

ALTON NORTH CONSERVATION BANK

1 **CONSERVATION BANK AGREEMENT**

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1 **ALTON NORTH CONSERVATION BANK**

2
3 This Conservation Bank Agreement (hereinafter referred to as "CBA") regarding the
4 establishment, use, operation and maintenance of the Alton North Conservation Bank
5 (hereinafter referred to as the "Bank") is made and entered into this ____ day of _____, by and
6 among Alton Preserve, LLC (hereinafter referred to as the "Bank Sponsor") , the Sacramento
7 Field Office of the U.S. Fish and Wildlife Service ("USFWS"), and the State of California,
8 Department of Fish and Game (hereinafter "CDFG"). These agencies are referred to jointly as
9 the Wildlife Agencies, and the Bank Sponsor and the Wildlife Agencies are hereinafter referred
10 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 2795 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 24.77-acre parcel shall be split into
12 two parcels. One parcel shall be 2.10 acres and be retained by the current property
13 owners. The remaining 22.67-acre parcel shall comprise the Bank and will be acquired
14 by CDFG in fee title. The Bank will be established, and Credits can be sold upon the
15 Bank 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 5. Non-Corps jurisdictional wetlands as defined by the USFWS and CDFG.

35
36 F. Modification of the CBA Template

37 This section is not applicable to the Bank.
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, Conservation Easements 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 12 A. Baseline Condition

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 16 B. Disclaimer

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 21 C. Exhibits and Appendices

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

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

31 Any proposals for subsequent Phase(s) of the Bank must be reviewed and approved by
32 the Wildlife Agencies prior to establishment of that Phase. Each subsequent Phase(s) shall
33 conform with this CBA and shall at a minimum include the documents listed in Appendix 1 of
34 this CBA. The Bank Sponsor shall submit a written request for approval of each subsequent
35 Phase and all relevant documents. Upon written approval from each member of the Wildlife
36 Agencies, the Bank Sponsor may then implement all approved Phases. Subsequent Phases may
37 simply require amendment of the Development Plan, Long-term Monitoring and Management
38 Plan and other CBA Exhibits. Subsequent phases need to comply with Wildlife Agencies'
39 content requirements at the time subsequent phases are proposed.
40

41 Bank Sponsor's Performance Under the CBA

42 The Bank Sponsor agrees to perform all necessary work, in accordance with the
43 provisions of this CBA and the Interim Monitoring and Management Plan, to establish and

1 protect special-status species habitats, as proposed in Exhibit C, until it is demonstrated to the
2 satisfaction of the Wildlife Agencies that the Bank complies in all respects with all conditions
3 contained herein. Bank Sponsor agrees to be responsible for all costs as defined in the Interim
4 Monitoring and Management Plan (Exhibit C), including installation of fencing and gates,
5 demolition of existing buildings, as needed, and removal of debris and trash. Bank Sponsor
6 agrees to fund fully the Management Endowment Fund. Any deviation from the Interim
7 Monitoring and Management Plan may reduce the number of Credits available, as determined by
8 CDFG and/or USFWS, as appropriate. The Bank Sponsor shall revise the Credit Table as
9 directed by CDFG and/or USFWS, to reflect a reduction, if any, in the available Credits.

10
11 **Section V: Bank Establishment**

12
13 Signature of the CBA will begin when the Exhibits and their associated supporting
14 documents have been filed with, reviewed by and approved substantially in the form attached
15 hereto by the Wildlife Agencies. Required documents for review and establishment of the Bank
16 shall include and adhere to those Exhibits listed in Section III and as fully described in Appendix
17 1 attached to this CBA. The Bank will be considered established and Credit sales may begin
18 only upon the following:

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

24
25 **Section VI: Financial Assurances**

26
27 The Bank Sponsor shall fund fully the Management Endowment Fund in the amount
28 specified in Exhibit E. Prior to payment into the Management Endowment Fund by Bank
29 Sponsor, CDFG shall establish a dedicated interest bearing account for the purpose of holding
30 the "Endowment Fund".

31
32 **Section VII. Credit Release Schedule For Covered Species and Covered Habitat Types**

33
34 Credits for Covered Species and Covered Habitat Types shall be determined as described
35 in this CBA and Exhibit F. Credits have been assigned to the Bank based upon Credit
36 methodologies developed by the Wildlife Agencies.

37
38 Upon submittal of all appropriate documentation by the Bank Sponsor, and subsequent
39 approval by the Wildlife Agencies, it is agreed that Credits for Covered Species and Covered
40 Habitat Types will be released by the Wildlife Agencies in accordance with the Table of Credits,
Exhibit F.

1 **Section VIII: Operation of the Bank**

2
3 A. Service Area

- 4 1. The Bank is established to provide mitigation to compensate for unavoidable
5 impacts to threatened, endangered and sensitive species habitat within the Service
6 Area of the Bank shown in Exhibit A, as described in Exhibit B. Decisions
7 authorizing use of Credits from the Bank for project compensation will be made by
8 the appropriate authority on a case-by-case basis in accordance with applicable
9 requirements. In general, it is agreed that use of Credits from the Bank will be
10 authorized whenever the appropriate authority determines that: (i) the particular
11 project requiring compensation/mitigation may purchase Bank Credits; and, (ii) the
12 Bank has available for sale Credits of the type required for the particular project, and
13 in an appropriate location, and (iii) the Bank Sponsor is in compliance with this
14 CBA. Covered Habitat Types and Covered Species Credits at the Bank are intended
15 to provide "in-kind" compensation/mitigation.
- 16 2. The Bank shall not be used to mitigate impacts to any State or Federal listed or
17 special status species which does not occur and/or whose habitat does not occur on
18 the Bank Property.

19
20 B. Establishment and Use of Credits

- 21 1. Upon Bank Establishment, the Bank shall have an initial total of Credits to sell or
22 convey as specified in Exhibit F and the Credit release schedule in this CBA. In no
23 case shall the Credits sold or expended exceed the total number of Credits which
24 have been allocated to the Bank for each Covered Habitat or Covered Species or as
25 released by written verification by the Wildlife Agencies prior to the proposed date
26 of sale. All Credit releases subsequent to this CBA shall be substantiated in writing
27 signed by the Wildlife Agencies, with a copy sent to all Parties, prior to any Credit
28 sales.
- 29 2. Subject to Bank Sponsor's obligations under this CBA, Bank Sponsor shall have the
30 exclusive right to determine the price for any and all Credits offered for sale or use
31 at this Bank.
- 32 3. Upon determination by the Wildlife Agencies that the purchase of Credits is an
33 appropriate form of compensation, a project applicant will be referred by the
34 appropriate Wildlife Agencies to acceptable Wildlife Agency-approved Banks so
35 that the applicant may determine where the applicant would like to purchase Credits,
36 if the applicant should decide to do so. Bank Sponsor shall follow the agency-
37 specific methodology for selling Credits as detailed in Exhibits F and H.
- 38 4. In the event that the Wildlife Agencies reasonably determine that portions of the
39 Bank have been damaged subsequent to the Bank Establishment Date, and the effect
40 of such activity has been to materially impair habitat values on such damaged
41 Property, and Bank Sponsor has not reasonably restored habitat value to such
42 damaged area or provided the Wildlife Agencies with reasonable evidence that
43 habitat value will be restored, then the Wildlife Agencies may, at their discretion,

1 suspend Credit sales and/or reduce the number of Credits allocated to the Bank in
2 proportion to such damaged area.

3 5. If any member(s) of the Wildlife Agencies approve(s) an NCCP and/or HCP
4 covering all or any part of the Service Area, and that plan uses habitat categories
5 different from those set forth herein, then, at the request of the Bank Sponsor, the
6 remaining Credits may be reallocated by the Wildlife Agencies in accordance with
7 such different habitat categories.

8 6. All Credit sales shall be reported to the Wildlife Agencies in accordance with
9 reporting requirements described in the Reporting Section of this CBA.

10 7. Credit modifications due to Bank expansion, restoration or other proposed means
11 shall be amended to this CBA according to the Modification Section.

12 8. Credit sales agreements are contracts strictly between the Bank Sponsor and project
13 applicant detailing the sale and purchase of Bank Credits by a specific project
14 applicant.

15 9. Nothing contained in this Agreement shall be deemed to limit the Wildlife
16 Agencies' respective jurisdiction over impacts and applicable mitigation of
17 endangered, threatened and sensitive species and biological resources, or to restrict
18 the ability of the Wildlife Agencies to fully discharge their respective
19 responsibilities under applicable law, including, without limitation, CESA and ESA,
20 respectively; provided, however, that subject to Section IV, the Wildlife Agencies
21 will not object to the use of Credits as set forth in Exhibit F. When discharging their
22 responsibilities, the Wildlife Agencies will utilize common conservation biology
23 principles to compare the species and habitat aspects of a development site within
24 the Service Area with those at a Conservation Bank. Considered factors may
25 include, but are not limited to, project habitat composition, project size and shape,
26 habitat use patterns by the species, core habitat areas, linkages, adjacent land uses,
27 relationship to other conserved areas, relationship to HCPs and NCCPs and other
28 regional conservation strategies, and other factors. If a development site is
29 determined to provide specific and important species needs or habitat characteristics
30 that are not provided at a bank site, the Wildlife Agencies may, through their
31 approval or oversight role, at their discretion, not authorize or recommend certain
32 projects to mitigate at the Bank.

33
34 C. Interim and Long-term Monitoring and Management

35 1. Interim Management

36 Interim management shall be implemented by the Bank Sponsor according to the
37 Interim Monitoring and Management Plan in Exhibit C. These interim management
38 measures will be implemented once the Bank Property has been transferred in fee
39 title to CDFG.

1 2. Long-term Monitoring and Management

- 2 a. After the first anniversary of the full funding of the Management Endowment
3 Fund, long-term maintenance, management and monitoring of the Bank shall be
4 implemented by CDFG as per Exhibit C.
- 5 b. The Long-term Monitoring and Management Plan prepared for the Bank shall
6 provide the basis for the implementation of the specific management measures
7 and tasks and identify the priority of the various measures and tasks.
- 8 c. Any amendments to the Long-term Monitoring and Management Plan which
9 cost more than the anticipated costs estimated for the endowment will only be
10 carried out when there is sufficient funding available in the Management
11 Endowment Fund.

12
13 3. Long-term Monitoring

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

19
20 D. Bank Closure

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

- 22 a. For habitat creation, restoration and/or enhancement, all performance criteria as
23 defined in the Alton North Table of Credits (Exhibit F) have been met; and
- 24 b. Either:
- 25 1) The last authorized Bank Credit has been transferred; or
- 26 2) The Bank Sponsor requests bank closure by written notice to the Wildlife
27 Agencies, and the Wildlife Agencies provide written approval of the closure;
28 and
- 29 c. All financial responsibilities have been met, including full funding of the
30 Management Endowment Fund.

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

1 E. Financial Operations

2
3 1. Management Endowment Fund

4 a. Endowment Fund Trustee

5 1) CDFG shall hold the Management Endowment Fund principal and interest
6 monies as required by existing law in the Special Deposit Fund or
7 subsequent State authorized trustee fund, which consists of moneys that are
8 paid into it in trust pursuant to law, and is appropriated to fulfill the purposes
9 for which payments into it are made. CDFG shall manage these monies as
10 required by Fish and Game Code Section 13014 and Section 16370 of the
11 Government Code and use the interest monies to fund long-term
12 management, enhancement, and monitoring activities on habitat lands in a
13 manner consistent with the terms of this CBA, including the Long-term
14 Monitoring and Management Plan and any amendments to the Long-term
15 Monitoring and Management Plan approved by CDFG and USFWS.

16 b. A portion of the interest and earnings from the Management Endowment Fund
17 shall be used for the long-term management, monitoring, maintenance and
18 reporting of the Bank and Bank related activities. The Management Endowment
19 Fund shall be determined through an economic analysis as provided in Exhibit C
20 of this CBA.

21 c. Interest earnings on the Endowment Funds available from the Endowment
22 Account, beyond those necessary to provide for Endowment Principal growth
23 commensurate with inflation and a re-investment contingency, may be used by
24 CDFG for management of the Bank Property in accordance with the Long-term
25 Monitoring and Management Plan.

26 d. If there is not sufficient funding available from the Endowment Fund interest
27 and earnings or if long-term Bank Property management expenses exceed those
28 estimated in the Financial Analysis and Schedule, Bank Sponsor shall have no
29 responsibility. Any endowment fund revenues (including earnings and interest)
30 as adjusted for inflation that may be determined to be generated in excess of the
31 anticipated annual expenditures shall be retained to address unexpected
32 expenses, including but not limited to, Adaptive Management needs and other
33 unexpected events.

34
35 **Section IX: Reporting**

36
37 A. Long-term Bank Management, Maintenance and Monitoring

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

40 B. Credit Sales Accounting

41 Bank Sponsor is responsible for reporting, separately and in writing, to each of the
42 Wildlife Agencies any additional crediting awarded to the Bank after completion of the

1 CBA. Bank Sponsor shall include a full ledger in the annual reports to the Wildlife
2 Agencies showing all transactions at the Bank to date. Bank Sponsor shall be responsible
3 for entering all required Bank information into electronic databases and tracking systems
4 approved by the Wildlife Agencies and as amended to this Agreement.

5 C. Credit Sales Reporting

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

11
12 **Section X: Responsibilities of the Bank Sponsor**

13
14 A. Bank Sponsor, prior to the transfer of the Bank Property to CDFG, hereby agrees and
15 covenants to the following:

- 16 1. Bank Sponsor shall not discharge or release to the Bank Property, or permit others to
17 discharge or release to the Property, any material or substance deemed hazardous or
18 toxic under any Federal, State, or local environmental law;
- 19 2. Bank Sponsor shall not create any encumbrance to the title of the Property other
20 than those set forth in Exhibit D and accounted for in the Property Assessment in
21 Exhibit D, and Bank Sponsor shall not execute, renew or extend any lien, license or
22 similar interest without the prior written consent of the Wildlife Agencies;
- 23 3. Bank Sponsor shall not construct any structure or engage in any activity or use of
24 the Property, including mineral exploration, excavating, draining, dredging or other
25 alteration of the Bank Property, that is not consistent with and in accordance with
26 this CBA and the Long-term Monitoring and Management Plan, without the prior
27 written consent of the Wildlife Agencies; and
- 28 4. Bank Sponsor shall ensure that the Bank Property is maintained to ensure its
29 suitability as a Bank consistent and in accordance with this CBA and the Long-term
30 Monitoring and Management Plan.
- 31 5. The Bank Sponsor shall allow, or otherwise provide for, access to the Bank Property
32 by all signatory Parties, as necessary, for the purpose of inspection and compliance
33 monitoring consistent with the terms and conditions of this CBA. Inspecting Parties
34 shall provide reasonable notice to the Bank Sponsor during normal business hours
35 and not less than 24 hours in advance, prior to inspection of the Bank.

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

37
38 A. Wildlife Agency Oversight

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

1 B. Wildlife Agency Review

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

5
6 C. Evaluation of Bank Progress

7 This section is not applicable to the Bank.

8
9 D. Compliance Inspections

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

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

17
18 **Section XII: Other Provisions**

19
20 A. Force Majeure

- 21 1. The Bank Sponsor, prior to the transfer of the Bank to CDFG, shall be responsible to
22 maintain and remediate the Bank except upon Catastrophic Events, events of Force
23 Majeure or unlawful acts as defined below.
- 24
25 2. Definitions
 - 26 a. Catastrophic Event shall mean an event, such as a spill of hazardous or toxic
27 substance, the impact of a vehicle or falling aircraft, or a fire, which has a
28 material and detrimental impact on the quality of native vegetation, soils or
29 wildlife of the mitigation bank and over which the Bank Sponsor has no control.
 - 30
31 b. Force Majeure shall mean war, insurrection, riot or other civil disorders, flood,
32 earthquake, fire, governmental restriction or the failure by authority, or any
33 injunction, which has a material and detrimental impact on the Bank; provided,
34 however, that (i) a riot or other civil disorder shall constitute an event of Force
35 Majeure only if the event has broad regional impacts and is not endemic to the
36 Bank and its immediate locale; (ii) a flood shall be considered an event of Force
37 Majeure only if it is greater than a presently projected 100-year flood, where
38 "flood" refers to a runoff event; (iii) an earthquake shall constitute an event of
39 Force Majeure only if the ground motion it generates at the Bank is greater than
40 that presently projected from an earthquake with a return period of 475 years;

1 (iv) disease shall constitute an event of Force Majeure only if such event has
2 broad regional impact and is not endemic to the Bank and its immediate locale;
3 and (v) governmental restriction or the failure by any governmental agency to
4 issue any requisite permit or authority, or any injunction or other enforceable
5 order of any court of competent jurisdiction shall not constitute an event of
6 Force Majeure unless there is no other feasible means of remediation.

7
8 c. Unlawful Act shall mean the unlawful act of another and shall include an event
9 or series of events, such as the intentional dumping within the Bank, or any
10 connected watercourse, of a hazardous toxic substance, or the discharge of such
11 a substance by any person or entity other than the Bank Sponsor in violation of a
12 statute, ordinance, regulation or permit, which event or series of events has a
13 material and detrimental impact on the water quality, native vegetation, soils or
14 wildlife of the Bank.

15
16 3. Notwithstanding the foregoing, subject to the availability of funds in the
17 Management Endowment Fund, and prior to the Bank Sponsor's transfer of the
18 Bank Property to CDFG, the Bank Sponsor shall not be relieved from the obligation
19 to maintain and remediate the Bank by reason of any such discharge which occurs as
20 a result of normal non-catastrophic activities. In case of occurrence of a
21 Catastrophic Event, events of Force Majeure, or unlawful acts, Bank Sponsor, and
22 the Wildlife Agencies shall meet to discuss the future course of action and
23 management of the Bank, and the Wildlife Agencies shall continue their obligation
24 to the extent practicable using the remaining funds in the accounts.

25
26 4. The Bank Sponsor shall bear the burden of demonstrating:
27 a. That the non-compliance was caused by circumstances beyond the control of the
28 Bank Sponsor and/or any entity controlled by the Bank Sponsor, including its
29 contractors and consultants;
30 b. That neither the Bank Sponsor nor any entity controlled by the Bank Sponsor,
31 including its contractors and consultants, could have reasonably foreseen and
32 prevented such noncompliance; and
33 c. The period of noncompliance was caused by such circumstances.

34
35 5. Reasonably foreseeable technical problems, or unanticipated or increased costs or
36 expenses associated with the implementation of actions called for by this CBA, or
37 changed financial or business circumstances in and of themselves shall not serve as
38 the basis for modifications of this CBA or extensions for the performance of the
39 requirements of this CBA.

40
41 6. Compliance with any requirement of this CBA by itself shall not constitute
42 compliance with any other requirement. An extension of one compliance date based
43 on a particular incident shall not necessarily result in the extension of a subsequent

1 compliance date or dates. The Bank Sponsor must make an individual showing of
2 proof regarding the cause of each delayed step or requirement for which an
3 extension is sought.

4
5 B. Dispute Resolution

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

- 10 1. The aggrieved Party shall notify the other Parties of the provision that may have
11 been violated, the basis for contending that a violation has occurred, and the
12 remedies for the aggrieved Party proposes to correct the alleged violation;
- 13 2. The Party alleged to be in violation shall have thirty (30) days (or such other time as
14 the Parties may mutually agree) to respond. During this time, such Party may seek
15 clarification of the initial written notice; and
- 16 3. Within thirty (30) days after such response was provided or due, whichever is later,
17 representative of each Party shall confer and negotiate in good faith toward a
18 resolution satisfactory to each Party, or shall establish a specific process and
19 timetable to seek such resolution.

20
21 C. Transfer

- 22 1. As part of the establishment of the Bank, the Bank Sponsor shall fund fully the
23 Management Endowment Fund and the Bank Property shall be transferred to CDFG.
- 24 2. If any of the required financial obligations under this CBA are not funded
25 completely at the time of transfer, either the current Bank Sponsor, or the
26 replacement Bank Sponsor, successors or assigns, shall deposit or provide security
27 in a form approved by the Wildlife Agencies for any funds necessary to fund
28 completely these accounts prior to the transfer of the Bank. Prior to transfer, and if
29 applicable, the Bank Sponsor shall provide to each Wildlife Agency a signed
30 commitment from the replacement Bank Sponsor stating that the replacement Bank
31 Sponsor accepts all of the responsibilities of the CBA. Transfer or assignment of
32 this CBA to a Party approved in writing by the Wildlife Agencies shall also be
33 subject to the requirement that any funds in the Management Endowment Fund shall
34 continue to be expended in a manner consistent and in accordance with this CBA
35 and the Long-term Monitoring and Management Plan.
36

37
38 D. Execution, Modification and Termination of the CBA

39 1. Execution

40 The Bank Sponsor must sign the CBA, prior to the signature and execution of the
41 CBA by the Wildlife Agencies. Subsequently, the CBA shall be executed by each

1 signatory agency to said document. The CBA will become valid and enforceable as
2 between each signatory agency and the Bank Sponsor when the Wildlife Agencies
3 have signed this CBA. The bank will be established, and Credits may be sold, upon
4 the Bank Establishment Date.

5
6 2. Modification

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

9
10 3. Termination of this CBA

11 a. Termination of CBA Prior to Credit Sales

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

- 14 1) No Credits developed in the Bank have been sold or conveyed in order to
15 compensate for the loss of Covered Habitat Types, Covered Species or other
16 special status species habitats; and
17 2) The habitat values of any habitat existing on the Bank site prior to the
18 initiation of efforts to restore and enhance the site shall be preserved in a
19 condition at least equal to that prior to initiation of Bank establishment
20 efforts.
21 3) Bank Sponsor shall have the right to convey or transfer the Bank Property in
22 conjunction with the establishment of the Bank in accordance with this CBA
23 and subject to written concurrence by the Wildlife Agencies.

24
25 b. Termination of CBA after Credit Sales Begin. Termination of the CBA may
26 only happen consistent with the following terms:

- 27 1) The CDFG and USFWS may terminate their participation in this CBA on the
28 condition that each of the following has occurred:
29 a) Bank Sponsor has breached one or more Bank Sponsor responsibilities
30 or terms and conditions set forth herein;
31 b) Bank Sponsor has received written notice from the CDFG and USFWS
32 of such breach and order to cease Credit sales; and
33 c) Bank Sponsor has failed to cure such breach within thirty (30) days after
34 such notice; provided that in the event such breach is curable in the
35 judgment of the Wildlife Agencies, but cannot reasonably be cured
36 within such thirty (30) day period, the Wildlife Agencies shall not
37 terminate this CBA so long as Bank Sponsor has commenced the cure of
38 such breach and is diligently pursuing such cure to completion. Nothing
39 in this paragraph is intended or shall be construed to limit the legal or
40 equitable remedies (including specific performance and injunctive relief)
41 at law available to the Wildlife Agencies in the event of a threatened or

1 actual breach of this CBA.

2 d) Bank Sponsor is in default under this CBA as described above, and fails
3 to cure such breach, and Bank Sponsor fails to designate a replacement
4 within 180 days of Bank Sponsor's receipt of written notice from the
5 Wildlife Agencies that the Bank Sponsor is in default of its obligations
6 under the CBA. If Bank Sponsor fails to designate a replacement, then
7 such public or private land or resource management organization
8 acceptable to and as directed by the Wildlife Agencies may enter onto
9 the Property in order to fulfill the purposes of the Bank as described in
10 the CBA.

11 e) Bank Sponsor provides the remainder of any endowment fund deposits
12 necessary to fund fully the Management Endowment Fund to carry out
13 the Long-term Monitoring and Management Plan for the Bank Property.

14 2) Upon written concurrence of the Wildlife Agencies, this CBA may be
15 terminated following the sale or conveyance of all available Credits and
16 satisfaction of all substantive terms and conditions of this CBA other than
17 ongoing management obligations such as maintenance and monitoring, as set
18 forth in the Long-term Monitoring and Management Plan, provided that the
19 Endowment Fund shall continue to be expended in a manner consistent and
20 in accordance with the conservation purposes for which it was established
21 pursuant to this CBA and California Civil Code Section 815, and the Long-
22 term Monitoring and Management Plan.

23 3) If requested, the Wildlife Agency proposing to terminate participation in the
24 CBA shall agree to meet with the other Wildlife Agency members to discuss
25 the reason(s) for such termination, prior to the termination taking effect.
26 Notice of a request for such meeting shall be made by the requesting
27 Wildlife Agency member(s) not later than fifteen (15) calendar days from
28 receipt of the notice of termination.

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

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

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

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

39
40 E. Specific Language of Bank Enabling Instrument Shall be Controlling

41 This section is not applicable to the Bank.
42

1 F. Entire Agreement

2 This CBA, and all exhibits, addenda, schedules and agreements referred to in this CBA,
3 in addition to any other elements of a CBA required under the Authorities in the Recitals
4 Section not heretofore provided by the Bank Sponsor, constitute the final, complete and
5 exclusive statement of the terms of the agreement between and among the Wildlife
6 Agencies and the Bank Sponsor pertaining to the Bank and supersedes all prior and
7 contemporaneous understandings or agreements of the Parties. No other agreement,
8 statement or promise made by the Parties, or to any employee, officer, or agent of the
9 Parties, which is not contained in this CBA, shall be binding or valid. Each Party
10 acknowledges that no representation, inducement, promise or agreement, oral or
11 otherwise, has been made by any other Party or anyone acting on behalf of any Party
12 unless the same has been embodied herein.

13 All Exhibits referred to in this CBA are attached to this CBA and are incorporated herein
14 by reference.

15
16 G. Reasonableness and Good Faith

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

24
25 H. Successors and Assigns

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

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

32
33 I. Partial Invalidity

34 If a court of competent jurisdiction holds any clause of this CBA to be invalid or
35 unenforceable, in whole or in part, for any reason, the validity and enforceability of the
36 remaining clauses, or portions of them, shall not be affected unless an essential purpose
37 of this CBA would be defeated by loss of the invalid or unenforceable provision.
38

1 J. Notices

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

8 Notices by the Bank Sponsor to the Wildlife Agencies shall be made to each of the
9 Wildlife Agencies. Such notice shall not be effective until deemed received by all
10 members of the Wildlife Agencies.

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

14 Bank Sponsor:

15 Mr. Harvey O. Rich, Managing Member
16 Alton Preserve, LLC
17 336 Bon Air Center, Box 232
18 Greenbrae, CA 94904
19 Telephone: 415-472-1086
20 Fax: 415-491-1147

21
22 Wildlife Agencies:

23 U.S. Fish and Wildlife Service
24 Sacramento Field Office
25 2800 Cottage Way, Room W-2605
26 Sacramento, CA 95825-1846
27 Attn: Field Supervisor
28 Telephone: 916-414-6600
29 Fax: 916-414-6713

30
31 California Department of Fish and Game
32 Bay Delta Region
33 Post Office Box 47
34 Yountville, CA 94599
35 Attn: Regional Manager
36 Telephone: 707-944-5500
37 Fax: 707-944-5563
38

1 California Department of Fish and Game
2 Habitat Conservation Planning Branch
3 1416 Ninth Street, 12th Floor
4 Sacramento, CA 95814
5 Attn: Branch Chief
6 Telephone: 916-653-4875
7 Fax: 916-653-2588
8

9 K. Restriction on Benefit

10 No member of or delegate to the United States Congress or Federal Resident
11 Commissioner shall be entitled to any share or part of this CBA, or to any benefit that
12 may arise from it.
13

14 L. Counterparts

15 This CBA may be executed in any number of duplicate and counterpart originals. A
16 complete original of this CBA containing original signatures of each of the Parties shall
17 be circulated to each of the Parties by Bank Sponsor and a complete original of this CBA
18 shall be maintained in the official records of each of the Parties hereto.
19

20 M. No Third Party Beneficiaries

21 This CBA shall not create any third party beneficiary hereto, nor shall it authorize anyone
22 not a party hereto to maintain a suit for personal injuries, property damages or
23 enforcement pursuant to the provisions of this CBA. The duties, obligations and
24 responsibilities of the Parties to this CBA with respect to third Parties shall remain as
25 otherwise provided by law in the event this CBA had never been executed.
26

27 N. Attorney Fees

28 If any action at law or equity, including any action for declaratory relief, is brought to
29 enforce or interpret the provisions of this CBA, each Party to the litigation shall bear its
30 own attorneys' fees and costs.
31

32 O. Availability of Funds

33 The duty of the CDFG and USFWS to carry out their respective obligations under this
34 CBA shall be subject to the availability of State and Federal appropriated funds and is
35 subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. ' 1341. Nothing in
36 this CBA may be construed to require the obligation, appropriation or expenditure of any
37 money from the United States Treasury or California State Treasury.
38

39 P. No Partnerships

40 This CBA shall not make or be deemed to make any Party to this CBA an agent for or the

1 partner of any other Party.

2
3 Q. Governing Law

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

7
8 R. Continued Authority of Wildlife Agencies


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

12
13 S. Elected Officials


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

17
18 **Section XIII: Execution**

19
20 This CBA shall become effective on the date of the signature by the last agency to sign
21 this CBA, and shall be binding only upon Bank Sponsor and the agencies so signing.

22
23 
24 _____ Date 9/21/07
25 Bank Sponsor
26 Alton Preserve, LLC

27
28
29
30
31 _____ Date _____
32 Manager, California/Nevada Office
33 U.S. Fish and Wildlife Service

34
35 
36 _____ Date 10/11/07
37 Regional Manager
38 Bay Delta Region
39 California Department of Fish and Game

1 partner of any other Party.

2
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4 This CBA shall be governed by and construed in accordance with the internal laws of the
5 State of California, the Federal Endangered Species Act and other applicable Federal
6 laws and regulations.

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11 respectively, to regulate the taking of endangered or threatened species.

12
13 S. Elected Officials

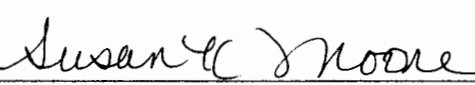
14 No member of or delegate to the California State Legislature, the United States Congress,
15 or any county or city government shall be entitled to any share or part of this CBA, or to
16 any benefit that may arise from it.

17
18 **Section XIII: Execution**

19
20 This CBA shall become effective on the date of the signature by the last agency to sign
21 this CBA, and shall be binding only upon Bank Sponsor and the agencies so signing.

22
23 
24 _____
25 Bank Sponsor
26 Alton Preserve, LLC
27

28
29 10/17/07
30 _____
31 Date

32
33 
34 _____
35 Field Supervisor
36 Sacramento Fish and Wildlife Office
37 U.S. Fish and Wildlife Service

38
39 10/17/07
40 _____
41 Date

42
43 _____
44 Regional Manager
45 Bay Delta Region
46 California Department of Fish and Game

47 _____
48 Date

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-1 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