance  
16 monitoring consistent with the terms and conditions of this CBA. Inspecting Parties  
17 shall provide reasonable notice to the Bank Sponsor during normal business hours  
18 and not less than 24 hours in advance, prior to inspection of the Bank.

19 **Section XI: Responsibilities of the Wildlife Agencies**

20  
21 A. Wildlife Agency Oversight

22 The Wildlife Agencies agree to provide appropriate oversight in carrying out provisions  
23 of this CBA.

24  
25 B. Wildlife Agency Review

26 The Wildlife Agencies agree to review and provide comments on all required documents  
27 for the Bank, as identified or incorporated by reference into this CBA, in a timely  
28 manner.

29  
30 C. Evaluation of Bank Progress

31 This section is not applicable to the Bank.

32  
33 D. Compliance Inspections

34 The Wildlife Agencies will conduct compliance inspections as deemed necessary:

- 35 1. To verify the Credits then currently available in the Bank; and/or  
36 2. Recommend corrective measures as needed; or  
37 3. For any other purpose as necessary to assure compliance with this CBA. These  
38 inspections shall continue until the effort to restore and enhance the Bank site, as  
39 described in this CBA, has been determined to be successful or otherwise ceases,  
40 and as necessary thereafter, as determined by the Wildlife Agencies .



1  
2 **Section XII: Other Provisions**

3  
4 A. Force Majeure

5 1. The Bank Sponsor, prior to the transfer of the Bank to CDFG, shall be responsible to  
6 maintain and remediate the Bank except upon Catastrophic Events, events of Force  
7 Majeure or unlawful acts as defined below.

8  
9 2. Definitions

10 a. Catastrophic Event shall mean an event, such as a spill of hazardous or toxic  
11 substance, the impact of a vehicle or falling aircraft, or a fire, which has a  
12 material and detrimental impact on the quality of native vegetation, soils or  
13 wildlife of the mitigation bank and over which the Bank Sponsor has no control.

14  
15 b. Force Majeure shall mean war, insurrection, riot or other civil disorders, flood,  
16 earthquake, fire, governmental restriction or the failure by authority, or any  
17 injunction, which has a material and detrimental impact on the Bank; provided,  
18 however, that (i) a riot or other civil disorder shall constitute an event of Force  
19 Majeure only if the event has broad regional impacts and is not endemic to the  
20 Bank and its immediate locale; (ii) a flood shall be considered an event of Force  
21 Majeure only if it is greater than a presently projected 100-year flood, where  
22 "flood" refers to a runoff event; (iii) an earthquake shall constitute an event of  
23 Force Majeure only if the ground motion it generates at the Bank is greater than  
24 that presently projected from an earthquake with a return period of 475 years;  
25 (iv) disease shall constitute an event of Force Majeure only if such event has  
26 broad regional impact and is not endemic to the Bank and its immediate locale;  
27 and (v) governmental restriction or the failure by any governmental agency to  
28 issue any requisite permit or authority, or any injunction or other enforceable  
29 order of any court of competent jurisdiction shall not constitute an event of  
30 Force Majeure unless there is no other feasible means of remediation.

31  
32 c. Unlawful Act shall mean the unlawful act of another and shall include an event  
33 or series of events, such as the intentional dumping within the Bank, or any  
34 connected watercourse, of a hazardous toxic substance, or the discharge of such  
35 a substance by any person or entity other than the Bank Sponsor in violation of a  
36 statute, ordinance, regulation or permit, which event or series of events has a  
37 material and detrimental impact on the water quality, native vegetation, soils or  
38 wildlife of the Bank.

39  
40 3. Notwithstanding the foregoing, subject to the availability of funds in the  
41 Management Endowment Fund, and prior to the Bank Sponsor's transfer of the  
42 Bank Property to CDFG, the Bank Sponsor shall not be relieved from the obligation  
43 to maintain and remediate the Bank by reason of any such discharge which occurs as

1 a result of normal non-catastrophic activities. In case of occurrence of a  
2 Catastrophic Event, events of Force Majeure, or unlawful acts, Bank Sponsor, and  
3 the Wildlife Agencies shall meet to discuss the future course of action and  
4 management of the Bank, and the Wildlife Agencies shall continue their obligation  
5 to the extent practicable using the remaining funds in the accounts.

- 6  
7 4. The Bank Sponsor shall bear the burden of demonstrating:
- 8 a. That the non-compliance was caused by circumstances beyond the control of the  
9 Bank Sponsor and/or any entity controlled by the Bank Sponsor, including its  
10 contractors and consultants;
  - 11 b. That neither the Bank Sponsor nor any entity controlled by the Bank Sponsor,  
12 including its contractors and consultants, could have reasonably foreseen and  
13 prevented such non-compliance; and
  - 14 c. The period of non-compliance was caused by such circumstances.
- 15
- 16 5. Reasonably foreseeable technical problems, or unanticipated or increased costs or  
17 expenses associated with the implementation of actions called for by this CBA, or  
18 changed financial or business circumstances in and of themselves shall not serve as  
19 the basis for modifications of this CBA or extensions for the performance of the  
20 requirements of this CBA.
- 21
- 22 6. Compliance with any requirement of this CBA by itself shall not constitute  
23 compliance with any other requirement. An extension of one compliance date based  
24 on a particular incident shall not necessarily result in the extension of a subsequent  
25 compliance date or dates. The Bank Sponsor must make an individual showing of  
26 proof regarding the cause of each delayed step or requirement for which an  
27 extension is sought.

28  
29 **B. Dispute Resolution**

30 The Wildlife Agencies and the Bank Sponsor agree to work together in good faith to  
31 resolve disputes concerning this CBA, but any party may seek any available remedy.  
32 Unless an aggrieved party has initiated legal action, the parties may elect to employ an  
33 informal dispute resolution process whereby:

- 34 1. The aggrieved Party shall notify the other Parties of the provision that may have  
35 been violated, the basis for contending that a violation has occurred, and the  
36 remedies for the aggrieved Party proposes to correct the alleged violation;
- 37 2. The Party alleged to be in violation shall have thirty (30) days (or such other time as  
38 the Parties may mutually agree) to respond. During this time, such Party may seek  
39 clarification of the initial written notice; and
- 40 3. Within thirty (30) days after such response was provided or due, whichever is later,  
41 representative of each Party shall confer and negotiate in good faith toward a  
42 resolution satisfactory to each Party, or shall establish a specific process and

1 timetable to seek such resolution.

2  
3 C. Transfer

- 4 1. As part of the establishment of the Bank, the Bank Sponsor shall fund fully the  
5 Management Endowment Fund and the Bank Property shall be transferred to CDFG.  
6  
7 2. After Bank Establishment and prior to Bank transfer, and if applicable, the Bank  
8 Sponsor shall provide to each Wildlife Agency a signed commitment from the  
9 replacement Bank Sponsor stating that the replacement Bank Sponsor accepts all of  
10 the responsibilities of the CBA. Transfer or assignment of this CBA to a Party is  
11 subject to approval in writing by the Wildlife Agencies shall also be subject to the  
12 requirement that any funds in the Management Endowment Fund shall continue to  
13 be expended in a manner consistent and in accordance with this CBA and the Long-  
14 term Monitoring and Management Plan.  
15

16 D. Execution, Modification and Termination of the CBA

17 1. Execution

18 The Bank Sponsor must sign the CBA, prior to the signature and execution of the  
19 CBA by the Wildlife Agencies. Subsequently, the CBA shall be executed by each  
20 signatory agency to said document. The CBA will become valid and enforceable as  
21 between each signatory agency and the Bank Sponsor when the Wildlife Agencies  
22 have signed this CBA. The bank will be established, and Credits may be sold, upon  
23 the Bank Establishment Date.

24  
25 2. Modification

26 This CBA, including its Exhibits, may be amended or modified with the  
27 written approval of each Wildlife Agency and the Bank Sponsor.  
28

29 3. Termination of this CBA

30 a. Termination of CBA Prior to Credit Sales

31 Prior to any Credit sales, the Bank Sponsor may withdraw the entire Bank and  
32 terminate this CBA at any time provided that:

- 33 1) No Credits developed in the Bank have been sold or conveyed in order to  
34 compensate for the loss of Covered Habitat Types, Covered Species or other  
35 special status species habitats; and  
36 2) The habitat values of any habitat existing on the Bank site prior to the  
37 initiation of efforts to restore and enhance the site shall be preserved in a  
38 condition at least equal to that prior to initiation of Bank establishment  
39 efforts.

- 40 3) Bank Sponsor shall have the right to convey or transfer the Bank Property in

1 conjunction with the establishment of the Bank in accordance with this CBA  
2 and subject to written concurrence by the Wildlife Agencies.

- 3  
4 b. Termination of CBA after Credit Sales Begin. Termination of the CBA may  
5 only happen consistent with the following terms:
- 6 1) The CDFG and USFWS may terminate their participation in this CBA on the  
7 condition that each of the following has occurred:
    - 8 a) Bank Sponsor has breached one or more Bank Sponsor responsibilities  
9 or terms and conditions set forth herein;
    - 10 b) Bank Sponsor has received written notice from the Wildlife Agencies of  
11 such breach and order to cease Credit sales; and
    - 12 c) Bank Sponsor has failed to cure such breach within thirty (30) days after  
13 such notice; provided that in the event such breach is curable in the  
14 judgment of the Wildlife Agencies, but cannot reasonably be cured  
15 within such thirty (30) day period, the Wildlife Agencies shall not  
16 terminate this CBA so long as Bank Sponsor has commenced the cure of  
17 such breach and is diligently pursuing such cure to completion. Nothing  
18 in this paragraph is intended or shall be construed to limit the legal or  
19 equitable remedies (including specific performance and injunctive relief)  
20 at law available to the Wildlife Agencies in the event of a threatened or  
21 actual breach of this CBA.
    - 22 d) Bank Sponsor is in default under this CBA as described above, and fails  
23 to cure such breach, and Bank Sponsor fails to designate a replacement  
24 within 180 days of Bank Sponsor's receipt of written notice from the  
25 Wildlife Agencies that the Bank Sponsor is in default of its obligations  
26 under the CBA. If Bank Sponsor fails to designate a replacement, then  
27 such public or private land or resource management organization  
28 acceptable to and as directed by the Wildlife Agencies may enter onto  
29 the Property in order to fulfill the purposes of the Bank as described in  
30 the CBA.
    - 31 e) Bank Sponsor provides the remainder of any endowment fund deposits  
32 necessary to fund fully the Management Endowment Fund to carry out  
33 the Long-term Monitoring and Management Plan for the Bank Property.
  - 34 2) Upon written concurrence of the Wildlife Agencies, this CBA may be  
35 terminated following the sale or conveyance of all available Credits and  
36 satisfaction of all substantive terms and conditions of this CBA other than  
37 ongoing management obligations such as maintenance and monitoring, as set  
38 forth in the Long-term Monitoring and Management Plan, provided that the  
39 Endowment Fund shall continue to be expended in a manner consistent and  
40 in accordance with the conservation purposes for which it was established  
41 pursuant to this CBA and California Civil Code Section 815, and the Long-  
42 term Monitoring and Management Plan.
  - 43 3) If requested, the Wildlife Agency proposing to terminate participation in the

1 CBA shall agree to meet with the other Wildlife Agency members to discuss  
2 the reason(s) for such termination, prior to the termination taking effect.  
3 Notice of a request for such meeting shall be made by the requesting  
4 Wildlife Agency member(s) not later than fifteen (15) calendar days from  
5 receipt of the notice of termination.

6 c. Termination by one of the Wildlife Agencies of its involvement in this CBA  
7 shall not terminate or affect the relationship between the remaining Wildlife  
8 Agency, toward each other or the Bank Sponsor, under this CBA.

9 d. As regards the termination of the CBA in its entirety, the terms and provisions of  
10 this CBA will be valid:

11 1) For two (2) years from the last date of execution of the CBA by the Parties  
12 in the event that no Credits are sold from the Bank; or

13 2) Until the Bank Closure Plan has been implemented to the satisfaction of the  
14 Wildlife Agencies and each provides notice, in writing, to the Bank Sponsor  
15 that this instrument may be terminated.

16  
17 E. Specific Language of Bank Enabling Instrument Shall be Controlling

18 This section is not applicable to the Bank.

19  
20 F. Entire Agreement

21 This CBA, and all exhibits, addenda, schedules and agreements referred to in this CBA,  
22 in addition to any other elements of a CBA required under the Authorities in the Recitals  
23 Section not heretofore provided by the Bank Sponsor, constitute the final, complete and  
24 exclusive statement of the terms of the agreement between and among the Wildlife  
25 Agencies and the Bank Sponsor pertaining to the Bank and supersedes all prior and  
26 contemporaneous understandings or agreements of the Parties. No other agreement,  
27 statement or promise made by the Parties, or to any employee, officer, or agent of the  
28 Parties, which is not contained in this CBA, shall be binding or valid. Each Party  
29 acknowledges that no representation, inducement, promise or agreement, oral or  
30 otherwise, has been made by any other Party or anyone acting on behalf of any Party  
31 unless the same has been embodied herein.

32 All Exhibits referred to in this CBA are attached to this CBA and are incorporated herein  
33 by reference.

34  
35 G. Reasonableness and Good Faith

36 Except as specifically limited elsewhere in this CBA, whenever this CBA requires Bank  
37 Sponsor or the Wildlife Agencies to give their consent or approval to any action on the  
38 part of the other, such consent or approval shall not be unreasonably withheld or delayed.  
39 If either the Bank Sponsor or the Wildlife Agencies disagree with any determination  
40 covered by this provision and reasonably requests the reasons for that determination, the  
41 determining Party shall furnish within thirty (30) calendar days following the request its  
42 reasons in writing and in reasonable detail.

1  
2 H. Successors and Assigns

3 This CBA and each of its covenants and conditions shall be binding on and shall inure to  
4 the benefit of the Parties and their respective successors and assigns.

5 Bank Sponsor may only transfer or assign its rights and obligations under this CBA  
6 consistent with applicable Federal and State regulations, this CBA, and with the prior  
7 written approval of the Wildlife Agencies, which approval shall not be unreasonably  
8 withheld.

9  
10 I. Partial Invalidity

11 If a court of competent jurisdiction holds any clause of this CBA to be invalid or  
12 unenforceable, in whole or in part, for any reason, the validity and enforceability of the  
13 remaining clauses, or portions of them, shall not be affected unless an essential purpose  
14 of this CBA would be defeated by loss of the invalid or unenforceable provision.

15  
16 J. Notices

17 Any notice, demand, approval, request, or other communication permitted or required by  
18 this CBA shall be in writing and delivered personally, sent by facsimile, or sent by  
19 recognized overnight delivery service, to the persons in the positions set forth below or  
20 shall be deemed given five (5) days after deposit in the United States mail, certified and  
21 postage prepaid, return receipt requested, and addressed as follows or at such other  
22 address as any of the Parties may from time to time specify in writing:

23 Notices by the Bank Sponsor to the Wildlife Agencies shall be made to each of the  
24 Wildlife Agencies. Such notice shall not be effective until deemed received by all  
25 members of the Wildlife Agencies.

26 Addresses for purposes of giving notice are set forth below. Either Party may change its  
27 address or telephone or fax number by giving the other party notice of the change in any  
28 manner permitted by this Section.

29 Bank Sponsor:

30 Mr. Harvey O. Rich, Managing Member  
31 Alton South Conservation Preserve, LLC  
32 336 Bon Air Center, Box 232  
33 Greenbrae, CA 94904  
34 Telephone: 415-472-1086  
35 Fax: 415-491-1147  
36  
37

1 Wildlife Agencies:

2 U.S. Fish and Wildlife Service  
3 Sacramento Field Office  
4 2800 Cottage Way, Room W-2605  
5 Sacramento, CA 95825-1846  
6 Attn: Field Supervisor  
7 Telephone: 916-414-6600  
8 Fax: 916-414-6713  
9

10 California Department of Fish and Game  
11 Bay Delta Region  
12 Post Office Box 47  
13 Yountville, CA 94599  
14 Attn: Regional Manager  
15 Telephone: 707-944-5500  
16 Fax: 707-944-5563  
17

18 California Department of Fish and Game  
19 Habitat Conservation Planning Branch  
20 1416 Ninth Street, 12th Floor  
21 Sacramento, CA 95814  
22 Attn: Branch Chief  
23 Telephone: 916-653-4875  
24 Fax: 916-653-2588  
25

26 K. Restriction on Benefit

27 No member of or delegate to the United States Congress or Federal Resident  
28 Commissioner shall be entitled to any share or part of this CBA, or to any benefit that  
29 may arise from it.

30  
31 L. Counterparts

32 This CBA may be executed in any number of duplicate and counterpart originals. A  
33 complete original of this CBA containing original signatures of each of the Parties shall  
34 be circulated to each of the Parties by Bank Sponsor and a complete original of this CBA  
35 shall be maintained in the official records of each of the Parties hereto.

36  
37 M. No Third Party Beneficiaries

38 This CBA shall not create any third party beneficiary hereto, nor shall it authorize anyone  
39 not a party hereto to maintain a suit for personal injuries, property damages or

1 enforcement pursuant to the provisions of this CBA. The duties, obligations and  
2 responsibilities of the Parties to this CBA with respect to third Parties shall remain as  
3 otherwise provided by law in the event this CBA had never been executed.

4  
5 N. Attorney Fees

6 If any action at law or equity, including any action for declaratory relief, is brought to  
7 enforce or interpret the provisions of this CBA, each Party to the litigation shall bear its  
8 own attorneys' fees and costs.

9  
10 O. Availability of Funds

11 The duty of the CDFG and USFWS to carry out their respective obligations under this  
12 CBA shall be subject to the availability of State and Federal appropriated funds and is  
13 subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. ' 1341. Nothing in  
14 this CBA may be construed to require the obligation, appropriation or expenditure of any  
15 money from the United States Treasury or California State Treasury.

16  
17 P. No Partnerships

18 This CBA shall not make or be deemed to make any Party to this CBA an agent for or the  
19 partner of any other Party.

20  
21 Q. Governing Law

22 This CBA shall be governed by and construed in accordance with the internal laws of the  
23 State of California, the Federal Endangered Species Act and other applicable Federal  
24 laws and regulations.

25  
26 R. Continued Authority of Wildlife Agencies

27 Nothing contained in this CBA shall be deemed to limit the Wildlife Agencies' respective  
28 jurisdiction under applicable law, including, without limitation, CESA, ESA,  
29 respectively, to regulate the taking of endangered or threatened species.


30  
31 S. Elected Officials

32 No member of or delegate to the California State Legislature, the United States Congress,  
33 or any county or city government shall be entitled to any share or part of this CBA, or to  
34 any benefit that may arise from it.




1 **Section XIII: Execution**

2  
3 This CBA shall become effective on the date of the signature by the last agency to sign  
4 this CBA, and shall be binding only upon Bank Sponsor and the agencies so signing.


5  
6  
7  \_\_\_\_\_ Date 6/19/08  
8 Managing Member  
9 Alton South Conservation Preserve, LLC

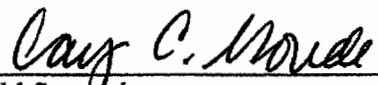
10  
11  
12  
13 \_\_\_\_\_ Date \_\_\_\_\_  
14 Field Supervisor  
15 Sacramento Fish and Wildlife Office  
16 U.S. Fish and Wildlife Service

17  
18  
19  \_\_\_\_\_ Date 8/15/08  
20 Regional Manager  
21 Bay Delta Region  
22 California Department of Fish and Game  
23

1 **Section XIII: Execution**

2  
3 This CBA shall become effective on the date of the signature by the last agency to sign  
4 this CBA, and shall be binding only upon Bank Sponsor and the agencies so signing.

5  
6  \_\_\_\_\_ Date 6/19/08  
7  
8 Managing Member  
9 Alton South Conservation Preserve, LLC

10  
11  
12  \_\_\_\_\_ Date 8/13/08  
13  
14 Field Supervisor  
15 Sacramento Fish and Wildlife Office  
16 U.S. Fish and Wildlife Service

17  
18  
19  
20 \_\_\_\_\_ Date \_\_\_\_\_  
21 Regional Manager  
22 Bay Delta Region  
23 California Department of Fish and Game  
24  
25  
26  
27

1 Appendix 1 – Description of the Exhibits necessary for Bank Review and Bank  
2 Establishment.

- 3 1 Index to Exhibits  
4  
5 2 Exhibit A. Bank Location, Legal Description of the Parcel, Geographic Service Area  
6  
7 3 Exhibit B. Biological Assessment  
8  
9 4 Exhibit C. Interim Monitoring and Management Plan, Bank Closure Plan, Long-term  
10 Monitoring and Management Plan  
11  
12 5 Exhibit D. Real Estate Records and Assurances: Certified Copy of “Grant Deed”  
13 granting fee title to the State, Preliminary Title Report, Legal Description, Parcel  
14 Map, Easements on each Bank Parcel  
15  
16 6 Exhibit E. Financial Assurances and Processes: Management Endowment  
17  
18 7 Exhibit F. Table of Credits and Calculations: California Tiger Salamander Credits and  
19 Plant Preservation Credits  
20  
21 8 Exhibit G. Phase-I Environmental Assessment  
22  
23 9 Exhibit H. Agreement To Purchase California Tiger Salamander / Preservation  
24 Habitat Credits, Mitigation Payment Transmittal Form, Agreement For Sale Of  
25 California Tiger Salamander / Preservation Mitigation Credits  
26  
27 10 Exhibit I. Results For One-year Survey for Special-status Plant Species  
28  
29 11 Exhibit J. Evaluation of Cultural and Historic Resource Significance  
30  
31  
32