12-012

Planning Agreement

by and among

The County of Yuba, the County of Sutter, the City of Yuba City, the City of Live Oak, the City of Wheatland, the California Department of Fish and Game, and the United States Fish and Wildlife Service

regarding the

Yuba-Sutter Natural Community Conservation Plan and Habitat Conservation Plan

November 2011

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This agreement regarding the planning and preparation of the Yuba-Sutter Natural Community Conservation Plan and Habitat Conservation Plan ("Yuba-Sutter NCCP/HCP", "Planning Agreement") is entered into as of the Effective Date by and among the County of Yuba, County of Sutter, Yuba City, the City of Live Oak, the City of Wheatland, the California Department of Fish and Game ("DFG") and the United States Fish and Wildlife Service ("USFWS"). These entities are referred to collectively as "Parties." The County of Yuba, County of Sutter, the City of Yuba City, the City of Live Oak, and the City of Wheatland are referred to collectively as "Local Agencies" and each individually as "Local Agency." The DFG and the USFWS are referred to collectively as "Wildlife Agencies."

1. Definitions

Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act have the meanings set forth in Fish and Game Code section 2805. The following terms as used in this Planning Agreement will have the meanings set forth below:

1.1. "CEQA" means the California Environmental Quality Act, Public Resources Code, section 21000 et seq.

1.2. "CESA" means the California Endangered Species Act, California Fish and Game Code, section 2050 et seq.

1.3. "City" or "Cities" means the governments of the cities of Yuba City, Live Oak, and Wheatland.

1.4. "Counties" means the governments of the County of Yuba and the County of Sutter.

1.5. "Covered Activities" means the activities that will be addressed in the Plan and for which the Local Agencies will seek an NCCP permit pursuant to Fish and Game Code, section 2835 and an incidental take permit pursuant to section 10 of FESA.

1.6. "Covered Species" means those certain species, both listed and non-listed, whose conservation and management are provided for in the Yuba-Sutter NCCP/HCP and which may be authorized for take under State and/or federal law once the Yuba-Sutter NCCP/HCP is approved.

1.7. "FESA" means the federal Endangered Species Act, 16 United States Code section 1530 et seq.

1.8. "Habitat Conservation Plan" or "HCP" means a conservation plan prepared pursuant to section 10(a)(1)(B) of FESA.

1.9. "Implementing Agreement" or "IA" means the agreement required pursuant to Fish and Game Code section 2820, subdivision (b) and

authorized under 14 U.S.C. section 1539 (a)(2)(B) which defines the terms for implementing the Plan.

1.10. "Listed Species" means those species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under FESA.

1.11. "Local Agencies" and "Local Agency" mean, individually or collectively, the County of Yuba, the County of Sutter, the City of Yuba City, the City of Live Oak, the City of Wheatland, and any other city, special district or local agency that becomes a Party to this Planning Agreement.

1.12. "Natural Community Conservation Plan" or "NCCP" means a conservation plan created to meet the requirements of Fish and Game Code, section 2801 et seq.

1.13. "Natural Community Conservation Planning Act" or "NCCPA" means Fish and Game Code, section 2801 et seq.

1.14. "NEPA" means the National Environmental Policy Act, 14 United States Code section 4321 et seq.

1.15. "Plan" means the joint natural community conservation plan and habitat conservation plan.

1.16. "Planning Area" means the geographic area proposed to be addressed in the Plan as described in Exhibit A.

1.17. "Planning Subareas" means those geographic areas that are smaller units of the planning area that will each have a specific function or jurisdictional boundary within the permitted plan.

2. Background

2.1. Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of NCCP Planning Agreements

The purposes of NCCP Planning Agreements are to:

- Define the Parties' goals and commitments with regard to development of a Plan;
- Define the geographic scope of the conservation Planning Area;
- Identify a preliminary list of natural communities and species known or reasonably expected to be found in those communities, that are intended to be the initial focus of the Plan;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the planning process;
- Ensure coordination among the Wildlife Agencies, particularly with respect to FESA, 16 U.S.C. section 1531 et seq.;
- Establish a process to review interim development within the Planning Area that will help achieve the preliminary conservation objectives and preserve options for establishing a viable reserve system or equivalent long term conservation measures; and
- Ensure public participation and outreach throughout the planning process.

2.3. Regulatory Goals

The Local Agencies intend that the NCCP/HCP will allow for development and growth compatible with state and federal requirements. By agreeing to assume responsibility for development of the NCCP/HCP, and committing staff resources to that purpose, the Local Agencies intend the NCCP/HCP to yield numerous benefits in addition to resources conservation, including greater regulatory efficiency, permit streamlining and permit processing certainty.

2.4. Compliance with CESA and FESA

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA and/or FESA. The Parties intend for the Plan to satisfy the requirements for an HCP under Section 10(a)(1)(B) of FESA, and an NCCP under the NCCPA, to serve as the basis for take authorizations under both Acts.

The NCCPA provides that after the approval of an NCCP, DFG may permit the taking of any identified species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of state-listed species may be authorized pursuant to CESA during development of the Plan. After approval of the Plan, state authorized take may be provided pursuant to the NCCPA.

FESA provides that after the approval of an HCP, USFWS may permit the taking of wildlife species covered in the HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of FESA. Take authorization for federally listed wildlife species covered in the HCP shall generally be effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed wildlife species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during plan preparation for wildlife species listed pursuant to FESA may be provided pursuant to individual permits issued pursuant to section 10(a)(1)(B), or consultations under section 7 of FESA.

2.5. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the Plan, once approved by the USFWS and included as a condition of federal incidental take permits to the Local Agencies, will be incorporated into future section 7 consultations between the USFWS or NOAA Fisheries and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect Covered Species or their habitat.

2.6. Concurrent Planning for Wetlands and Waters of the United States

The Local Agencies intend to address impacts to wetlands and waters of the United States and changes to the bed, bank or channel of rivers, streams and lakes resulting from Covered Activities in the Planning Area. Based on the Plan, the Local Agencies may seek future programmatic permits or authorizations under the Clean Water Act and Fish and Game Code section 1600 et seq. as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent but separate planning regarding these permits. However, such programmatic permits or authorizations are not necessary for approval of the Plan or for issuances of take permits.

2.7. Assurances

2.7.1. FESA

The Parties anticipate that the USFWS will provide assurances pursuant to applicable federal law and regulations then in effect upon issuance of federal incidental take permits to the Local Agencies.

Specifically, the Parties intend that if the NCCP/HCP meets the criteria for issuance of an incidental take permit under Section 10 of FESA, the Applicants will receive the assurances identified in the "no surprises" regulations of the United States Department of the Interior at 50 C.F.R. 17.22(b)(5) and 17.32(b)(5) and the United States Department of Commerce at 50 C.F.R. 222.3 and 222.22 for all species adequately covered under the NCCP/HCP. Such assurances would be provided upon

approval of the NCCP/HCP and issuance of incidental take permits to the Applicants. In order to ensure that state regulatory assurances are legally binding, such provisions will be included in an Implementing Agreement.

2.7.2. NCCPA

The Parties anticipate that if the Plan meets the criteria for an NCCP permit under section 2835 of the Fish and Game Code, DFG will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCP permits to the Local Agencies. Under section 2820(f) of the Fish and Game Code, DFG may provide assurances for Plan participants commensurate with the level of long-term conservation and associated implementation measures provided in the Plan. In order to ensure that state regulatory assurances are legally binding, such provisions will be included in an Implementing Agreement.

3. Planning Goals

The Parties acknowledge that the Plan is intended to meet the conservation objectives of the NCCPA and the following Local Agency planning goals:

- Provide for the conservation and management of Covered Species;
- Preserve aquatic and terrestrial resources through conservation partnerships with the Local Agencies;
- Allow for appropriate and compatible economic growth and development consistent with applicable land use laws and general plans;
- Provide a basis for permits and authorizations necessary to lawfully take Covered Species;
- Provide a process for the issuance of take authorizations for Covered Species which are not currently listed which may be listed in the future without the imposition of additional mitigation, conservation or other requirements;
- Provide a comprehensive means intended to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, NCCPA and other applicable laws relating to biological and natural resources within the Planning Area;
- Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
- Provide clear expectations and regulatory predictability for persons carrying out Covered Activities within the Planning Area.

3.1. Departure from Project-by-Project Planning Approach.

The Parties agree the development of a successful Plan will result in greater conservation and an efficient method of complying with the species conservation requirements of ESA, NCCPA, and the environmental review processes of NEPA and CEQA than a project-by-project approach. The Parties also agree that a successful Plan may be more beneficial for species, habitat, and economic development than individual project permitting.

3.2. Impacts of Taking and Covered Species.

The Parties intend for the Plan to address the impacts of taking likely to result from Covered Activities in the planning area on covered species. The purpose of addressing unlisted species will be to provide for the conservation and management of the species, and to lessen the possibility that such species become listed as threatened or endangered under FESA or CESA. Addressing unlisted species in the Plan is also intended to avoid the need to develop new and different measures or restrictions to mitigate for impacts should such species become listed in the future.

4. Planning Area and Plan Participants

4.1. Plan Background

Early in 2001, Caltrans was pursuing improvements to State Highways 99 and 70 in Sutter and Yuba counties under a program partially funded by the Federal Highway Administration (FHWA). The proposed improvements entailed potential impacts to federally listed species, and FHWA initiated a consultation with USFWS as required by FESA section 7. In reviewing the environmental documentation for the proposed improvements, USFWS found that the project would produce indirect impacts by opening the way for additional development adjacent to the highways. USFWS also indicated that the proper mitigation for those effects would be the creation of a habitat conservation plan (HCP) for the affected area and species. The affected area was delineated by Caltrans, the two counties, and wildlife agencies in 2001 and is cited in various documents as the "cumulative effects area."

Discussions that included the two counties, Caltrans, USFWS, and DFG resulted in a letter being sent from each county to the USFWS committing to participation in the development of the HCP in conjunction with Caltrans. In the letters, the counties agreed to: 1) not issue any land use entitlements, other than for agricultural uses, within the cumulative effects area without proof of compliance with the ESA; and 2) implement interim conservation measures to protect federally and state listed species and their habitats. USFWS then prepared and issued a Biological Opinion (BO) on the effects of the highway improvements. The BO describes the status of affected species, provides an environmental baseline, provides an incidental take statement for Caltrans' activities, and outlines the terms and conditions on which the incidental take statement is based. The most recent BO issued by

USFWS for the Highway 99/70 upgrade is dated May 15, 2003 and is based on the BO issued on June 15, 2001, as amended March 18, 2002.

Pursuant to the provisions of the BO, a Working Group was formed with representatives from both counties, USFWS, DFG, and Caltrans. NOAA Fisheries also was invited to participate and did so beginning in 2004. The Working Group met to discuss approaches to conservation planning and to identify funding for the planning process. As part of that effort, DFG suggested that the counties address CESA as well as FESA issues by preparing a combined NCCP/HCP. The counties agreed to the combined approach, and with the support of Caltrans and the Sacramento Area Council of Governments, applied for federal conservation planning funds available through the FESA section 6 program and "smart growth" planning funds available through FHWA/Caltrans. The grant applications were approved. The Working Group then developed a scope of work for the planning process. Consistent with the terms and conditions of the BO and the commitment letters from the counties to the USFWS, the Working Group agreed that the "cumulative effects area" would be the initial Planning Area for the NCCP/HCP. The Working Group also understood that as the planning went forward, the Planning Area may need to be expanded based on information (i.e. biological, economic, etc.) derived as part of the planning process. Caltrans is a participant in the NCCP/HCP planning process but is not requesting take authorization through the Plan.

During 2006, the Counties received guidance from their Citizen's Advisory Group and the Science Advisory Group to reevaluate the Plan Area boundary. The initial plan area boundary was primarily based upon growth projections and not on species conservation requirements. It was determined that efficient and cost- effective species conservation requires a broader habitat level perspective across large landscapes, necessitating a much larger plan area.

The Counties pursued a Conservation Plan Area boundary expansion through guidance from the public, the Science Advisors and agency experts, and in December 2006, adopted a new Plan Area boundary that would look at species conservation in a broader context; extend the usefulness of the planning effort and resultant permit streamlining to address both state and federally listed species; and address the requirements of the State NCCP Act as well as the federal Endangered Species Act. The resultant Plan Area more than doubled the initial plan area and comprises approximately 468,552 acres encompassing the valley floor in both counties excluding cities and their spheres of influences.

In 2008, the City of Yuba City, City of Live Oak and the City of Wheatland committed in joining the planning effort. In 2010, the cities formalized their participation in the planning effort and the Plan Area boundary was expanded to include the spheres of influence and city limits of the City of Yuba City, City of Live Oak and the City of Wheatland.

4.2. Geographic Scope

The Parties agree that the geographic area shown in Exhibit A is the Planning Area for the Yuba-Sutter NCCP/HCP. The Parties also acknowledge that, subject to the consent of the Local Agencies and Wildlife Agencies, the boundaries of the Planning Area may change during the planning process to include or exclude lands and Planning Subareas may be delineated within the Planning Area.

As shown in Exhibit A, the Planning Area includes approximately 468,552 acres: approximately 140,640 acres of unincorporated lands in the County of Yuba and 316,852 acres of unincorporated lands in the County of Sutter, 9,375 acres within the incorporated city limits of the City of Yuba City, 488 acres within the incorporated city limits of Wheatland and 1,197 acres within the incorporated city limits of Live Oak.

4.3. Local Agencies

The Local Agencies are the local sponsors of the Plan. As part of this planning process, the Local Agencies have committed to undertake a collaborative, systematic approach to protecting the Planning Area's ecologically significant resources, including candidate, threatened and endangered species and their habitats, open space, and working landscapes, and to ensure that the Covered Activities comply with applicable federal and state laws. To this end, the two counties and three cities have entered into Memoranda of Understanding with each other regarding cost sharing and joint lead agency status pursuant to CEQA, have designated staff and resources for the planning process, and have retained a consulting firm to assist them with preparation of the Plan and related documents. The Local Agencies also have requested that the Wildlife Agencies provide technical assistance during the planning process.

4.4. California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife. DFG is authorized to approve NCCPs pursuant to the NCCPA, administer and enforce CESA and other provisions of the Fish and Game Code, and enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

4.5. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce FESA with respect to terrestrial wildlife, certain fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCPA and this Planning Agreement require coordination with USFWS with respect to FESA.

5. Preliminary Conservation Objectives

The Parties agree that the preliminary conservation objectives for the Plan are as follows:

- Provide for the protection of species and natural communities on an ecosystem or a landscape level.
- Preserve the diversity of plant and animal communities in the Planning Area;
- Assure connectivity to and compatibility with conserved areas within and adjacent to the Planning area boundaries.
- Protect the viability of threatened, endangered or other special status plant and animal species, and minimize and mitigate the take or loss of the Covered Species;
- Identify and designate biologically sensitive habitat areas;
- Preserve habitat and thereby contribute to the recovery of the Covered Species; and
- Reduce the need to list additional species.

The Parties also agree that the Plan will set forth specific habitat and covered species based goals and objectives, expressed in terms of the amount and quality (including connectivity) of habitat to be protected and preserved.

5.1. Conservation Elements

5.1.1. Ecosystems, Natural Communities, and Species List

The Plan will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the Plan will employ species-specific minimization, mitigation, conservation and management measures as required to meet federal and state permit issuance standards under FESA and NCCPA.

A narrative description of natural communities and a preliminary list of the endangered, threatened, candidate, or other sensitive species known, or reasonably expected to be found in the Planning Area, that are intended to be the initial focus of the Plan is attached as Exhibit B. This list identifies the species that the Parties will evaluate for inclusion in the Plan. Exhibit B is not necessarily the Plan's final Covered Species list. The Parties acknowledge that inclusion of a particular species as a Covered Species in the Plan will require an individual determination by each Wildlife Agency that the Plan adequately provides for conservation of the species in accordance with State and/or Federal permit issuance requirements.

5.1.2. Conservation Areas and Viable Habitat Linkages

The Plan will establish conservation areas in the Planning Area and provide linkages, where appropriate, between the conservation areas within the Planning Area. It will also identify where linkages between the conservation areas, and important habitat areas contiguous to outside the Planning Area should occur where possible. Such conservation areas will include a range of environmental gradients and ecological functions, and will address edge effects and other reserve design principles.

5.1.3. Project Design

The Plan will ensure that projects will be appropriately designed to avoid and/or minimize and mitigate on-site and off-site impacts to resources.

6. Preparing the Plan

The Parties intend that this Planning Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the Plan that fulfills the requirements of the NCCPA and FESA. The process used to develop the Plan will incorporate independent scientific input and analysis, and include the opportunity for extensive public participation with ample opportunity for comment from the general public as well as advice solicited by the Local Agencies from key groups of stakeholders as described below:

6.1. Best Available Scientific Information

The Plan will be based on the best available scientific information, including, but not limited to:

- principles of conservation biology, community ecology, landscape ecology, individual species' ecology, and other scientific knowledge and thought;
- thorough information about all natural communities and proposed Covered Species on lands throughout the Planning Area; and
- advice from well-qualified, independent scientists.

6.2. Data Collection

The Parties agree that information regarding the subjects briefly described below in Section 6.2.1. is important for preparation of the Plan. The Parties therefore agree that data collection for preparation of the Plan should be prioritized to develop more complete information on these subjects. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species. The science advisory process and analysis of existing information may reveal data gaps currently not known that are necessary for the full and accurate development of the Plan. Data needed for preparation of the Plan may not be known at this time nor identified herein. Therefore, the Parties anticipate that data collection priorities may be adjusted from time to time

during the planning process. All data collected for the preparation and implementation of the Plan will be made available to the Wildlife Agencies in hard and digital formats, as requested.

6.2.1. Information collected for the Yuba-Sutter HCP/NCCP will include but is not limited to the following subjects:

1. Natural communities in the Planning Area, identified based on ecosystem function, biological diversity, and environmental gradients.
2. Connectivity of natural communities within the Planning Area and to natural communities outside the Planning Area.
3. Current and historical distribution of listed and other sensitive species in the Planning Area, with an emphasis on potential Covered Species.
4. Amount, distribution, and quality of habitat for potential Covered Species in the Planning Area.
5. Habitat function and value of agricultural lands for potential Covered Species.
6. Existing and proposed land uses in the Planning Area, with proposed land uses identified at the parcel level where possible.
7. Land ownership and management of existing reserves and permanent open space in the Planning Area.
8. Economic and land use impacts of conservation strategies for Covered Species, including effects on the counties' abilities to meet housing and capital improvement requirements.
9. Status of conservation planning efforts in adjacent counties (e.g., in Yolo and Placer counties) and in portions of Yuba and Sutter counties outside the Planning Area (e.g., on Beale Air Force Base).

6.3. Independent Scientific Input

The Local Agencies and DFG intend to include independent scientific input and analysis to assist in the preparation of the Plan. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, will, at a minimum:

- recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the Plan;
- recommend a set of reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the Plan;

- recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the Plan; and
- identify data gaps and uncertainties so that risk factors can be evaluated.

The independent scientists may be asked to provide additional feedback on key issues during preparation of the Plan, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Local Agencies and DFG.

Design and implementation of the science advisory process must be done in a coordinated fashion and with the mutual agreement of the Local Agencies and DFG. The Local Agencies and DFG will establish funding and payment procedures. The independent science advisory process will include the development of a detailed scope of work, use of a professional facilitator, input from technical experts, and production of a report by the scientists. In addition, the Local Agencies and DFG will make the report available for use by all participants and the public during the planning process.

6.4. Public Participation

The Local Agencies will prepare the Plan in an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests including state, local, and tribal governments, landowners, conservation organizations, agricultural commissioners, agricultural organizations, and the general public. The planning process will provide for thorough public review and comment, and include a working group that will review the Plan at key stages of development. To assist in the development of the Plan, the Local Agencies will form an Advisory Committee and conduct a public outreach program.

6.4.1. Advisory Committee

The Advisory Committee will be appointed by actions of the Yuba County Board of Supervisors and the Sutter County Board of Supervisors and City Councils of the cities of Yuba City, Live Oak, and Wheatland. Its primary purpose will be to provide input from individuals and organizations with a specific interest in the lands, resources, activities, communities, businesses, and other concerns potentially affected by the Plan. The committee will function as a standing advisory body to the two Boards of Supervisors for the duration of the Plan planning process and will be structured to ensure that a well-balanced variety of views are represented. At the request of the Local Agencies, staff from the Wildlife Agencies will provide technical expertise and share information for the development and implementation of the Plan with the Advisory Committee.

6.4.2. Outreach

The Plan Participants, in concert with the Advisory Committee, will provide access to information for persons interested in the Plan, with an emphasis on obtaining input from a balanced variety of public and private interests, including state and local governments, landowners, conservation organizations, developers, agricultural organizations, and the general public. The Parties expect and intend that public outreach regarding preparation of the Plan will be conducted largely by and through the Advisory Committee meetings. In addition, the Local Agencies will provide periodic briefings to their governing boards and continue to hold public meetings to present key decisions regarding the preparation of the Plan to allow the public the opportunity to comment on and inquire about the decisions. Other outreach efforts will include fact sheets and brochures, a website, mailings, and public meetings.

6.4.3. Availability of Documents for Public Review

The Local Agencies will designate and make available for public review in a reasonable and timely manner "public review drafts" of pertinent planning documents including, but not limited to, plans, memoranda of understanding, maps, conservation guidelines, and species coverage lists. Such documents will be made available by the Local Agencies at least ten working days prior to any public hearing addressing these documents. In addition, the Local Agencies will make available all reports and formal memoranda prepared by the Advisory Committee and independent scientists. This obligation will not apply to all documents drafted during preparation of the Plan. However, the Local Agencies will periodically designate various pertinent documents drafted during preparation of the Plan as "public review drafts", and will make these documents available to the public. The Parties agree that the Yuba-Sutter NCCP/HCP website (www.yubasutterhcp.org) will be one of the principal means of making documents available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

6.4.4. Public Hearings

Public hearings regarding development of the Plan will be planned and conducted with hearings otherwise required by law, and in a manner that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

6.4.5. Public Review and Comment Period Prior to Adoption

The Plan Participants will make the proposed draft Plan and Implementing Agreement available for public review and comment at least 60 days before adoption. The Local Agencies expect to fulfill this obligation by distributing the draft Plan and Implementing Agreement with the draft environmental impact report prepared for the Plan pursuant to CEQA

and/or the draft environmental impact statement prepared for the Plan pursuant to NEPA.

6.5. Covered Activities

Covered Activities under the Plan are those activities that may result in take of Covered Species and impacts to natural communities that will be identified and addressed in the Plan. Covered Activities under the Plan may also include those land uses over which the Local Agencies have land use authority, and adaptive habitat management and monitoring activities in the Planning Area.

The Parties intend that the Plan will allow Covered Activities in the Planning Area to be carried out in compliance with NCCPA, CESA and FESA.

6.6. Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the Plan, certain projects and activities may be proposed within the Planning Area. The Parties agree to the following interim project process to: (1) ensure that development, construction, and other projects or activities approved or initiated in the Planning Area before completion of the Plan are consistent with the preliminary conservation objectives (Section 5) and do not compromise successful completion and implementation of the Plan; (2) facilitate CEQA, CESA, and FESA compliance for interim projects that require it; and (3) ensure that processing of interim projects is not unduly delayed during preparation of the Plan.

6.6.1. Reportable Interim Projects

The Local Agencies will notify the Wildlife Agencies pursuant to section 6.6.2 about proposed development, construction, subdivisions, rezones or other projects or activities requiring discretionary approvals from the Local Agencies that have the potential to adversely impact proposed Covered Species and natural communities ("Reportable Interim Project") within the Planning Area.

6.6.2. Notification Process

The Local Agency proposing to undertake or approve a Reportable Interim Project will notify the Wildlife Agencies of the project prior to the time, or as soon as possible after, the project application is deemed complete. The Local Agency will notify the particular individuals designated by the Wildlife Agencies to be notified of Reportable Interim Projects, and will provide these designated individuals with (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available to the Local Agency; and (3) any other biological information available to the Local Agency about the project area.

6.6.3. Wildlife Agency Review

The Wildlife Agencies will review Reportable Interim Projects in a timely manner, and will use reasonable efforts to provide any comments on the projects to the referring Local Agency within the legally prescribed comment periods. The Wildlife Agencies may recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives. Any take of listed or candidate species arising out of a Reportable Interim Project must be authorized pursuant to applicable federal and/or state law. Wildlife Agency comments will be responded to through the planning and CEQA process.

6.6.4. Coordinating Interim Process with Plan Preparation

Representatives of the Parties will meet as needed to discuss Reportable Interim Projects and to coordinate with development of the Plan. Independent scientific input will be considered by the Parties during interim project review.

6.7. Protection of Habitat Land During Planning Process

6.7.1. Conservation Lands Acquired/Protected

The Parties may elect to preserve, enhance or restore, either by acquisition or other means (*e.g.*, conservation easements; designated setbacks), lands in the Planning Area that contain native species of wildlife or natural communities prior to approval of the Plan. The Local Agencies will consult with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to credit such lands toward the land acquisition or habitat protection requirements of the Plan as appropriate, provided the lands are permanently conserved and managed and contribute to the Plan's conservation strategy.

6.7.2. Mitigation Lands

Lands, or portions of lands, acquired or otherwise protected solely to mitigate the impacts of specific projects, actions, or activities approved prior to Plan approval will only be considered as mitigation for those projects, actions or activities. Such lands will be considered during the Plan analysis, but will not count toward future mitigation obligations of the Plan.

6.8. Implementing Agreement

The NCCPA requires that any NCCP approved by DFG include an Implementing Agreement that contains provisions for:

- conditions of species coverage;
- the long-term protection of habitat reserves and/or other conservation measures;
- implementation of mitigation and conservation measures;

- terms for suspension or revocation of the take permit;
- procedures for amendment of the Plan and IA;
- implementation of monitoring and adaptive management;
- oversight of Plan effectiveness and funding; and
- periodic reporting.

While the Plan is being developed, the Parties will negotiate a draft Implementing Agreement that will satisfy the requirements of the NCCPA and FESA, and include specific provisions and procedures for the implementation, monitoring and funding of the Plan. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the Plan.

7. Commitment of Resources

7.1. Funding

The Parties agree that they will work together to bring available funding to the planning effort.

7.1.1. Local Funding

The Local Agencies recognize that, as prospective applicants for state and federal permits, they have the primary responsibility for developing a plan that meets applicable legal requirements and that as a result, the development and implementation of the Plan must be funded primarily from locally assured sources.

7.1.2. DFG Assistance with Funding and DFG Costs

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate and available, federal and state funds earmarked for natural community conservation planning. The Parties agree that the Local Agencies shall not provide reimbursement to DFG for its participation in the planning phase of the Plan as provided in Fish and Game Code, section 2810, except as provided in Section 8.7 of this Planning Agreement. DFG's commitments and obligations under this Planning Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative.

7.1.3. USFWS Assistance with Funding

The USFWS agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and state funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of

Agriculture or Transportation. The commitments of the USFWS under this Planning Agreement are subject to the requirements of the federal Anti-Deficiency Act (31 U.S.C. section 1341) and the availability of appropriated funds. The Parties acknowledge that this Planning Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency provides for such expenditures in writing.

7.2. Expertise of Wildlife Agencies

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the Local Agencies with the timely and efficient development of the Plan.

8. Miscellaneous Provisions

8.1. Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

8.2. Statutory Authority

The Parties will not construe this Planning Agreement to require any Party to act beyond, or in a manner inconsistent with, its statutory authority.

8.3. Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

8.4. Effective Date

The Effective Date of this Planning Agreement will be the date on which it is fully executed by each of the Parties (collectively or independently).

8.5. Duration

This Planning Agreement will be in effect until the Plan is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment. This Planning Agreement may be terminated pursuant to Section 8.7 below.

8.6. Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

8.7. Termination and Withdrawal

Subject to the requirement in Section 8.7.1 of the Planning Agreement, any party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This

Planning Agreement can be terminated only by written agreement of all Parties.

8.7.1. Funding

In the event that federal or State funds have been provided to assist with Plan preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to withdrawal. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal or State funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any funds that have not been spent, and for which liability has not been incurred, to the grantor prior to termination.

8.8. Indemnification

None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

SIGNATURES:

Dated: 1-17, 2012

Hal Stocker

COUNTY OF YUBA

By: Hal Stocker

Title: Chairman

APPROVED AS TO FORM
ANGIL P. MORRIS-JONES
COUNTY COUNSEL
BY: Pam Harmon

Dated: 1/17, 2012

COUNTY OF SUTTER

By: LARRY MUNGER

Title: BOARD CHAIRMAN

Dated: _____, 20__

_____

CITY OF YUBA CITY

By: _____

Title: _____

Dated: Jan 18, 2012

CITY OF LIVE OAK

By: _____

Title: Mayor City of Live Oak

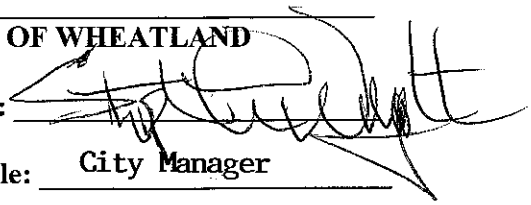
ATTEST
MELISSA DEMPSEY
CITY CLERK

BY Kathleen Caldwell
Assistant City Clerk

CITY OF LIVE OAK INCORPORATED JANUARY 28, 1947 LIVE OAK, CALIFORNIA

Dated: Janaury 24, 20 12

CITY OF WHEATLAND

By: 

Title: City Manager

Dated: September 27, 2012

CALIFORNIA DEPARTMENT OF
FISH AND GAME

By: Sandra Morey

Title: Deputy Director, Ecosystem Conservation Div.

Dated: 5/14, 2012

Susan K Moore

U.S. FISH AND WILDLIFE SERVICE

By: Susan K. Moore

Title: Field Supervisor

EXHIBIT A

PLAN AREA BOUNDARY
EXHIBIT A

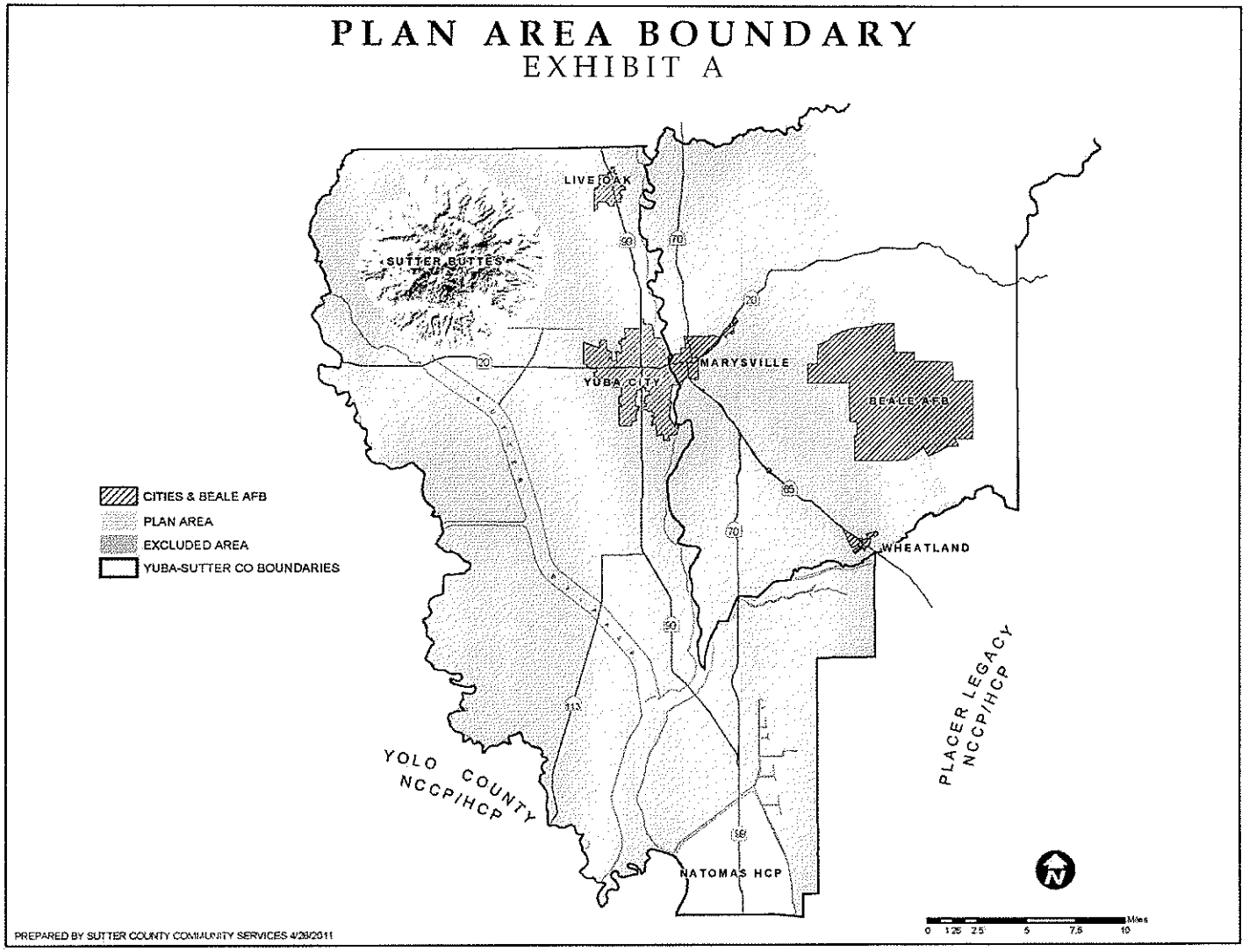


EXHIBIT B

Table B-1 Natural Communities in the Planning Area and Corresponding Land-Cover Types

Type	Definition
Natural Communities	
Annual Grassland Community	
Annual Grassland	Upland nonagricultural vegetation dominated by herbaceous plants (includes inactive agricultural fields lacking visible evidence of irrigation or tillage, and dominated by species characteristic of annual grasslands)
Vernal Pool Complex Community	
Vernal Pool Complex	Annual Grassland containing vernal pools and swales
Oak Savanna/Woodland Community	
Blue Oak Savanna/ Woodland	Continuous herbaceous layer and > 10% tree cover, primarily of blue oaks
Valley Oak Savanna/ Woodland	Continuous herbaceous layer and > 10% tree cover, primarily of valley oaks (MMU 10 acres); (riparian areas dominated by valley oak were mapped as Riparian Forest)
Live Oak Woodland	Upland vegetation with > 10% tree cover, primarily of live oak
Oak–Foothill Pine Woodland	Upland vegetation with > 10% tree cover, primarily of live oak and with foothill pine present
River-Stream System Community	
Riverine	Permanent and intermittent streams with a defined channel (MMU 0.25 acre) (rivers and stream channels dominated by wetland vegetation were mapped as Fresh Emergent Wetland or Riparian Scrub)
Lacustrine	Inland natural ponds and lakes, and artificial features such as reservoirs and stock ponds formed by damming perennial or intermittent streams
Riparian Scrub	Wetland vegetation with 25–100% cover of woody plants (trees plus shrubs) and < 25% cover of mature trees; generally associated with streams or ditches
Riparian Forest	Wetland vegetation with 25–100% shrub cover and > 25% cover of mature trees; generally associated with streams or ditches
Fresh Emergent Wetland	Wetland vegetation dominated by herbaceous plants and with < 25% cover of woody plants

Table B-1 Natural Communities in the Planning Area and Corresponding Land-Cover Types

Type	Definition
Agricultural Communities	
Rice Cropland Community	
Rice	Agricultural land planted in rice, and flooded and fallow rice fields; these fields are associated with berms, ditches, canals, and water control structures
Non-Flooded Herbaceous Cropland Community	
Row Crop	Agricultural fields of herbaceous plants (generally monotypic), and fallow agricultural fields with visible evidence of tillage
Alfalfa	Agricultural land planted in alfalfa (an irrigated, perennial, forage crop harvested by periodic mowing)
Irrigated Pasture	Irrigated land managed as pasture (regularly grazed or mowed), excluding alfalfa; intensity of management variable (e.g., may or may not be seeded in forage crops)
Woody Cropland Community	
Orchard	Agricultural land planted in tree fruit and nut crops (e.g., walnuts)
Vineyard	Agricultural land planted in rows of vines; includes kiwi and other vine crops
Other Woody Vegetation	Upland vegetation dominated by planted, woody, nonnative species (e.g., eucalyptus), excluding fruit and nut crops
Developed	
Barren and Disturbed Land	Natural features such as rock outcrops, and historically and recently disturbed nonagricultural sites including landfills, graded nonagricultural lands, gravel mines, and mine tailings
Rural Residential	Developed lands with < 1 unit (or structure) per acre; usually contains infrastructure and landscaping
Urban Parks and Golf Course	Landscaped areas, generally associated with infrastructure, structures, and partially or fully surrounded by Urban-Suburban land cover
Urban Riparian Forest	Wetland vegetation with 25–100% shrub cover and > 25% cover of mature trees, and at least half its perimeter surrounded by developed landcover; generally associated with streams or ditches
Urban-Suburban	Developed lands with > 1 unit (or structure) per acre and generally containing infrastructure and landscaping (or land dominated by impermeable surfaces [e.g., parking lots])
Urban Wetland	Wetland with < 25% cover of woody plants and at least half its perimeter surrounded by developed landcover

Table B-2 Covered Species

Common Name and *Scientific Name*	Species Status[a] Federal/State/CNPS	California Distribution	Habitats
Vernal pool fairy shrimp *Branchinecta lynchi*	T/–/–	Central Valley, central and south Coast Ranges from Tehama to Santa Barbara Counties. Isolated populations in Riverside County	Common in vernal pools; also found in sandstone rock outcrop pools
Vernal pool tadpole shrimp *Lepidurus packardi*	E/–/–	Shasta County south to Merced County	Vernal pools and ephemeral stock ponds
Valley elderberry longhorn beetle *Desmocerus californicus dimorphus*	T/–/–	Stream-side habitats below 3,000 feet throughout the Central Valley	Riparian and oak savanna habitats with elderberry shrubs; elderberry is the host plant
Giant garter snake *Thamnophis gigas*	T/T/–	Central Valley from Fresno north to the Gridley/Sutter Buttes area; has been extirpated from areas south of Fresno	Sloughs, canals, and other small waterways with a prey base of small fish and amphibians; requires grassy banks and emergent vegetation for basking and areas of high ground protected from flooding during winter
Swainson's hawk *Buteo swainsoni*	–/T/–	Lower Sacramento and San Joaquin Valleys, Klamath Basin, and Butte Valley. Highest nesting densities occur near Davis and Woodland, Yolo County	Nests in oaks or cottonwoods in or near riparian habitats. Forages in grasslands, irrigated pastures, and grainfields
Western yellow-billed cuckoo *Coccyzus americanus occidentalis*	–/E/–	Nests along the upper Sacramento, lower Feather, south fork Kern, Amargosa, Santa Ana, and Colorado Rivers	Wide, dense riparian forests with a thick understory of willows for nesting; sites with dominant cottonwood overstory are preferred for foraging; may avoid valley oak riparian habitats where scrub jays are abundant

Table B-2 Covered Species

Common Name and *Scientific Name*	Species Status[a] Federal/State/CNPS	California Distribution	Habitats
Bank swallow *Riparia riparia*	–/T/–	Occurs along the Sacramento River from Tehama to Sacramento Counties; along the Feather and lower American Rivers; in the Owens Valley; and in the plains east of the Cascade Range in Modoc, Lassen, and northern Siskiyou Counties. Small populations near the coast from San Francisco to Monterey Counties	Nests in bluffs or banks, usually adjacent to water, where soil consists of sand or sandy loam
Black rail *Laterallus jamaicensis*	–/T, FP/–	Permanent resident in the San Francisco Bay and east through the Delta into Sacramento and San Joaquin Counties; small populations in Marin, Santa Cruz, San Luis Obispo, Orange, Riverside, and Imperial Counties	Tidal salt marshes associated with heavy growth of pickleweed; also occurs in brackish marshes or freshwater marshes at low elevations
Greater sandhill crane *Grus canadensis tabida*	–/T/–	Breeds on the plains east of the Cascade Range and south to Sierra County; winters in the Central Valley, southern Imperial County, Lake Havasu National Wildlife Refuge, and the Colorado River Indian Reserve	Summers in open terrain near shallow lakes or freshwater marshes; winters in plains and valleys near bodies of fresh water

Table B-2 Covered Species

Common Name and *Scientific Name*	Species Status[a] Federal/State/CNPS	California Distribution	Habitats
Bald eagle *Haliaeetus leucocephalus*	D/E, FP/–	Nests in Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Butte, Tehama, Lake, and Mendocino Counties and in the Lake Tahoe Basin. Reintroduced to central coast. Winter range includes the rest of California, except the southeastern deserts, very high altitudes in the Sierra Nevada, and east of the Sierra Nevada south of Mono County	In western North America, nests and roosts in coniferous forests within 1 mile of lake, reservoir, stream, or the ocean
Foothill yellow-legged frog *Rana boylii*	–/SSC/–	Klamath, Cascade, North Coast, South Coast, Transverse, and Sierra Nevada Ranges to approximately 6,000 feet	Creeks or rivers in woodlands or forests with rock and gravel substrate and low overhanging vegetation along the edge. Usually found near riffles with rocks and sunny banks nearby
Western spadefoot *Scaphiopus hammondii*	–/SSC/–	Sierra Nevada foothills, Central Valley, Coast Ranges, coastal counties in southern California	Shallow streams with riffles; seasonal wetlands such as vernal pools in annual grasslands and oak woodlands
Northwestern pond turtle *Clemmys marmorata marmorata*	–/SSC/–	Oregon border of Del Norte and Siskiyou Counties south along the coast to San Francisco Bay, inland through the Sacramento Valley, and on the western slope of Sierra Nevada	Ponds, marshes, rivers, streams, and irrigation canals with muddy or rocky bottoms and with watercress, cattails, water lilies, or other aquatic vegetation in woodlands, grasslands, and open forests
Western burrowing owl *Athene cunicularia hypugea*	–/SSC/–	Lowlands throughout California, including the Central Valley, northeastern plateau, southeastern deserts, and coastal areas. Rare along south coast	Level, open, dry, heavily grazed or low-stature grassland or desert vegetation with available burrows

Table B-2 Covered Species

Common Name and *Scientific Name*	Species Status[a] Federal/State/CNPS	California Distribution	Habitats
Tricolored blackbird *Agelaius tricolor*	–/SSC/–	Permanent resident in the Central Valley from Butte to Kern Counties. Breeds at scattered coastal locations from Marin to San Diego Counties and at scattered locations in Lake, Sonoma, and Solano Counties. Rare nester in Siskiyou, Modoc, and Lassen Counties	Nests in dense colonies in emergent marsh vegetation, such as tules and cattails, or upland sites with blackberries, nettles, thistles, and grainfields. Probably requires water at or near the nesting colony
Pacific Townsend's big-eared bat *Corynorhinus townsendii townsendii*	–/SSC/–	Distributed state-wide excluding sub-alpine and alpine regions; most abundant in mesic habitats.	Roosts in caves, tunnels, mines, and dark attics of abandoned buildings. Very sensitive to disturbances; may abandon a roost after one onsite visit
Midvalley fairy shrimp *Brachinecta mesovallensis*	–/–/–	Central Valley from Sacramento to Fresno Counties	Vernal pools
California fairy shrimp *Linderiella occidentalis*	–/–/–	Shasta County south to Fresno County and across the valley to the Coast and Transverse Ranges from Willits in Mendocino County south to near Sulfur Mountain in Ventura County	Large fairly clear vernal pools and lakes
Hartweg's golden sunburst *Pseudobahia bahiifolia*	E/E/1B.1	Scattered distribution in Central Valley from Yuba to Fresno Counties	Annual grassland, 50-500 feet
Bogg's Lake hedge-hyssop *Gratiola heterosepala*	–/E/1B.2	Scattered occurrences concentrated in the eastern Sacramento Valley and the Modoc Plateau	Vernal pools and shallow lake margins, < 4000 feet

Table B-2 Covered Species

Common Name and *Scientific Name*	Species Status[a] Federal/State/CNPS	California Distribution	Habitats
Dwarf downingia *Downingia pusilla*	–/–/2.2	Inner Coast Ranges, Southern Sacramento Valley and northern and central San Joaquin Valley	Vernal pools and swales, and wetland margins, < 500 feet
Ahart's dwarf rush *Juncus leiospermus* var. *ahartii*	–/–/1B.2	Eastern Sacramento Valley; northeastern San Joaquin Valley; Butte, Calaveras, Placer, Sacramento, and Yuba Counties	Vernal pool margins, 100–330 feet