

MEMORANDUM OF AGREEMENT

by and between

MOUNT BURDELL ENTERPRISES/BURDELL RANCH PARTNERS, LTD.

and

CALIFORNIA DEPARTMENT OF FISH AND GAME

and

SAN FRANCISCO DISTRICT U.S. ARMY CORPS OF ENGINEERS

and

U.S. FISH AND WILDLIFE SERVICE

and

U.S. ENVIRONMENTAL PROTECTION AGENCY

for the

BURDELL RANCH WETLAND CONSERVATION BANK
IMPLEMENTATION AGREEMENT

MEMORANDUM OF AGREEMENT
for the
BURDELL RANCH WETLAND MITIGATION BANK

Section I. PURPOSE AND OBJECTIVES

This Memorandum of Agreement (MOA) is made and entered into by and between MOUNT BURDELL ENTERPRISES/BURDELL RANCH PARTNERS, LTD. ("BURDELL"), THE CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), SAN FRANCISCO DISTRICT U.S. ARMY CORPS OF ENGINEERS ("CORPS"), U.S. FISH AND WILDLIFE SERVICE ("USFWS"), AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") (referred to collectively as the "Parties"). In this MOA, the four resource and/or regulatory agencies are collectively referred to as the "Agencies" or Mitigation Bank Review Team (MBRT).

The purpose of this MOA is to establish the terms and conditions of a Wetland Mitigation Bank, which will be known as the Burdell Ranch Wetland Mitigation Bank, on lands owned by Burdell contiguous to CDFG's lands at the area known as Burdell Ranch in northern Marin County, California. This bank will create wetlands and enhance existing wetlands to provide off-site compensation for unavoidable impacts to certain types of wetlands and associated resources caused by projects within the identified Bank service area (Exhibit A, Figure 3) encompassing portions of Marin, southern Sonoma, southern Napa, western Solano, and northwestern Contra Costa counties.

The goal of establishing and utilizing this Mitigation Bank is to achieve no net loss of wetland acreage, functions, and values, and to provide greater predictability to project proponents affecting wetlands. Additional Mitigation Bank objectives are to:

- Reduce CDFG's and Burdell's current operation and maintenance costs at the site.
- Eliminate current constraints to CDFG's ability to implement desired wetland restoration/enhancement activities on CDFG's contiguous land.
- Provide public access to both the public and private lands in a manner compatible with resource objectives.
- Allow Burdell an economically viable use of their remaining private lands while enhancing the diversity, extent, and quality of wildlife and wetland habitats on these lands as well as the adjacent state lands.

Section II. RECITALS

WHEREAS, Burdell is the sole owner in fee simple of certain real property in the County of Marin, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Bank Site"); and

WHEREAS, the Bank Site possesses wildlife and native habitat values (collectively, "conservation values" and described more completely in the Resource Management Plan provided in Exhibit B) of great importance to Burdell, the people of Marin County and the people of the State of California; and

WHEREAS, the Bank Site provides habitat for wildlife and contains native grasslands and wetland habitats contiguous to lands owned by the State of California; and

WHEREAS, the CDFG has, pursuant to the Fish and Game Code section 1802, jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable population of those species; and

WHEREAS, Burdell intends to convey to CDFG the right to preserve, enhance, and protect the conservation values of the Bank Site in perpetuity; and

WHEREAS, for or if a project that will result in the unavoidable discharge of dredged or fill material into a wetland or otherwise adversely affect the wetlands acreage, function, and values, it is the policy of the Agencies to require compensatory mitigation. This mitigation is generally at a ratio of at least one acre of newly created wetlands for each acre of wetlands impacted. On-site mitigation is usually preferable; however, where this is not feasible or appropriate for the purposes of maintaining wetland functions and values, the Agencies may prefer off-site mitigation; and

WHEREAS, development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation; and

WHEREAS, Burdell and the Agencies believe substantial public benefit will result from implementing a wetland mitigation bank program on the bank site, which among other things would result in the restoration of significant acreage to wetland and significant enhancement of functions and values of existing wetlands; and

WHEREAS, Burdell and the Agencies agree that implementing this mitigation bank program on the site, in compliance with state and federal laws and regulations, will benefit the public by promoting the policy of "no net loss" of wetland acreage, functions, and values.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code section 815, et seq., the parties agree as follows:

Section III. DEFINITIONS

Agencies - The resource and regulatory agencies that are signatory to this MOA, including: the California Department of Fish and Game ("CDFG"), San Francisco District U.S. Army Corps of Engineers ("Corps"), U.S. Fish and Wildlife Service ("USFWS"), and the U.S. Environmental Protection Agency ("EPA").

Bank Site - The site where the wetland mitigation bank will be developed. The bank will encompass up to 131.3 acres of private lands at Burdell Ranch adjacent to Gness Field in northern Marin County California. See Exhibit A, Figure 1 for location.

Co-Chairs - The California Department of Fish and Game ("CDFG") and San Francisco District U.S. Army Corps of Engineers ("Corps") will serve as the Co-Chairs of the Mitigation Bank Review Team.

Compensatory Mitigation - The creation, restoration, and enhancement of wetland or other aquatic habitats and their functional values expressly for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been achieved.

Mitigation Bank - A parcel of land whose natural resource values - habitats or species present - are sold or traded as credits to those who must compensate (under state and federal laws) for resource impacts elsewhere.

Operations and Maintenance Costs - Labor and expenses required to maintain the bank site for fire abatement, mosquito abatement, levees, water control structure, and costs of maintaining the wetlands at a desired level of performance. These include costs required to maintain safety on site, or elimination of nuisance caused by it.

Mitigation Bank Review Team (MBRT) - The resource and regulatory agencies that are signatory to this MOA, including: the California Department of Fish and Game ("CDFG"), San Francisco District U.S. Army Corps of Engineers ("Corps"), U.S. Fish and Wildlife Service ("USFWS"), and the U.S. Environmental Protection Agency ("EPA").

Mitigation Credit - A unit of measured area (normally measured in 0.1-acre increments) of wetland habitat supporting wetland habitat and wetland habitat values and functions not pre-existing at the bank site prior to bank creation. Credits may be designated for functional uplands converted to wetland and for significant enhancement of existing degraded wetlands.

Operation, Management, and Protection - These terms shall mean those actions required to permit the wetlands and associated wildlife to function within a natural ecological system. Such actions may include management actions of a legal, biological, or

administrative nature.

Project - The whole of an action that may result in either direct or indirect physical change in the environment.

Project Sponsor - A public or private entity acting within its proprietary or management capacity that seeks to implement a project that would adversely impact wetlands and that seeks to compensate for the loss of the wetland acreage and/or wetland habitat functions and values through participation in the mitigation bank.

Remediation Costs - Expenses required to increase the level of performance of the wetlands to the projected level.

Wetlands - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. For the purposes of this MOA, wetlands shall be determined using the technical criteria described in the Corps 1987 Wetland Delineation Manual and subsequent applicable technical supplements and guidance.

Wildlife - Wildlife shall be defined consistent with the definition found at California Fish and Game Code section 711.2 to mean all wild animals, birds, plants, fish, amphibians, reptiles, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability.

Section IV. EXHIBITS

Whereas, the following Exhibits are incorporated as appendices to this MOA:

1. "Exhibit A", Bank location and service areas;
2. "Exhibit B", *Burdell Ranch Mitigation Bank Restoration and Management Plan* ("Resource Management Plan"), and all subsequent revisions and addenda thereto, as identified by the Co-Chairs of the MBRT;
3. "Exhibit C", Draft of Declaration of Trust;
4. "Exhibit D", *Burdell Ranch Summary of Habitat Restoration Acreages*;
5. "Exhibit E", Level 1 Environmental Contaminant Survey;
6. "Exhibit F", Draft Deed ;
7. "Exhibit G", Grading Plan;

8. "Exhibit H", Schedule of Credits;
9. "Exhibit I", Preliminary Title Report;
10. "Exhibit J", Burdell Ranch Wetland Mitigation Bank Mitigation Credit Purchase Agreement;
11. "Exhibit K", Acknowledgment of Sale of Mitigation Credits;
12. "Exhibit L", Map of Existing Wetlands;
13. "Exhibit M", Proposed Wetlands.

Section V. GUIDELINES AND POLICIES

The implementation, use, operation, and maintenance of the Mitigation Bank shall be consistent with existing guidelines and/or policy statements, including but not limited to:

- Clean Water Act (33 USC 1251 et seq.)
- Rivers and Harbors Act of 1899 (33 USC 403)
- Federal Endangered Species Act (16 USC 1531 et seq.)
- National Environmental Policy Act (42 USC 4321 et seq.)
- Fish and Wildlife Coordination Act (16 USC 661 et seq.)
- National Historic Preservation Act (16 USC 470)
- Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320 through 330)
- Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230)
- Federal Guidance for the establishment, Use and Operation of Mitigation Banks (CFR Vol. 60, NO. 43, March 6, 1995).
- Executive Order 11990, Protection of Wetlands
- California Environmental Quality Act
- California Endangered Species Act
- California Resources Agency Official Policy on Conservation Banks (April 7, 1995)
- Sections 1601 -1603 of the Fish and Game Code

Section VI. ESTABLISHMENT OF THE BANK

A. **MITIGATION BANK DESCRIPTION:** The Mitigation Bank will be developed in two phases (see Exhibit A, Figure 2). The first phase encompasses approximately 26.8 acres. Of the 26.8 acres, 19.3 acres are upland and 7.5 acres are existing wetland. The second phase covers the 51-acre area in the southwestern corner of the site which is comprised primarily of fill material deposited from an old quarry on the adjacent Mount Burdell. Wetland construction/restoration on this site is anticipated to occur within two to five years of Phase 1

implementation, assuming adequate financial and environmental performance of Phase 1 of the bank. This area encompasses approximately 80 percent of the M-3 Industrial zoned land on the site. Approximately 41.4 acres of upland and 9.6 acres of wetland are present in this area.

Burdell's 9 acres of ranch lands lying in a 100-foot wide strip along the western property boundary parallel to the North Western Railroad right of way will not be included in the initial Mitigation Bank lands. This strip has been identified as a potential future safe alternative access road to the Redwood Sanitary landfill which lies to the north of the ranch. While wetland restoration and enhancement on these lands will occur concurrently with Phase 1 and 2 of the bank, Burdell will reserve this area from the Mitigation Bank at the present time in order not to preclude this public interest project. This land, however, may be added to the Mitigation Bank in the future at discretion of the Burdell Ranch owners.

Exhibit B, the Resource Management Plan for the Mitigation Bank and adjacent CDFG lands provides a more detailed summary of the existing environmental conditions on the ranch lands.

B. **MITIGATION BANK MANAGER:** Burdell will serve as the bank manager and will be responsible for necessary construction, compliance, monitoring and reporting requirements for the Mitigation Bank as well as management of the bank lands while the bank is in operation. Burdell agrees to perform all necessary work, in accordance with the provisions of this MOA, to establish the aquatic and riparian habitats as proposed in Exhibit B, until it is demonstrated to the satisfaction of the MBRT, acting through the Co-Chairs, that the Bank complies in all respects with all conditions contained herein.

C. **FINANCIAL ASSURANCES REQUIREMENTS:** Burdell agrees to provide the following financial assurances over the life of the Bank and at Bank Closure, for the periods noted:

1. Prior to the transfer of any Bank credits, Burdell shall furnish the Corps with acceptable financial assurances such as Letter of Credit, Performance Bond, or deposit of funds in a trust account (collectively referred to as "Performance Bond" for the purposes of this document) in the amount of 100% of the cost of construction, issued by a surety authorized to issue bonds, letters of credit, or administer trust accounts in the State of California and identified as an acceptable surety in Treasury Circular 570. The cost of construction shall be the amount set forth in the construction contract entered into by Burdell. The Performance Bond shall assure performance of Burdell's obligation to construct the aquatic and riparian habitats in accordance with this MOA. The Corps shall release the Performance Bond upon Burdell's completion of such construction, as evidenced by:
 - (a) The submission of the as-built drawings; and
 - (b) Verified by a subsequent on-site inspection involving some, or all, of the members of the MBRT; or 30 calendar days have passed without any of

the Co-Chairs of the MBRT contacting the Burdell to arrange for such on-site verification inspection; or 60 calendar days have passed unless one of the Co-Chairs of the MBRT have approved or rejected the adequacy of the construction as set forth in accordance with this MOA.

2. During the period of habitat establishment, Burdell shall also furnish the Corps with Performance Bonds.
 - (a) The amount of the contingency security shall be in an aggregate amount equal to \$5,000 per aquatic or riparian habitat acre credit transferred (collectively, the "Contingency Security"). The Contingency Security shall assure performance of Burdell's maintenance obligations under this MOA, including, without limitation, its obligation to cure its defaults and deficiencies under this MOA.
 - (b) Provided the Bank meets the performance objectives specified in the Resource Management Plan, the Contingency Security shall be released upon the later of: (i) the fifth anniversary of the date of this MOA; or (ii) the third anniversary of the remedial action most recently taken in order to meet the performance objectives set forth in the Resource Management Plan.
3. During the period of Bank credit sales, the Burdell shall make deposits into a non-wasting endowment fund held by the CDFG in order to assure long-term maintenance of the Bank in perpetuity.
 - (a) Endowment funds shall be deposited with each credit sold in the amount of \$230 multiplied by the number of credits transferred. Beginning on January 1, 2002, and upon each one year anniversary thereafter, the per-Credit amount of the endowment deposit shall be increased by a percentage equal to the percentage increase, if any, in the Consumer Price Index for the San Francisco Bay Region as published by the United States Department of Labor, Bureau of Labors Statistics.
 - (b) Funds deposited in the endowment fund shall be held by the CDFG as trustee and expended in accordance with the Declaration of Trust Agreement (Exhibit C).

The \$230 per credit fee will generate a \$35,650 endowment for the long term management trust account for Phase 1 (based on 155 credits) and \$74,750 for the Phase 2 area (based on 325 credits), or a total of \$110,400 for both phases. The 9-acre potential roadway reserve area if added to the bank at a later date would generate an additional \$15,410 (based on 67 credits). These funds are to be used as a permanent capital endowment principal, the interest from which will be available to provide funds for operations, management, and protection of the existing State Lands and the Mitigation Bank at Burdell Ranch. The endowment

principal shall not be drawn upon unless the CDFG finds such expenditure of principal is essential to protect the continued functions and values of wetlands on the site. Operation, management, and protection activities shall include, but shall not be limited to, costs of attorneys, reasonable administrative overhead, biological monitoring, improvements to carrying capacity, and law enforcement, as necessary to maintain the lands in conditions suitable for the protection of the wetlands.

D. **LEGAL ASSURANCE:** Ownership of the Phase 1 Bank area will be transferred to CDFG within 45 days of signing of the MOA and acceptance of the Resource Management Plan under the conditions that: Burdell will retain the right to develop the Bank and sell mitigation credits on the Bank lands as described under this MOA and Resource Management Plan; Burdell would also retain an easement and the rights to develop the alternative access road to the Redwood Landfill should that use be required at some point in the future; and that all lands formerly known as Burdell Ranch will now be known as *Scooter's Marsh*. The retained easement for the alternative access road will be extinguished after 20 years if the road has not been built or an agreement is in place to construct the road. The approximately 45-acre parcel, known as the cross-wind runway, will be donated to CDFG concurrent with the Phase 1 donation under the condition that Burdell can implement the proposed 1.9 acres of proposed wetland restoration east of Gness Field as mitigation for 0.9 acre of wetland fill required to implement the Bank. The Phase 2 Bank area will be deeded in fee title to CDFG within 45 days of Phase 2 implementation under the same conditions as the Phase 1 area.

E. **AS-BUILT DRAWING:** Burdell agrees to submit as-built drawings, with accurate maps of the of the constructed habitat no later than 90 calendar days following completion of the re-vegetation associated with the establishment of the Bank. The as-built drawings will describe in detail any deviation from that described in the Resource Management Plan.

Section VII. OPERATION OF BANK

A. **SERVICE AREA:** The Burdell Ranch Wetland Mitigation Bank credits may be used to mitigate for unavoidable impacts to non-tidal wetlands, riparian habitats, and other special aquatic sites within the following geographic region (see Figure 3, Exhibit A):

1. Marin County, exclusive of any areas west or south of Highway 1;
2. Sonoma County within the Petaluma River and Walker Creek drainages and in the Sonoma Creek drainage from approximately the Town of Sonoma south;
3. Napa County from City of Napa west; and
4. Solano County from City of Vallejo (Napa River drainage only) west; and
5. Contra Costa County bordering San Pablo Bay lying between the Carquinez and Richmond San Rafael bridges, with an inland boundary of I-80 on the East and

Cutting Boulevard and I-580 on the south.

B. ACCESS TO THE BANK BY THE MBRT: All signatory agencies will be granted access to the bank site to inspect and monitor development of the wetlands, as necessary.

C. PROJECTS ELIGIBLE TO MITIGATE AT THE BANK: The Mitigation Bank is intended to be used by projects with unavoidable impacts to wetland, riparian, and other aquatic habitats similar in function to the habitats constructed and restored on the bank site and where the projects have demonstrated that onsite avoidance and compensation is impracticable or is insufficient to achieve adequate mitigation. The majority of projects using the Mitigation Bank are anticipated to be typically authorized under the Corps of Engineers' Nationwide Permits and CDFG 1601-1603 Streambed Alteration Agreements.

Use of the bank is also predicated by the following conditions:

- Impacts to tidal and deep-water habitats, vernal pool and swale complexes, and geothermal wetlands generally should not be mitigated for at Burdell Ranch;
- Impacts to seasonal (vernal pool) wetlands that have developed on soils with an underlying claypan or hardpan, such as Huichica Loam or Wright Loam generally should not be mitigated for at Burdell Ranch.
- Impacts to wetlands on heavy clay soils, such as Clear Lake clays, or impacts to wetlands on organic clay soils, such as Reyes or Novato, or histosols, are generally suitable for mitigation at Burdell Ranch.
- Impacts to other habitats and areas outside of the Mitigation Bank service area could be allowed on a case by case basis upon specific approval of applicable regulatory agencies.

D. AVAILABLE CREDITS: Acres available for bank credit sale shall be between 48.0 and 54.7 (480 to 547 credits) depending on the potential inclusion of up to 9 acres of land which are being held in reserve at the present time for potential future public interest project. The acres available for credits equal the amount of existing upland restored to functional wetland habitat.

Available credits are based on the following formula per area:

<u>Area</u>	<u>Total Acreage</u>	<u>Existing Wetland (ac)</u>	<u>Existing Upland (ac)</u>	<u>Acres Available for Mitigation Credits</u>
<i>Phase 1</i>				
North Unit	26.8	7.5	19.3	15.5
<i>Phase 2</i>				
South Unit	51.0	9.6	41.4	32.5
<i>Reserve Areas</i>				
Landfill Access Strip*	9.0	1.8	7.2	6.7

* Values may vary depending on future use of this area for landfill access

Available credits will be further subdivided by the acreage of specific community types (seasonal wetland, riparian, pond, etc.) which are established within each phase of the bank. The Resource Management Plan (Exhibit B) describes the target acreage for each habitat type to be established on the bank site.

Nothing contained in this agreement shall be deemed to require the Burdell to establish the bank; provided however, that no Conservation Credits will be acknowledged by the Agencies until such time as an active phase of the Bank has been established pursuant to the terms of this agreement and transfer of the land ownership to the CDFG.

E. SCHEDULE OF CREDIT AVAILABILITY: Upon submittal of all appropriate documentation by Burdell, and subsequent approval by the Co-Chairs, in consultation with the other members of the MBRT, it is agreed that credits will become available for use by Burdell or for transfer to a third party in accordance with Exhibit H, Schedule of Credits, attached hereto, as follows.

1. 20% of the total credits shall be available for sale upon completion of all the necessary approvals, execution of this MOA, and transfer of land ownership to the CDFG for each active phase of the bank.
2. The remaining 80% of the total credits within an active Phase of the Bank shall be available upon completion of the habitat construction work (i.e., grading and planting) within that Phase and demonstration of appropriate hydrology as described in accordance with this MOA.

Upon the signing of the MOA, Burdell shall construct the wetlands and water control features in conformance with the Resource Management Plan and shall complete the Phase 1 activities prior to the end of 2000.

F. COMPENSATION RATIOS: The exchange of mitigation credits between Burdell and a project sponsor (i.e. a project qualifying to mitigate by purchasing restored wetlands at the Bank Site) shall proceed under the procedures, specifications, and requirements of this MOA. The

parties agree that wetland habitats which are filled under permit and the wetlands constructed at the Bank for mitigation will be evaluated using biological criteria. The required compensation ratio for permitted fills will be based on the criteria of wetland acreage impacted (directly and indirectly) and the difference in functions and values between the Bank and impact site wetlands. Generally, projects affecting wetlands of lesser value than the bank site will be required to mitigate on a minimum 1:1 acre-based ratio. Projects affecting wetlands with greater value than the those on the bank site will be required to mitigate at higher ratios. The units of exchange (i.e. required number of credits) will be defined on a project by project basis as specified by the Agencies or other permitting agency. Credits shall be sold in increments of 0.1 acre.

Project sponsors wishing to purchase mitigation credits at the bank should conduct an assessment of the functions and values of the project's site wetlands (impacted wetlands) and shall provide an assessment of the applicability of the Mitigation Bank wetlands for replacing lost functions and values. Project sponsors seeking an individual Section 404 permit or authorization or verification of compliance with a nationwide permit should include this assessment as part of their permit application, Pre-Construction Notification, or verification request.

Upon receipt of a sponsor's habitat impact assessment, staff of the Agencies\MBRT will confer to determine the adequacy of the assessment and the number of mitigation credits to be purchased at the bank to fully compensate project impacts to wetland resources.

The Corps will determine the number of credits to be purchased at the bank and will communicate this figure to Burdell and project sponsor. For non-Section 404 projects, CDFG will make the credit determination.

Section VIII. MANAGEMENT AND MONITORING OF THE BANK

A. **MONITORING OF THE MITIGATION BANK:** Annual monitoring and reporting will be conducted by Burdell per conditions of the Resource Management Plans for phases 1 and 2 of the Mitigation Bank. Each annual monitoring report will evaluate the site conditions against the performance criteria specified in the respective phase Resource Management Plans. The intent of the monitoring is to assess the progress of the Mitigation Bank wetlands towards meeting target success criteria. The monitoring will be conducted for 5 years, or until final performance criteria are achieved for two consecutive years. The monitoring plan is described in the Resource Management Plan (Exhibit B).

B. **RESOURCE MANAGEMENT PLAN:** Approval and development of the Mitigation Bank would result in the substantial enhancement of approximately 17.1 acres of existing wetland, restoration of wetland function to approximately up to 48.0 acres of diked historic baylands, and retention/enhancement of approximately 13.2 acres of upland buffer habitat within the Phase 1 and 2 Mitigation Bank area (excludes reserve strip).

The management goal for the Burdell Ranch is to provide a matrix habitat of seasonal wetlands intermixed with perennial water and associated wetland and riparian habitats in sloughs and ditches in a manner that will increase wetland extent and functional habitat values for wildlife.

Specific management objectives are:

Hydrology

- Maintain freshwater conditions in the management area to the extent feasible through retention of up slope runoff and rainfall. Make-up water for dry years, dry season, and fall flood-up, if needed, will be brackish water from the adjoining diked CDFG lands.

Vegetation

- Increase wetland and riparian vegetation species and structural diversity while preventing establishment of dense large mono-typic stands of cattail and/or tule and large areas of dense weedy, ruderal vegetation.
- Prevent establishment of exotic pest plant species.

Wildlife

- Maximize the extent and duration of shallow seasonal ponds consistent with other management objectives. Provide a normal maximum high water levels that are consistent with maintaining water depths at less than 1.5 feet during early and mid winter water period.
- Manage water depths and ponding to emphasize habitat values for migratory and wintering waterfowl in the fall and winter. Draw-down water levels in late winter/early spring to expose mudflats and create shallows for northward migrant shorebirds.

Mosquito Abatement

- Maintain suitable water levels and quality in channels and sloughs for mosquito fish and other mosquito larvae predators.
- Manage the density and composition of vegetation through water manipulation, controlled burns, livestock grazing, mowing, disking, or other applicable measures in a manner to minimize dense stands of aquatic vegetation which may serve as refuge for mosquito larvae from predators.
- Manage water levels, fall flood-up, and spring draw-down to minimize larvae habitat and nuisance hatches.

Management practices will be adapted, as appropriate, to achieve the basic management goals and to add or modify existing objectives for the bank wetlands. Future decisions on changes to the basic management plan will be by mutual agreement between CDFG and Burdell for the Mitigation Bank lands.

The Resource Management Plan and preliminary grading plan for the bank is included as Exhibits

B and G, respectively, of this agreement. The target bank habitat types for the bank are presented in the following table.

	Size	Existing Seasonal Wetlands	Proposed Target Habitats (approximate)
Phase 1	26.8 ac	7.5 ac	1.3 ac Riparian 14.2 ac Seasonal Marsh 3.8 ac Upland
Phase 2	51.0 ac	9.6 ac	7.8 ac Riparian 2.6 ac Marsh 22.1 ac Seasonal Marsh 8.9 ac Upland
Reserve Area	9.0 ac	1.8 ac	6.7 ac Seasonal Marsh 0.5 ac Upland
Total	86.8 ac	18.9 ac	9.1 ac Riparian 43.0 ac Seasonal Marsh 2.6 ac Marsh 13.2 ac Upland

Actual acreage established by habitat may vary. Final acreage of the various habitats will be determined following plan is implementation.

C. SALE AND ACCOUNTING OF MITIGATION CREDITS: Sales of mitigation credits will be permitted each year provided the Agencies determine that the available credits for sale exceed the number of credits which have been previously sold. Annual sales of credits will be debited against available credits remaining in the bank.

Debits will not be against any specific area within the Mitigation Bank. Debits will be assessed against the remaining balance of mitigation credits available at the time of the sale. Burdell will serve as the Bank bookkeeper for the purposes of credit and debit accounting, and will perform all duties necessary to maintain the Bank account and all other required records and reports. Burdell will be responsible for establishing that credits are available for requested mitigation. After each sale of credits, Burdell shall send a report of credits, debits, and balance in the Bank to all of the Agencies. Annual reports summarizing all business transactions for the previous year shall be submitted to the MBRT by January 15 each year, beginning after the first full growing season and continuing until all credits have been sold.

D. CONTINGENCY AND REMEDIATIONS: During the 5-year monitoring and implementation period(s), Burdell will monitor the Bank site and submit annual reports as per the Resource Management Plan. If the Agencies determine that the wetlands functions and values fall below specified performance criteria based on an annual report or other information, Burdell and the Agencies shall mutually develop specific remedial actions, possibly including extension of the

required monitoring period. The agreed upon remediation will be mandatory if there are "oversold" credits. Mitigation credits will be considered oversold if, as a result of decline in the overall quality of the wetlands, the available credits fall below the number of credits allotted and sold in previous years. Remediation will be mandatory and sales of mitigation credits will cease (until performance criteria are demonstrated) if habitat values indicate an overselling of credits. Remediation will be at the discretion of Burdell if no credits are oversold.

Whereas, DFG manages the Burdell Unit of the Petaluma Marsh Wildlife Area. The Burdell Unit is managed as diked seasonal wetlands to provide seasonal wetland habitat for waterfowl and shorebirds. To achieve this management objective the DFG must maintain levees along the Petaluma River. These levees also protect the Gness Field and Burdell property from tidal flooding. DFG has maintained and will continue to maintain these levees during the operation of the bank.

If natural or man-induced actions beyond the control of Burdell result in a breach in the DFG outer tidal dikes which result in significant changes to the physical characteristics, functions, and values of the wetlands and other aquatic habitats in the Mitigation Bank, the DFG will repair its dikes to maintain the hydrologic conditions necessary to maintain the habitat types and values of the Bank during its period of operation.

E. **LONG-TERM MONITORING AND MAINTENANCE:** After the successful sale or dedication of all Mitigation Bank credits or closure of the bank, CDFG will assume long-term responsibility for the maintenance and management of the Mitigation Bank site.

F. **BANK CLOSURE:** The Bank shall be deemed open on the date that the MOA is fully executed. The Bank shall be deemed closed upon the date that both:

1. Mature wetland and riparian habitats have been established consistent with the performance objectives in the Resource Management Plan; and
2. Either:
 - (a) The last authorized Bank credit has been transferred; or
 - (b) Burdell sends the Co-Chairs written notice stating that Burdell is closing the Bank.

At this point, the project shall be deemed complete.

G. **TERMINATION OF AGREEMENT PRIOR TO CREDIT SALES:** Burdell may withdraw the entire Bank Site or a Phase of the Bank Site and terminate this MOA at any time provided that:

1. No mitigation credits developed in the Bank or a specific Phase have been transferred in order to compensate for the loss of aquatic or riparian habitat, or endangered species impacts; and

2. The wetland acreage and habitat values of any wetland habitat existing on the Bank site prior to the initiation of efforts to restore and enhance the site shall be preserved in a condition at least equal to that prior to initiation of Bank establishment efforts.

H. **RELEASE OF THE CONTINGENCY SECURITY:** The Contingency Security will automatically be released if 60 days have passed from Burdell's submission of documentation of the to the Co-Chairs of the MBRT of the information contained in item VI(C) 2 (b) above unless one of the Co-Chairs of the MBRT have approved or rejected the adequacy of the bank performance objectives set forth in accordance with this MOA.

Section IX. RESPONSIBILITIES OF THE MBRT

A. **MBRT REVIEW:** The agencies represented on the MBRT agree to provide appropriate oversight in carrying out provisions of this MOA. In addition, the agencies agree to review and provide comments on all project plans, monitoring reports, remediation plans, and necessary permits for the Bank, as identified or incorporated by reference into the MOA, in a timely manner. Comments on the annual reports and remediation plans will be reviewed within 60 calendar days from the date of complete submittal, except for good cause. If the MBRT is unable to review remediation plans within the time specified, this fact will be reflected in any schedule established for remediation, and any evaluation of Burdell for time of performance.

C. **EVALUATION OF BANK PROGRESS:** The agencies represented on the MBRT agree to review and confirm reports on evaluation of success criteria prior to certifying credits in the Bank, within the timelines provided.

D. **COMPLIANCE INSPECTIONS:** The agencies represented on the MBRT shall conduct compliance inspections, as necessary, as determined by the Co-Chairs in coordination with Burdell.

1. To verify the credits then currently available in the Bank; and/or
2. Recommend corrective measures as needed.

These inspections shall continue until the effort to restore and enhance the Bank site, as described in the Resource Management Plan, has been determined to be completely successful.

Section X. MISCELLANEOUS PROVISIONS

A. NOTICES: All notices and other communications required or permitted to be given or delivered pursuant to this MOA shall be in writing. Such writing shall be delivered personally, by courier, by telecopy, or sent by first-class or certified mail, return receipt requested. All default notices shall be sent certified mail, return receipt requested. All such notices or transmittals shall be deemed delivered upon the earlier of actual receipt of three days after posting by certified mail.

BURDELL Mount Burdell Enterprises and Burdell Ranch Partners, Ltd.
C/O James McKenney
365 Bel Marin Keys Boulevard
Novato, CA 94949, Suite 100
Tel (415) 884-2164; Fax (415) 884- 2261

CDFG California Department of Fish and Game
Legal Affairs Division
1416 Ninth Street
Sacramento, CA 95814
Tel (916) 654-3821
Fax (916) 654-3805

CDFG REGION 3 Jim Swanson
P.O. Box 47
Yountville, CA 94599
Tel (707) 944-5500
Fax (707) 944-5563

CORPS U.S. Army Corps of Engineers
San Francisco District
Regulatory Branch
333 Market Street, 8th Floor
San Francisco, CA 94105
Tel (415) 977-8462
Fax (415) 977-8483

EPA EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105
Tel (415) 774-1500
Fax (415) 774-1078

USFWS

U.S. Fish and Wildlife Service
Ecological Services
2800 Cottage Way
Sacramento, CA 95821
Tel (916) 414-6600
Fax (916) 414-6713

B. ASSIGNMENT: No sale or assignment of this MOA or any of the rights or obligations thereunder shall be made by any party hereto unless there first shall have been obtained the written consent thereto of the parties; provided, however, that no consent shall be required for assignment or pledge made by Burdell to a) any company which shall succeed by purchase, merger or consolidation to the properties of Burdell; b) to any parent, affiliate or wholly-owned subsidiary of Burdell; c) as security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument.

C. GOVERNING LAW/CONFLICTS: This MOA shall be governed by the laws of the State of California. Actual or threatened breach of this MOA may be prohibited or restrained by a court of competent jurisdiction.

D. FURTHER ACTIONS: From time to time hereafter, Burdell and the Agencies shall execute such instruments and other documents and take such other actions, upon the request of the others, as may be reasonably necessary to carry out the terms of this MOA. This MOA cannot be amended or modified in any way except by a written instrument duly executed by Burdell and the Agencies.

E. TERMINATION: This MOA shall terminate upon completion of all terms and conditions. This MOA shall also be immediately terminated upon written agreement by both Burdell and the Agencies.

F. EFFECTIVE DATE: This MOA shall be immediately effective upon execution by Burdell and the Agencies.

G. AUTHORIZED REPRESENTATIVES OF THE PARTIES: Each party, by written notice to each other party, shall designate the representative(s) who is (are) authorized to act on its behalf with respect to this Agreement. Each party may change the designation(s) of its authorized representative(s) upon oral notice to each other party, confirmed promptly by written notice.

Section XI. EXECUTION

In witness whereof, the parties have entered into this Agreement as of the date last written below.

MT. BURDELL ENTERPRISES AND BURDELL RANCH PARTNERS, LTD.

By: _____ Date: _____
James McKenney

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

By: _____ Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: Joel A. Mellin Date: 9/12/00
Deputy Field Supervisor

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

Section XI. EXECUTION

In witness whereof, the parties have entered into this Agreement as of the date last written below.

MT. BURDELL ENTERPRISES AND BURDELL RANCH PARTNERS, LTD.

By: _____ Date: _____
James McKenney

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

By: *James J. O'Rourke* Date: 22 Aug 00

U.S. FISH AND WILDLIFE SERVICE

By: _____ Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

Section XI. EXECUTION

In witness whereof, the parties have entered into this Agreement as of the date last written below.

MT. BURDELL ENTERPRISES AND BURDELL RANCH PARTNERS, LTD.

By: _____ Date: _____
James McKenney

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____ Date: _____

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

By: _____ Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: _____ Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: *Alexis Thomas* Date: *22 Aug. 00*

Section XI EXECUTION

In witness whereof, the parties have entered into this Agreement as of the date last written below.

MT. BURDELL ENTERPRISES AND BURDELL RANCH PARTNERS, LTD.

By: James McKenney Date: 7/23/00

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: [Signature] Date: 7/10/00

*Approved as to form
S.M.
Deputy General Counsel*

U.S. ARMY CORPS OF ENGINEERS, SAN FRANCISCO DISTRICT

By: _____ Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: _____ Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____

EXHIBITS

Exhibit A - Bank Location and Service Areas

Exhibit B - Burdell Ranch Mitigation Bank Restoration and Management Plan

Exhibit C - Draft of Declaration of Trust

Exhibit D - Burdell Ranch Summary of Habitat Restoration Acreages

Exhibit E - Level 1 Toxic Survey

Exhibit F - Draft Deed

Exhibit G - Grading Plan

Exhibit H - Schedule of Credits

Exhibit I - Preliminary Title Report

Exhibit J - Burdell Ranch Wetland Mitigation Bank Conservation Credit Purchase Agreement

Exhibit K - Acknowledgment of Sale of Conservation Credits

Exhibit L - Map of Existing Wetlands

Exhibit M - Proposed Wetlands.