

Alameda County Resource  
Conservation District

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Voluntary Local Program

October 1, 2012

# Alameda County Voluntary Local Program

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# Alameda County Voluntary Local Program

## 1. Introduction

This Voluntary Local Program (VLP or Program) is entered into between the Alameda County Resource Conservation District (ACRCD), working as the Program Administrator, and the Department of Fish and Game (Department) as authorized by the Department's Voluntary Local Program regulations (Cal. Code Regs., tit. 14, § 786), which implements Article 3.5. Incidental Take Associated with Routine and Ongoing Activities section 2086 *et. seq.* of the California Endangered Species Act (CESA).

This is a voluntary program that recognizes the unique and important role that private landowners in California play in wildlife and habitat enhancement. The purpose of this Program "is to encourage farmers and ranchers engaged in agricultural activities to establish locally designed programs to voluntarily enhance and maintain habitat for endangered and threatened species." (Cal. Code Regs., tit. 14, § 786.0 (a).). These activities are to be carried out on public and private lands while providing take authorization as a result of conservation efforts to increase numbers of, and habitat for, special status species on their lands.

Under the VLP, take of State endangered, threatened, or candidate<sup>1</sup> species covered by the VLP and incidental to routine and ongoing agricultural activities is not prohibited by Division 3, Chapter 1.5 of the Fish and Game Code, as long as the take arises from routine and ongoing agricultural activities incorporating management practices covered under the Program. In no case will authorized take include take of fish species that are a member of the class Osteichthyes. The ACRCD and the Department recognize that these management practices when successful will increase the number of individuals of candidate, threatened and endangered species in proximity to farms and ranches.

This Program is intended to protect farmers and ranchers from legal liability for take that may result from their voluntary participation in this VLP. This Program specifically addresses liability for take under the California Endangered Species Act and does not necessarily satisfy any other legal requirements. For example, entities proposing projects or practices that are subject to Fish and Game Code Section 1602 must still notify the Department in accordance with Section 1600 of the California Fish and Game Code; the components of an agreement entered into pursuant to the VLP may or may not coincide with any conditions of any required Lake or Streambed Alteration Agreement.

The VLP will assist landowners who wish to restore and enhance the condition of the natural resources on their property by providing technical assistance to these landowners. This Program will help achieve important water quality and habitat conservation goals in Alameda County. Many of these projects will focus on erosion control and habitat restoration. The ACRCD will review potential projects submitted for

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<sup>1</sup> The species status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species. However, if the Commission does not opt to designate a candidate as endangered or threatened, take of that species is not authorized by this program. Take coverage under this program would terminate at the time candidacy ends.

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the Program and determine whether or not these projects are appropriate to be implemented under the VLP.

The ACRCD, working with the Natural Resources Conservation Service (NRCS), will determine on an annual basis if conservation projects are the size, scale, and scope to qualify for coverage under the VLP. The NRCS will provide technical assistance on projects covered under the VLP that are funded by the Farm Bill through oversight, planning, installation, and monitoring of the projects. NRCS may also be involved in ACRCD programs that do not utilize the Farm Bill programs as a contractor through the ACRCD. Together, the ACRCD and the NRCS have the expertise and funding to oversee the implementation of the restoration practices and have state and federal mandates to protect our natural resources by working with private landowners.

This Program was developed with input and participation by local landowners through community meetings and representation from the following agencies/organizations:

- Alameda County Ag Commissioner
- California Cattleman's Association
- California Department of Food and Agriculture
- California Department of Fish and Game
- California Farm Bureau Federation
- California Rangeland Conservation Coalition (see below)
- Contra Costa Water District
- East Bay Municipal Utilities District
- East Bay Regional Park District
- Mule Deer Foundation
- Natural Resources Conservation Service
- San Francisco Public Utilities Commission
- University of California Davis Cooperative Extension

A representative from the California Rangeland Conservation Coalition (CRCC) attended community meetings and provided input to the development of this Program. The CRCC is a coalition of ranchers, environmentalists, researchers and agencies that are working together to conserve rangeland encircling the Central Valley. While CRCC representatives did provide input to this Program, it is not necessarily endorsed by all members of the CRCC.

Under the VLP, the Program Administrator and a participating rancher/farmer (Cooperator) will sign a Cooperative Agreement, in which the Cooperator agrees to voluntarily carry out habitat improvements described in the Program and their Cooperative Agreement and to abide by the terms and conditions set forth in the VLP and the take authorizations described below. Through participation in this VLP, as evidenced by a Cooperative Agreement, any taking of the Covered Species (as defined herein) incidental to routine and ongoing agricultural activities is not prohibited for Program participants if the take occurs while the management practices required by this VLP and the Cooperative Agreement are being followed.

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### 2. Area Description

#### a. Geographic Boundaries

The VLP would cover the entire county but primarily serves persons conducting routine and on-going agricultural activities in the eastern, rural portion of Alameda County and within properties adjoining or encompassing creeks in rural-urban interface areas (Figure 1). Alameda County encompasses an area of 469,400 acres situated in the greater San Francisco East Bay region. The majority of the county's population lives in the highly urbanized area along the easternmost portion of San Francisco Bay. This western portion of Alameda County includes the cities of Alameda, Berkeley, Fremont, Hayward, Oakland, and San Leandro. The more rural, eastern portion supports ranching, with an urban/suburban center located in the Tri-Valley region of Dublin, Livermore, and Pleasanton (Figure 2). The county is approximately 50% agricultural land and 50% urban lands.

Agricultural lands dominate the eastern portion of the county; most are within the Alameda Creek Watershed (Figure 2). Grazing on 200,000 acres of rangeland is the predominant agricultural land use followed by viticulture, which covers approximately 4,000 acres. Other significant land uses include field and vegetable crops and nursery products. Wind farms are situated in the vicinity of Altamont Pass mostly on privately owned rangelands near the eastern edge of Alameda County. These rangelands are currently grazed and play an important role in managing most of the wind farms for fuel loads and maintaining valuable grassland habitat.

#### b. Excluded Areas and Habitats

The Program would not include projects in any of the following habitats or areas:

- Salt marsh and estuary projects in the Alameda County's bayfront area. This excluded bayfront area includes all land and waterways under the jurisdiction of the Bay Conservation and Development Commission.
- Serpentine soils or alkali-sink habitat
- Known pallid manzanita occurrences

Consequently, projects in the habitats and specific locations identified above would be excluded from the Program. Persons working with the ACRCDC on proposed projects in these particular areas and habitats would need to seek individual permits on a project-by-project basis.

#### c. Alameda County Watersheds

The major watersheds are Alameda Creek, San Leandro Creek, and San Lorenzo Creek watersheds. Some smaller watersheds in Alameda County are Arroyo Viejo; East Creek Watershed; Estudillo Canal; Ettie Pump Station; Laguna Creek; Lion Creek; Mowry Slough; San Antonio Creek (or Oakland Estuary); Sausal Creek; Strawberry Creek; and Temescal Creek watersheds. These smaller watersheds are predominately located in urbanized areas.

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Associated waterways and land uses for three major watersheds within Alameda County are described below and are shown in Figure 1. The majority of projects under the VLP would occur within these three watersheds.

### Alameda Creek (Alameda County portion)

The watershed spans 140,000 acres, from Contra Costa County, south past Mt. Hamilton and far into Santa Clara County with the majority located in Alameda County. It includes cities such as San Ramon, Dublin, Pleasanton, Livermore, Union City, Fremont, Newark, and Sunol. The land use in the area has been primarily grazing for generations.

The following are tributaries of Alameda Creek with smaller creeks in parentheses: Stonybrook Creek, Sinbad Creek, Arroyo de la Laguna, (Valecitos Channel, Arroyo Del Valle, Dry Creek, Arroyo Mocho, Dublin Creek, San Ramon Creek, Alamo Creek, Tassajara Creek, Cottonwood Creek, Collier Canyon Creek, Cayetano Creek, Altamont Creek, and Arroyo Seco), San Antonio Creek (Indian Creek), and Hetch Hetchy Aqueduct. Del Valle Reservoir, San Antonio Reservoir, and Calaveras Reservoir, are also part of the Alameda Creek Watershed. Arroyo Hondo, Calaveras Creek, Isabel Creek, and Smith Creek are located in Santa Clara County and stem from the Calaveras Reservoir. This large network of creeks eventually drains to San Francisco Bay.

### San Leandro Creek

San Leandro Creek is located on the eastern side of the Berkeley-San Leandro Hills and western slopes of Rocky Ridge near Moraga, in Contra Costa County. The entire watershed encompasses 44 square miles including areas drained by Moraga, Indian, Redwood, Buckhorn, and Grass Valley creeks. Chabot Reservoir was constructed in 1874-1875 and Upper San Leandro Reservoir in 1926. Below Chabot Reservoir, San Leandro Creek passes through the highly urbanized city of San Leandro, entering Central San Francisco Bay at the southern end of the Oakland Estuary.

### San Lorenzo Creek

Located in western Alameda County, the San Lorenzo Creek Watershed encompasses about 48 square miles. San Lorenzo Creek flows generally west, entering central San Francisco Bay near Roberts Landing, west of the city of San Lorenzo. Eight major sub-watersheds drain into San Lorenzo Creek: Cull, Crow, Eden Canyon, Hollis Canyon, Norris, Palomares, Castro Valley, and Chabot creeks.

The lower and middle watershed areas are highly urbanized, flowing through Castro Valley, Hayward, and San Lorenzo. A 4.6-mile concrete channel runs from the mouth upstream. The upper watershed, including areas tributary to Crow and Palomares creeks, is less urbanized. The Cull Creek and Don Castro dams constructed in the early 1960s created complete barriers to anadromous fish migration into large portions of the upper watershed.

#### *d. Number of Acres Covered*

The Program will cover approximately 200,000 acres of agricultural lands in Alameda County. It is estimated that over the life of the Program, approximately 50,000 acres of annual grassland, wetland, and riparian habitats will be maintained and enhanced as a result of the implementation of the management practices.

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### e. *Habitat Enhancement Opportunities and Constraints*

#### Enhancement Opportunities

Habitat loss, fragmentation, and introduction of invasive species present the largest threats to many native species throughout Alameda County<sup>2</sup>. Private ranches hold the majority of the County's remaining habitat along with public landowners such as the East Bay Regional Park District and the San Francisco Public Utilities Commission. This remaining valuable habitat for species such as the American badger, western burrowing owl, golden eagle and other raptors, migratory and grassland birds as well as reptiles and amphibians such as the Alameda whipsnake and California tiger salamander occurs mostly on ranches and grazed public lands. Constructed stock ponds are important breeding habitat for aquatic species such as the California red-legged frog, California tiger salamander and western pond turtle, as natural habitats such as slow-moving creeks and vernal pools continue to be altered or lost. In Alameda County, these species mostly occur in grazed grassland habitat and reproduce in the associated stock ponds. Appropriate grazing practices are an essential tool to management of these stock ponds that the California red-legged frog and California tiger salamander utilize for reproduction.

The recovery of these species and enhancement of these habitats on private lands requires voluntary participation in conservation projects by private landowners<sup>2</sup>. The VLP will streamline the regulatory process and encourage implementation of these enhancement and restoration projects by providing CESA take authorization.

Management practices covered by the proposed Program would result in the enhancement and/or restoration of suitable aquatic non-fish habitat, riparian habitat, and upland habitat for listed plant and animal species, resulting in net environmental benefits to listed animal species as well as species of special concern and non-listed native species (see Table 1 for a full listing of species likely to benefit). The proposed management practices are designed to control erosion, reduce sedimentation, restore native vegetation, restore pond habitat, and improve the quality of riparian habitat. All of these actions would benefit listed species and their habitat in the long-term. The improvements to riparian habitats and water quality would benefit all listed and non-listed species that utilize riparian corridors for breeding, foraging, or dispersal. State listed species covered by this Program may benefit by better livestock distribution through spring development and other off stream water developments. Listed plant and animal species will both benefit from the removal of non-native or invasive vegetation in aquatic and upland habitat. Removal of non-native vegetation will result in the decreased spread of these species and less competition between non-native invasive species and native plants. Habitat conditions will improve over the long-term, resulting in improved breeding, foraging, and dispersal habitat. The presence of additional native vegetation may increase the diversity and abundance of other wildlife species (invertebrate and vertebrate species), thus improving prey availability for native species.

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<sup>2</sup> McCamman, J. *State of California Natural Resources Agency Department of Fish and Game REPORT TO THE FISH AND GAME COMMISSION A STATUS REVIEW OF THE CALIFORNIA TIGER SALAMANDER (Ambystoma californiense) January 11, 2010*

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### Constraints

Several hurdles stand in the way of conservation projects for these species. For example, permitting can be a lengthy and confusing process for landowners. Some landowners also fear they will face more regulatory restrictions if they voluntarily enhance habitat for listed species.

### *f. Covered Species*

This Program provides take authorization for Alameda whipsnake<sup>3</sup> (*Masticophis lateralis euryxanthus*) and California tiger salamander<sup>4</sup> (*Ambystoma californiense*), both species are designated as threatened pursuant to the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), hereafter referred to as the “Covered Species.”

### *g. Federal and State Special Status Species Likely to Benefit*

Table 1 includes species that are likely to benefit from the habitat improvements associated with the implementation of the management practices. No take coverage is afforded as part of participation in this Program for species other than the Covered Species.

**Table 1. Special Status Species That May Benefit from Project Activities**

Common Name	Scientific Name	VLP Covered Species	Federal Status <sup>a</sup>	State Status <sup>b</sup>	CNPS Status <sup>c</sup>
<b>Plants</b>					
Congdon's tarplant	<i>Centromadia parryi</i> <i>spp. congdonii</i>	No			1B
<b>Invertebrates</b>					
Calippe silverspot butterfly	<i>Speyeria callippe</i> <i>callippe</i>	No	E		
<b>Amphibians and Reptiles</b>					
Alameda whipsnake	<i>Masticophis lateralis</i> <i>euryxanthus</i>	Yes	T	T	
California horned lizard	<i>Phrynosoma coronatum</i> ( <i>frontale</i> )	No		CSC	
California red-legged frog	<i>Rana aurora</i> <i>draytonii</i>	No	T	CSC	
California tiger salamander	<i>Ambystoma californiense</i>	Yes	T	T	
San Joaquin	<i>Masticophis</i>	No		CSC	

<sup>3</sup> See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(D).

<sup>4</sup> See *Id.*, subd. (b)(3)(G).

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whipsnake	<i>flagellum ruddocki</i>				
Southwestern pond turtle	<i>Clemmys marmorata pallida</i>	No		CSC	
Western pond turtle	<i>Clemmys marmorata</i>	No		CSC	
Western spadefoot	<i>Spea hammondi</i>	No		CSC	
<b>Birds</b>					
Burrowing owl	<i>Athene cunicularia</i>	No		CSC	
California horned lark	<i>Eremophila alpestris actia</i>	No		CSC	
Golden eagle	<i>Aquila chrysaetos</i>	No		FPS	
Loggerhead shrike	<i>Lanius ludovicianus</i>	No		CSC	
Northern harrier	<i>Circus cyaneus</i>	No		CSC	
Prairie falcon	<i>Falco mexicanus</i>	No		CSC	
Swainson's hawk	<i>Buteo swainsoni</i>	No		T	
Tri-colored blackbird	<i>Agelaius tricolor</i>	No		CSC	
White-tailed kite	<i>Elanus leucurus</i>	No		FPS	
<b>Mammals</b>					
American badger	<i>Taxidea taxus</i>	No		CSC	
Pallid bat	<i>Antrozous pallidus</i>	No		CSC	
Greater western mastiff bat	<i>Eumops perotis californicus</i>	No		CSC	
Hoary bat	<i>Lasiurus cinereus</i>	No			
San Francisco dusky footed woodrat	<i>Neotoma fuscipes annectens</i>	No		CSC	
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	No	E	T	
Silver-haired bat	<i>Lasionycteris noctivagans</i>	No		CSC	

\* based on CNDDDB records for the Program area and adjacent areas with similar habitat

<sup>a</sup> E = federally listed as endangered, T = federally listed as threatened

<sup>b</sup> E = state listed as endangered, T = state listed as threatened, CSC = California special concern species, FPS = state fully protected species

<sup>c</sup> 1B = rare, threatened, or endangered in California and elsewhere

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*h. Reasonably attainable interim targets and long range goals for increasing the quantity and quality of habitat through the Program area*

Annual interim targets for the Program will be identified as part of the annual reporting process. Long range voluntary restoration goals that the VLP will support include:

1. Continued support for the sustainability of grazing and agricultural operations that contribute to maintaining valuable open space lands
2. Increased participation in voluntary restoration projects
3. Increased enrollment in Farm Bill programs and use of available funding towards wildlife friendly restoration projects. Increased enrollment has a secondary effect of increasing the amount of Farm Bill funding that is available in Alameda County.
4. Increased on-the-ground conservation
5. Increased outreach for opportunities for voluntary restoration. In the past outreach of voluntary restoration programs to landowners has been limited due to the constraints on permitting habitat restoration projects.

### **3. Designated Representative**

The Alameda County Resource Conservation District will be the designated representative and Voluntary Local Program Administrator.

*The Alameda County Resource Conservation District (ACRCD)*

The mission of the ACRCD is to provide leadership in Alameda County and the region about natural resources conservation and agricultural issues through education, outreach, resource services, partnerships, and funding. The fundamental principles of natural resources conservation, the working landscape, and agricultural heritage guide the ACRCD's programs and activities. Since 1972, ACRCD has administered government and private foundation grants for watershed-wide planning, erosion control, and restoration projects. The ACRCD continues to bring together state, federal, and local agencies with private landowners to conserve soil and water resources, with projects focusing on the following topics:

- Control of soil erosion
- Riparian habitat restoration
- Protection and improvement of water quality
- Education and outreach
- Conservation of rangeland and cropland
- Active support of the district's agricultural economy and heritage

The California Public Resources Code (PRC) specifically empowers Resource Conservation Districts (RCD) to manage soil conservation, water conservation, erosion control, erosion prevention, or erosion stabilization projects (PRC § 9415). The code also allows an RCD, with the consent of affected private property owners, to make

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improvements or conduct operations that will further water conservation and the prevention and control of soil erosion (PRC § 9415).

### *Contact*

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Voluntary Local Program Administrator  
3585 Greenville Road, Suite #2  
Livermore, CA 94550  
(925) 371-0154

#### **4. Management Practices and Routine and Ongoing Agriculture Activities**

##### *a. Management Practices*

Pursuant to California Fish and Game Code section 2086 and California Code of Regulations section 786.1(a), a VLP must include measures to avoid and/or minimize impacts to candidate, threatened, and endangered species. These measures take the form of "management practices" that provide standard measures for avoidance of take of the Covered Species, but do not cover all possible measures that may be used. As set forth in section 786.1(a), "management practices" are practical, achievable agricultural practices that, to the maximum extent practicable, avoid and minimize the take of candidate, threatened or endangered species while encouraging enhancement of wildlife habitat without compromising the economics of agricultural operations when undertaken by a farmer or rancher. Examples of management practices include, but are not limited to, establishing brood ponds, installing artificial nesting structures, reducing harvester speed, integrated pest management techniques, planting fallow fields, delaying fall tillage, flooding harvested fields, and establishing wildlife refugia at margins of fields.

The management practices described herein were developed using the NRCS conservation practices specific standards and specifications in consultation with the US Fish and Wildlife Service (USFWS), the Department, ACRC and NRCS biologists, and species experts using the best scientific information available. Each practice will be implemented to meet the minimum standards and specifications for the NRCS and will be tailored at the local level for project specific requirements based on the natural resource need at each site. More specifically, the conservation practices that were selected from this program were developed from The NRCS California Handbook of Conservation Practices which establishes standards for the design of measures commonly used to treat natural resource problems. These practice standards are based on research, conservation field trials, and accumulated knowledge and experience of agency employees. The practice standard represents the minimum details or factors that must be considered in the design of a site-specific practice or combination of practices. NRCS Standards and/or Specifications for each conservation practice are available on the web in NRCS' electronic Field Office Technical Guide, Section IV ([http://efotg.sc.egov.usda.gov/efotg\\_locator.aspx](http://efotg.sc.egov.usda.gov/efotg_locator.aspx)).

The list below summarizes the Management Practices that will be included and covered under the VLP. Appendix A describes these practices more fully so that take of candidate, threatened and endangered species can be avoided or minimized. Incorporating these management practices into routine and on-going agricultural activities will provide the opportunity to control erosion and sedimentation, stabilize eroding stream channels, improve water quality, maintain and ultimately enhance annual

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grassland, rangeland, scrub habitat, oak woodland, riparian areas, aquatic non-fish breeding and associated upland habitats.

1. Pond Restoration Activities
  - a. Control predator species
  - b. Establish native vegetation
  - c. Structural components repair
  - d. Obstruction removal
  - e. Pond desiltation
2. Stream Restoration Activities
  - a. Native riparian habitat restoration
  - b. In-stream channel stabilization
  - c. Obstruction removal
3. Livestock and Wildlife Water Distribution
  - a. Spring development
  - b. Off stream water facilities
  - c. Pipeline installation
4. Erosion Control
  - a. Access road improvements
  - b. Vegetation establishment
  - c. Water control structures

### *b. Routine and Ongoing Agricultural Activities*

Enrollment in the Program authorizes take of the Covered Species incidental to routine and ongoing agricultural activities provided that the take occurs while implementing selected management practices and in accordance with the approved Cooperative Agreement.

The Department defines routine and ongoing agricultural activities practices in section 786.1(b) of the California Code of Regulations as:

"Routine and ongoing agricultural activities" shall include the cultivation and tillage of the soil; crop rotation; fallowing; dairying; the production, cultivation, growing, replanting and harvesting of any agricultural commodity including viticulture, vermiculture, apiculture, or horticulture; the raising of livestock, fur bearing animals, fish, or poultry; any practices performed by a farmer on a farm as incident to or in conjunction with those farming operations, including the preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market, including any such activities recognized as compatible uses pursuant to the Williamson Act (Government Code sections 51200 et seq.) provided such activities are consistent with the economics of agricultural operations; and other similar agricultural activities. Routine and ongoing agricultural activities do not include conversion of agricultural land to nonagricultural use, timber harvesting activities governed by the State Board of

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Forestry or activities that intentionally reduce habitat and wildlife to facilitate conversion to non- agricultural use.

Appendix A includes a detailed list of routine and ongoing activities associated with ranching and agriculture that are provided take coverage under the VLP. This list of routine activities is not exhaustive and serves merely to provide guidance to Cooperators as to the type of activities that are anticipated to be covered under the VLP. Activities that are not listed in Appendix A will be reviewed by the Program Administrator and the Department to determine if the activities are appropriate for coverage under the VLP. For the purposes of this Program the conversion of rangeland to more intensive agricultural uses, such as permanent crops, is not considered a routine and ongoing agricultural activity. Ordinary pasture maintenance and renovation and dry land farming operations consistent with rangeland management are considered routine and ongoing agricultural activities. Routine activities may vary from one ranching operation to another, and vary with changing environmental and economic conditions.

### **5. Environmental Analysis**

CEQA will be conducted on the VLP with the ACRCDD acting as the lead agency and the Department as a responsible agency.

### **6. Administrative Plan**

#### *a. Process for Persons to enter into a Cooperative Agreement*

Persons within the VLP area (see Figure 1) who are working cooperatively with the ACRCDD and/or the NRCS and who are interested in voluntarily implementing conservation projects will enter into a Cooperative Agreement with the ACRCDD that will outline the management activities that will be covered.

The specific management practices that a Cooperator is covered for under the VLP will be included in the Cooperative Agreement by ACRCDD. The Cooperative Agreement will be submitted to the Department prior to the Cooperator signing the Agreement. The Department will review the Cooperative Agreement and provide any applicable edits or approve the Cooperative Agreement within 30 days of receiving it.

#### *b. Lands Eligible for Enrollment*

All public and private lands are eligible for enrollment in the VLP.

#### *c. Persons Eligible for Participation in the VLP*

- Private landowners
  - Lessees of public or private lands who provide proof of lease or other control of land required. Take authorization can only be applied to activities implemented by the lessee for the duration of the lease AND only on lands that are covered under the lease.

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- o Any Cooperator that is participating in restoration work that falls within the definition of “routing and ongoing agricultural activities” that is defined in Title 14 can enroll in the VLP

### *d. Record Keeping Process to ensure participant confidentiality:*

- i. ACRCDC will work with the person who is voluntarily entering into the Program.
- ii. ACRCDC will work with the person, the NRCS, and/or other partners to complete a Cooperative Agreement that details:
  - a. The management practices that will be covered under the Agreement and
  - b. Provisions for implementation of the appropriate management practices
- iii. All information generated by the VLP or Cooperator in the course of participation in the local Program that identifies or indicates the existence of endangered, threatened or otherwise protected species or their habitat on a particular farm or ranch, including but not limited to observations, records, correspondence and communications, shall be confidential to the extent permitted by the Public Records Act and other applicable laws. Confidential information may only be used or shared as necessary for the administration, approval or denial of a local Program, or as otherwise required by law unless the release of information is authorized in writing by an individual landowner specifically for that purpose.
- iv. All records and Cooperative Agreements will be kept in a secure, locked cabinet at the ACRCDC office.
- v. The Department may request access to records by scheduling a visit with the Program Administrator to view files and information generated by the VLP. The Department will not be authorized to take any information from the files unless otherwise authorized in writing by an individual landowner specifically for that purpose.

### *e. Developing, Reviewing and Revising Management Activities:*

Development of the management practices and routine and ongoing agricultural activities associated with rangeland management that are covered under the VLP will, to the maximum extent practicable, avoid and minimize take of Covered Species, while encouraging the enhancement of habitat.

The VLP will be assessed on an as needed basis to verify the practices and activities listed as implemented are meeting the intent of the Program. Assessments will be completed at the request of the Department or as determined necessary by the ACRCDC.

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As part of the assessments completed, ACRCDD and Department staff will assess the effectiveness of the program by evaluating the number of Cooperators participating, the number and acres of habitat restoration projects implemented and the effectiveness of the practices on improving habitat while avoiding impacts to the Covered Species. Assessments will be included in the annual report and any necessary review and/or revisions will be completed in accordance with the Amendment process.

### *f. Annual Process*

- i. ACRCDD will complete an annual report that will include:
  - a. Summary of the acreage benefiting from the local Program
  - b. Summary of the management practices included in the Cooperative Agreements
  - c. Summary of the success of the management practices listed
  - d. Summary of species encountered during construction activities
    - i. Total numbers of and types of species encountered
    - ii. Locations of species encountered on a sub-watershed level
  - e. Recommendations, if any, on how to further improve voluntary participation by farmers and ranchers and further improve benefits to wildlife
  - f. Assessment by RCD and NRCS staff will be conducted, if any, that the practices and activities being utilized for the Program are meeting the intent to avoid and minimize take and enhance habitat.
  - g. Annual report will be submitted to the Department by December 31 of each year
- ii. The annual report shall not include information generated by the VLP or an individual landowner that identifies or indicates the existence of Covered Species or their habitat on a particular farm or ranch unless the release of information is authorized in writing by an individual landowner specifically for that purpose.

### *g. Cooperative Agreement Monitoring/Revocation/Termination:*

As the designated representative, ACRCDD has the responsibility to assure compliance by all Cooperators enrolled in the Program. The procedure for monitoring Cooperators' compliance and revoking Cooperative Agreements in the event Cooperators do not comply is set forth below:

- Within one month of becoming aware that a Cooperator or their agents (e.g., contractors, labor) are not carrying out work consistent with the VLP management practices' design, installation, and monitoring and maintenance specifications, the ACRCDD shall notify the Cooperator in writing (Initial Contact) and work directly with the Cooperator to resolve the noncompliance.
- If the Cooperator has not complied within two months of the Initial Contact, the ACRCDD will contact the Cooperator's partners (e.g. NRCS, others) to seek assistance regarding the Cooperator's failure to comply.

## Alameda County Voluntary Local Program

- If the Cooperator has not complied within three months of the Initial Contact, the ACRCDC shall notify the Cooperator in writing regarding the non-compliance and shall indicate that revocation of the Cooperative Agreement will commence if the Cooperator does not come into compliance within four months of the Initial Contact.
- If the Cooperator has not complied within four months of the Initial Contact, the Department will be notified of the lack of compliance. The Department then has the opportunity to notify the ACRCDC what additional measures, if any, may be taken to bring the Cooperator into compliance prior to proceeding with revocation.
- If the Department revokes the Cooperative Agreement, the Department will issue, in writing to the ACRCDC, a request to revoke the subject Cooperative Agreement. The ACRCDC will then notify the Cooperator in writing, with a copy to the Department, that the Cooperator's activities are inconsistent with the procedures contained in the Cooperative Agreement that the Cooperative Agreement is thereby terminated, and the Cooperator's actions are no longer covered by the VLP. ACRCDC shall have no further responsibility to enforce the conditions and shall not be held responsible for their implementation. The Cooperator shall be held directly liable for all violations and will have to individually obtain all necessary permits, approvals, and/or rights from the agency(ies), and to comply with all laws and ordinances.

### **7. Take Authorization**

Cooperators, through enrollment in the VLP, authorized by Cal. Code Regs., tit. 14, section 786, and execution of a Cooperative Agreement, are allowed take of Covered Species incidental to routine and ongoing agricultural activities if the take occurs on lands covered by the VLP during implementation of the management practices. The ACRCDC and the Department recognize that implementation of the management practices under the VLP may increase the number of individual Covered Species in proximity to farms and ranches as a result of management practices. Cooperators are authorized take of the selected Covered Species incidental to otherwise lawful activities under the following circumstances:

1. Take occurs while implementing the management practices identified in the Cooperative Agreement
2. Take occurs while conducting the routine and ongoing agricultural activities on the Enrolled Property after the management practices identified in the Cooperative Agreement, have been initiated

Take authorization of Covered Species will be defined in the Cooperative Agreement and coverage will be limited to the species that directly benefit from the implementation of the selected management practices. Determination of the species authorized for take in each Cooperative Agreement will be developed with the Cooperator, the Program Administrator, and the Department, but will be limited to the Covered Species in this VLP.

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### 8. Program and Take Authorization Duration

The VLP becomes effective upon approval and shall be in effect for 10 years. Notwithstanding any expiration of the VLP, Cooperative Agreements developed pursuant to this Agreement will remain in effect for a term of at least 10 years. Prior to approving a Cooperative Agreement, the Department will ensure that the duration of the Cooperative Agreements is long enough to achieve a net conservation benefit for the species covered under the Cooperative Agreement. Authorization of take of Covered Species pursuant to a Cooperative Agreement begins upon initiation of the management practices specified in the subject agreement. Cooperators may opt out of their Cooperative Agreement at any time without penalty if they are adhering to withdrawal procedures. After 10-years, the Program will be reviewed and may be extended by mutual consent of ACRCDC and the Department.

### 9. Program Amendments

The Program Administrator or the Department may propose amendments to this Program by providing written notice to, and obtaining the written concurrence of, the other party. Such notice shall include a statement of the proposed amendment, the reason for it, and its expected results. The Parties will respond to proposed amendments as indicated below. Proposed amendments will become effective upon the other parties written concurrence and completion of appropriate environmental analysis.

- a. Amendment proposed by the Program Administrator: The Program Administrator may initiate an amendment by providing the Department with the necessary information for review.
  - i. Minor Amendments. The Department Director shall approve and incorporate or deny minor amendments (as defined in Cal. Code Regs., tit. 14, § 786.4(a)(1)) initiated by the Program Administrator within 30 days of submission.
  - ii. Major Amendments. The Department will respond to major amendments (as defined in Cal. Code Regs., tit. 14, § 786.4(a)(2)) initiated by the Program Administrator according to the process established in this article for a new local program, except that the information and analysis provided in support of an application for a major amendment may rely on supplemental information to the analysis used in the initial submittal for the Program Administrator.
- b. Amendment proposed by the Department: The Department may initiate an amendment to the Alameda County VLP if it believes that an amendment is necessary to bring the Program into compliance with section 2086(b) of the Fish and Game Code or any other relevant provision of law.
  - i. Minor Amendments. The Department shall notify the Program Administrator in writing of the proposed minor amendment and give the Alameda County VLP participants 60 days to accept or decline the proposed minor amendment. If the Program Administrator declines the amendment the Department may initiate steps to terminate the program

## Alameda County Voluntary Local Program

or allow individuals to withdraw. If the Program Administrator accepts the amendment or fails to respond within the 60 days the Department may approve the minor amendments with no further consultation.

- ii. Major amendments. The Department must make a finding that the Alameda County VLP is not in compliance with section 2086(b) of the Fish and Game Code and state its rationale. The Program Administrator shall be notified in writing of the findings and rationale and be given 60 days to respond to deficiencies outlined by the Department. If the Program Administrator fails to amend the program, as directed by the Department, the Department may initiate steps necessary to terminate the Alameda County VLP and allow individuals to withdraw from the Alameda County VLP.

### 10. Termination of Agreements

#### *a. Cooperative Agreement:*

- i. A Cooperator may withdraw his/her Cooperative Agreement from the Program for any reasons by giving written notice not less than 90 days in advance to the Program Administrator and adhering to the applicable withdrawal procedures.
- ii. Withdrawal shall not become effective prior to completion of any enrolled management practices. Cooperator shall continue to be responsible for complying with measures of other agreements or permits (i.e., Streambed Alteration Agreement, Clean Water Act section 401 water quality certifications of U.S. Army Corps section 404, grading permits, etc.) required as part of the regulatory permitting process.
- iii. A withdrawing Cooperator shall acknowledge, in writing, that they understand that by withdrawing from the Program that take of Covered Species for routine and ongoing agricultural activities is no longer authorized by the Program.

#### *b. Voluntary Local Program:*

- i. The Program Administrator may terminate the VLP for any circumstances by giving written notice of not less than 120 days in advance to the Department. The Program Administrator shall give advance notice of not less than 120 days to enrolled Cooperators. Enrolled Cooperators shall continue to receive take authorization until withdrawal has been completed.
- ii. If the Department terminates the VLP because it no longer complies with section 2086(b) of the Fish and Game Code, termination shall be conducted consistently with the terms and conditions detailed in section 786.2(d)(9). Enrolled Cooperators following the terms and conditions of withdrawal shall continue to receive take authorization until withdrawal has been completed.

## Alameda County Voluntary Local Program

- iii. If the Program Administrator is unable to perform its obligations under this Program, the Program Administrator will give written notice to Department at least 120 days prior to ceasing to perform its obligations under the Agreement. Upon receiving such notice, the Department may, at their discretion after consultation with Cooperators, either amend this Program and the associated take authorizations to substitute a new Program Administrator, or, if the Department agrees and a Cooperator prefers, convert any previously approved Cooperative Agreement into an individual Program between the Cooperator and the Department under the same terms. Such an amendment shall follow the procedures described in Section 9 above.

### 11. New Listings of Species

In the event that a rangeland and/or agricultural land associated species not authorized for take in association with this Agreement is subsequently listed as candidate or threatened or endangered under the California Endangered Species Act, the Program Administrator and the Department may consider amending the Program to add the candidate or newly-listed species as a Covered Species. Previously approved Cooperative Agreements may be amended to include newly listed species as Covered Species, subject to approval by the Department.

### 12. Other Measures

- a. Remedies. No party shall be liable in monetary damages for any breach of this Program, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.
- b. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes. Amendment to the Program shall follow the procedures detailed in Section 9 above.
- c. Succession and Transfer. If a Cooperator transfers his or her interest in the Enrolled Property to another non-Federal entity, the Department will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the original Cooperator, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Cooperator.
- d. No Third-Party Beneficiaries. This Program does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Program to maintain a suit for personal injuries or damages pursuant to the provisions of this Program. The duties, obligations, and responsibilities of the Parties to this Program with respect to third parties shall remain as imposed under existing law.
- e. Other Laws. This Program and activities conducted under it are subject to all applicable federal, state, and local laws and regulations.

## Alameda County Voluntary Local Program

### **13. Notices and Reports.**

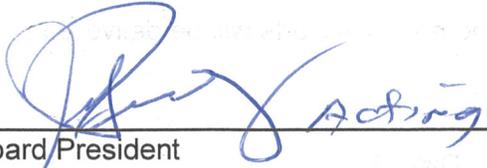
Any notices and reports, including monitoring and annual reports will be delivered to the persons listed below, as appropriate:

Voluntary Local Program Coordinator  
Alameda County Resource Conservation District  
3585 Greenville Road, Suite #2  
Livermore, CA 94550  
(925) 371-0154

Voluntary Local Program Coordinator  
Department of Fish and Game  
Bay Delta Region  
7329 Silverado Trail  
Napa, CA 94558  
(707) 944-5500

Alameda County Voluntary Local Program

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Voluntary Local Program to be in effect as of the date that the Department approves the VLP and issues the Take Authorization.

  
\_\_\_\_\_  
Board President  
Alameda County Resource Conservation District

10/15/12  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Director  
California Department of Fish and Game

10/10/12  
\_\_\_\_\_  
Date