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10.0 PLAN IMPLEMENTATION

10.1 INTRODUCTION

This section addresses implementation and funding of the Solano HCP. Plan Participants will be responsible for ongoing administration, coordination, monitoring, review and reporting of the HCP.

The following describes the roles and responsibilities of the Plan Participants and HCP implementing committees, initiating actions, implementation actions, assurances, the process for revisions and amendments to the HCP, and the funding program for implementing the HCP.

10.2 PLAN PARTICIPANTS

The following agencies are participants in the HCP and will have primary responsibility for ensuring compliance with the HCP conservation measures within their respective jurisdictions and authorities. In general, SCWA will assume overall responsibility for coordination, reporting, and oversight of the Conservation Program. The Plan Participants are:

HCP Coordination, Solano Project Water Contract Administration

- Solano County Water Agency (SCWA)

Irrigation Districts

- Solano Irrigation District (SID)
- Maine Prairie Water District (MPWD)
- Reclamation District 2068 (RD 2068)
- Dixon Resource Conservation District (Dixon RCD)

Cities

- City of Fairfield
- City of Vacaville
- City of Suisun City
- City of Vallejo
- City of Rio Vista
- City of Dixon

Special Districts

- Vallejo Sanitation and Flood Control District (VSFCD)

- Fairfield-Suisun Sewer District (FSSD)
- Dixon Joint Powers Authority (Dixon JPA)

10.2.1 Governance

The SCWA Board of Directors will serve as the governing board for the oversight of the HCP. The SCWA Board of Directors is composed of the five members of the Solano County Board of Supervisors, the mayors from all seven cities in the County, and a board member from each of the three agricultural irrigation districts in the County (SID, MPWD, and RD 2068). The SCWA Board of Directors meets on a monthly basis.

The SCWA Board of Directors will act as the decision-making body for implementation and oversight of the Solano HCP. The Board's duties will include, but are not limited to:

1. Adoption of annual operating budgets.
2. Approval of changes to annual impact fees.
3. Acceptance/denial of conservation easements or land dedications.
4. Resolution of any Plan Participant disputes or differences between implementation and/or interpretation of conservation measures or other HCP requirements.

10.2.2 Solano County Water Agency

SCWA staff will assume primary responsibility for coordination with the Resource Agencies and preparation of the annual compliance report based on information provided by each Plan Participant. The Plan Participants will provide input and guidance for decision-making through an Advisory Committee.

SCWA's responsibilities will include, but are not limited to:

1. Maintaining a regional data base for Covered Species occurrence and development activities in compliance with the HCP monitoring and reporting requirements.
2. Preparing and submitting an annual report on the status of compliance with HCP implementation.
3. Coordinating plan amendments.
4. Providing support for ongoing education for interested parties regarding the status of the HCP.
5. Collecting application and in-lieu impact fees from Plan Participants and disbursing these fees for appropriate conservation activities consistent with applicable HCP conservation strategies and Advisory Committee input.
6. Maintaining and developing annual budgets.
7. Implementing ongoing monitoring and adaptive management studies.
8. Establishing standard protocols for baseline surveys.

9. Managing and coordinating technical consultants and specialists, as necessary, to implement and monitor HCP compliance.
10. Certifying and maintaining a list of approved reserves, conservation areas, and mitigation banks in compliance with Solano HCP mitigation and conservation requirements.
11. Serving as the long-term land steward/management entity for reserves and preserves (such duties will most likely be contracted to a third party land trust or other management entity).
12. Coordinating applications for and disbursement of non-impact fee funding from grants and other sources to enhance HCP conservation programs.
13. Coordinating review and approval of reserve management plans and endowments.
14. Coordinating with Plan Participants, Resource Agencies, and an advisory group on an as-needed and appropriate basis to review HCP implementation.

10.2.3 Other Plan Participants

Local land use agencies and the city Plan Participants will likely implement the HCP through their planning departments. Other Plan Participants (e.g., irrigation districts and special districts) will implement the applicable conservation actions through their executive director or designated representative. These Plan Participants will be responsible for the following actions within their respective jurisdictions and authorities:

1. Determining appropriate avoidance/minimization measures and/or compensation requirements for Covered Activities as well as eligible third parties seeking coverage under the HCP for Covered Activities within their respective jurisdictions.
2. Assuring and documenting compliance with required conservation measures.
3. Collecting or verifying that application and in-lieu impact fees have been paid prior to issuing grading permits or other project approvals that would affect Covered Species or Natural Communities.
4. Transferring application and in-lieu impact fees (or land acquisitions/easements provided in lieu of impact fees) to SCWA.
5. Providing compliance data to SCWA for preparation of the annual compliance report.

The Solano HCP conservation strategies rely on a variety of approaches for achieving desired habitat preservation and enhancement objectives. Private mitigation banks and land set-asides associated with development activities are expected to provide most of the habitat preservation and enhancement for Natural Communities and associated Covered Species and Special Management Species. For private and institutional mitigation banks, the long-term management structure, funding, and responsible management entities are provided under state and federal mitigation banking requirements (Federal Register, Vol. 60, No. 228, pp. 58605-58614, Nov. 28, 1995). However, current monitoring requirements for established mitigation banks in Solano County do not fully address the range of studies required to comply with the Solano HCP monitoring and adaptive management requirements. Therefore, additional funds will be required for private and institutional mitigation banks to meet monitoring and adaptive management standards consistent with the Solano HCP. For the life of the HCP, effectiveness monitoring at these reserves will be partly funded through

existing endowments established at each bank and supplemented with HCP user fees (see Section 11.0 for additional information). Banks may need to adjust their endowment funding in order to become certified under the Solano HCP. SCWA will oversee monitoring at each site to ensure consistency in study implementation and analysis.

SCWA will assume long term management authority and ensure compliance with mandated management requirements for designated resource lands or will designate such authority to an appropriate, resource agency-approved local land trust, conservation organization, or other management entity. Funding shall be provided through a management endowment or other permanent funding mechanism to be developed and provided for each reserve area. HCP user fees will provide funding for effectiveness monitoring for the HCP.

For conservation strategies involving the collection of in-lieu impact fees, the city Plan Participants will collect the fees and transfer them to SCWA. SCWA will then assume responsibility for disbursing these fees for appropriate conservation activities and programs consistent with the HCP.

Once applicable state and federal incidental take permits are issued, the Plan Participants will also assume primary responsibility for granting incidental take coverage for their own activities , extending coverage to third parties over which the Plan Participants have direct regulatory control (e.g., through issuance of grading permits, occupancy permits, use permits, etc.), and ensuring compliance with required conservation measures.

10.2.4 Plan Participant Committee

SCWA and the other Plan Participants will form an Executive Committee similar to the Applicant Committee formed for preparing the Solano HCP. The Executive Committee will provide input from the individual Plan Participants and keep the Plan Participants informed on the status of the HCP.

10.2.5 HCP Advisory Committee

SCWA and the other Plan Participants will form an Advisory Committee to provide guidance on the implementation of the Solano HCP. The Advisory Committee will be comprised of representatives from the Plan Participants' agencies; the Resource Agencies; and members from the general public representing various environmental, land use, agricultural and development interests similar to the HCP preparation steering committee. The purpose of the Advisory Committee will be to provide input and guidance on the use of in-lieu fees, preparation of grant applications, establishment and approval of reserve/preserve management plans and funding mechanisms, and general interpretation of HCP conservation strategies where the intent or applicability of the measures for a specific project may not be clear. (Note –interpreting the HCP requirements is the responsibility of the permit holders and the issuing Resource Agency(ies); however, the agencies and permit holders may use and rely on recommendations from the Advisory Committee.)

10.2.6 HCP Agency Review Committee

SCWA, Plan Participants and the Resource Agencies (see Section 10.2.7 below) will establish a Review Committee that will meet regularly for the purposes of reviewing specific required documents

for Incidental Take Coverage under the Plan. The committee will be responsible for evaluating complex applications under Section 10.4 below, such as: (1) interpretation of baseline study results; (2) adequacy of management plans and associated funding for reserves; (3) restoration plans; and (4) documentation that a project complies with avoidance requirements and constitutes the least environmentally damaging practicable alternative for the project site as required under this HCP. The committee will advise applicants of all insufficient items, inadequate documentation or data needs and will provide recommendations for project modifications needed for compliance with the HCP.

The U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency (EPA), and Regional Water Quality Control Boards may also be invited to participate in this review committee as the Plan Participants desire to integrate Section 401 and Section 404 Clean Water Act compliance with the Endangered Species Act compliance under the HCP program.

10.2.7 Resource Agencies

USFWS, CDFG, and NOAA NMFS are the Resource Agencies that will issue the federal and state Incidental Take permits and oversee implementation and compliance with the Solano HCP. The responsibilities or obligations of the Resource Agencies include:

1. Providing guidance to the Plan Participants for implementation and compliance of the Solano HCP.
2. Reviewing and commenting on annual compliance monitoring reports.
3. Assisting in resolving any potential issues associated with the interpretation of HCP conservation strategies where the intent or applicability of the conservation measures are unclear.
4. Assisting the Plan Participants in attempting to secure state, federal, and other sources of funding to expand Solano HCP conservation efforts.
5. Providing technical assistance and support for establishing standard protocols for baseline surveys, implementation of conservation measures, and review and assessment of monitoring and adaptive management actions.

10.2.8 Public

The Plan Participants intend to have a transparent decision-making process and expect the public to be fully involved in implementing the Solano HCP. Discretionary decisions regarding implementation of the HCP and most Plan Participant and Advisory Committee meetings will be open to the public. The only closed or restricted meetings would involve the following topics:

- Personnel Issues - Only to discuss the appointment, employment, performance evaluation, discipline, complaints about or dismissal of a specific employee or potential employee.
- Pending Litigation - Only if open discussion would prejudice the position of one or more of the Plan Participants that is or may become a party in the litigation.
- Property Negotiations - Only to discuss, with an agency's identified bargaining agent, price or payment terms. However, final price and payment terms must be disclosed when the actual lease or contract is discussed for approval.

10.3 HCP INITIATING ACTIONS

The Plan Participants will enter into an implementing agreement with the Resource Agencies (USFWS, NOAA NMFS, and CDFG). The Implementing Agreement defines the roles and responsibilities of the parties under the Solano HCP for implementing the regional conservation strategy and the terms of the Incidental Take permits issued by the Resource Agencies. The Implementing Agreement also describes the legal remedies should any party fail to meet its obligations under the HCP and the terms of the Incidental Take permits. The Final HCP and Implementing Agreement will need to be adopted and approved by the Plan Participants and submitted to the Resource Agencies in support of the application for federal and state Incidental Take permits. A joint EIR/EIS, prepared in compliance with CEQA and NEPA, will be completed by SCWA (acting as the local lead agency for the Plan Participants under CEQA) and the USFWS (as the federal lead agency for NEPA) and distributed for public review prior to certification and permit issuance.

The Plan Participants may also need to adopt local ordinances or amend local plans and policies, as necessary, to implement the HCP.

10.4 AUTHORIZATION OF INCIDENTAL TAKE

Upon issuance of the Incidental Take permits from the Resource Agencies, each Plan Participant, as a permit holder, will be authorized for Incidental Take of Solano HCP Covered Species for permitted/Covered Activities conducted directly by the Plan Participant. Such activities will be conducted consistent with the terms and conditions of the federal 10(a)(1)(B) and State 2081 Incidental Take permits and the HCP conservation strategies. Plan Participants may also extend Incidental Take coverage for Covered Activities conducted by third parties who fall under their direct regulatory control. Conditions for granting Incidental Take for activities conducted by Plan Participants or third parties include:

- Authorization for Incidental Take by permit holders and/or eligible third parties shall occur upon verification that the applicable conservation strategies for avoidance, minimization, and/or mitigation have been satisfied or that applicable construction period avoidance and protection measures have been implemented. For example, grading permits or other approvals that could result in the loss or conversion of natural communities/habitat may not be issued until proof is provided that applicable conservation measures have been implemented. The local participating agency shall document applicable conservation measures as conditions of approval in their final approval for the project.
- Authorization for Incidental Take provided to the Plan Participants as permit holders and eligible third parties shall run concurrently with the specific land development or other Covered Activity. Coverage shall extend through completion of Covered Activities, including completion of construction pursuant to individual building permits granted in accordance with land development approvals. Incidental Take coverage may be extended to subsequent owners or interests other than the original third party to whom the Incidental Take was extended provided the transferee complies with all terms and conditions and notifies the applicable permit holder/Plan Participant of the change.

Incidental Take coverage shall not exceed the term of the permits (30 years) unless:

1. Final project conditions of approval have been given prior to expiration of the Solano HCP permits; and
2. All work subject to the project approvals identified in the Incidental Take permits is completed within 48 months of receiving the approvals; and
3. The permit holder/Plan Participant secures an extension of the applicable Incidental Take permits prior to their expiration pursuant to the plan amendment procedures described in Section 10.10. The extension may be issued for a period of up to four years and shall allow completion of specified projects authorized under the Solano HCP, but for which Covered Activities have not yet been completed; or
4. The Incidental Take permits are renewed pursuant to Section 10.10.3 of the HCP.

Under the HCP, the use of commercial or institutional mitigation banks is encouraged if such banks are certified in the official banking agreement/enabling instrument as suitable for the species/habitat being impacted by a Covered Activity (e.g., provide in-kind mitigation). Banks and individual/project-specific mitigation projects must also meet minimum reserve management, monitoring, and funding standards consistent with Section 10.5. Banks and individual mitigation projects meeting these standards will be certified by SCWA for use in mitigating Solano HCP Covered Activities. When appropriate “in-kind” opportunities may not exist or be practicable, a project proponent may obtain approval from the local lead agency, USFWS, NOAA NMFS, CDFG and other relevant Resource Agencies to use alternative or out-of-kind mitigation. Acceptance of out-of-kind mitigation shall be based on the following criteria: provide a demonstrable benefit (e.g., net gain in biological value to the species and/or habitats impacted) to the biological resources in the region and such gains shall be consistent with and further the overall HCP conservation goals.

10.4.1 Procedures for Determining Conservation Measure Requirements

The following describes the basic approach for determining the applicable conservation requirements for Covered Activities to be conducted by Plan Participants or where Incidental Take coverage is requested by regulated third parties. When possible, applicants are encouraged to submit pre-application packages to the local lead agency/Plan Participant for initial review and coordination.

1. Pre-application packages shall clearly identify the location of the project with respect to the natural community boundaries (see Figure 4-1) and designated conservation areas (see figures in Section 4.0). Initial or pre-application site surveys shall also be conducted to characterize the site’s biological resources (e.g., community type such as grassland, vernal pool grassland, oak woodland) and identify the presence of important resources such as wetlands and riparian habitats/stream courses. This site information shall also be used assess the need for and types of surveys required to determine applicable conservation measures. Minimum project identification requirements for a biological resources report shall include:
 - The location clearly depicted on a map;
 - A description of where the project is in relation to the Natural Community boundaries (Figure 4-1);

- A site fact sheet with the parcel number(s), legal owner, applicant (if different than owner), local lead agency/Plan Participant, local lead agency tracking number and contact; and
- A project purpose and description.

Specific data requirements for each Natural Community and/or Covered Species are provided in Section 5.2.

2. Complete applications shall include the project information described above and the following:

- a. A biological resources report that provides information on cover types/plant communities, project site location relative to Solano HCP natural community conservation areas, a summary of recorded/known occurrences of Covered Species and Special Management Species within 1 mile of the site (minimum sources shall include the Solano HCP data base and CNDDDB), and a wetland delineation¹.

The reports shall include at minimum: survey dates and times; names, affiliations, and qualifications of biologists conducting the surveys; and survey results and conclusions, including maps of identified locations of Covered Species or Special Management Species, vegetation types, the extent of wetlands and channels, stream/channel order, and other wildlife habitat features. Pre-application survey reports shall also contain CNDDDB Native Species Surveys forms for all Covered and Special Management Species encountered on a site.

Mapping shall include the entire project site and a 250-foot buffer (300 feet in Callippe Silverspot Butterfly Conservation Areas). Mapping and assessment of features within the buffer may be accomplished using aerial photographs.

Section 5.2 identifies specific habitat identification criteria for each Natural Community and species-specific survey requirements (e.g., is a project located in a conservation area where detailed species-specific pre-application surveys are required?). The purpose of the surveys is to determine whether species-specific avoidance and compensation measures will be required. Where species-specific surveys are required, SCWA will provide standard survey protocols. In general, survey results will remain valid for a period of three years. SCWA will also maintain a list of certified consultants that may conduct these studies.

In general, the level of survey shall be commensurate with the potential impacts to Covered Species and the conservation value of the project site. Projects on small (less than five acres), in-fill lots within existing city limits (as of March 1999) that are surrounded by urban development on at least three sides² are not considered to be important for conservation purposes and are generally exempt from in-depth habitat surveys. However, even small in-fill projects will be required to comply with wetland protection, compensation and permitting requirements, and with protection measures for burrowing owl and Swainson's hawk nests.

¹ Procedures and criteria presented in the Corps of Engineers 1987 Wetland Delineation Manual and applicable technical clarifications and updates shall be used to define and delineate wetlands. Draft delineations (e.g., consultant prepared, but unverified by the Corps) may be submitted as part of the pre-application report. However, final determination of applicable conservation requirements will be based upon verified delineations.

² Note – this definition is intended to be consistent with the intent of Class 32 Categorical Exemption as defined in Section 15332 of the CEQA Guidelines

Documentation requirements for such sites include an assessment of the presence of wetlands, streams or their tributaries, elderberry plants, and burrowing owl and Swainson's hawk nesting activity. Projects in certain, limited high value conservation areas, could require up to two years of appropriately timed surveys. In lieu of completing species-specific surveys, applicants may assume presence of listed species in all suitable habitats (as determined by SCWA in consultation with the Resource Agencies) and implement applicable Avoidance and Minimization Measures (Chapter 5.3) and appropriate Conservation Measures (Section 6.0). Future modifications or alternative procedures may be adopted upon concurrence from the Resource Agencies.

Note that the presence of wetlands and streams/tributaries is based on applicable technical criteria established by the Corps regardless of jurisdictional issues that may not be based on biological considerations (e.g., the lack of Corps Section 404 jurisdiction on a site is based on factors other than just the presence of wetlands).

- b. Justification for direct impacts (fill) of wetlands, stream, riparian and species habitats is required in certain areas, such as high value conservation areas, areas where wetlands contribute to the value of adjacent preserves, and in breeding/nursery sites for several species (see Section 6.0). Justification for such impacts shall be based on the practicability of avoidance based on cost, logistics, and technology. Such evaluations shall follow the EPA's 404(b)(1) guidelines for assessing the feasibility of alternatives to minimize impacts to aquatic resources (see Section 6.1.1), except that only onsite alternatives need be considered for compliance with the HCP. Note that compliance with this condition does not supersede or obviate the need for compliance with other state or federal agency application requirements, procedures, and permits.
 - c. Applicants are also encouraged to submit other relevant information for determining conservation measure requirements such as stream order and vernal pool complex boundaries based on criteria presented in the applicable community or species conservation strategies (Section 6.0).
3. Plan Participants, acting as the CEQA lead agency and permit holder, shall determine the conservation requirements for each project consistent with applicable community and species conservation requirements in the HCP. Generally, the identification of applicable conservation requirements would be addressed and reviewed as part of CEQA compliance for a project or administrative approvals for project that are exempt from CEQA. For projects involving impacts to wetland communities, lead agencies shall rely on verified Corps jurisdictional determinations for the extent of wetlands that are waters of the United States. For isolated waters/waters of the State, Regional Water Quality Control Board jurisdiction, if available, or other best available information may be utilized for area and boundary determinations.
 4. Prior to issuing final approvals such as grading or use permits that could result in the take of Covered Species, lead agency Plan Participants shall verify compliance with applicable conservation measures as specified in the HCP. Compliance may take the form of a certificate of purchase of mitigation credits/land at an approved conservation or mitigation bank; payment of in-lieu impact fees to the appropriate agency; or acceptance of fee title, conservation easement, or other appropriate conservation mechanism for preserve lands along with approved management plans (if required) and management funding mechanism. Incidental Take coverage for on- or off-

site reserves that have not been established through the federal mitigation banking program shall not be issued until the long term management plan has been reviewed and accepted by SCWA and endowment or other mechanism for funding long term management actions has been reviewed and accepted by the management entity (see Section 10.5). For phased development projects, conservation requirements may be implemented concurrently with authorization for each active phase or sub-phase if the phased conservation actions are equivalent to or greater than the conservation actions required for the ongoing/planned phase's impacts.

5. Plan Participants are responsible for monitoring compliance with avoidance, minimization and compensation measures (Section 5.3) for their projects or those for which take authority has been granted to third parties. For third party projects, Plan Participants may use monitoring and compliance reports provided by project sponsors, but the Plan Participants are ultimately responsible for ensuring compliance with applicable conservation measures. For projects using approved conservation or mitigation banks, the bank operator is responsible for monitoring performance compliance for habitat enhancement, construction, and restoration as specified in their respective enabling instruments or agreements. Under these instruments or agreements, financial assurances and other measures are incorporated to ensure long term compliance and performance.
6. Prior to issuing final approvals such as grading or use permits that could result in the take of Covered Species, Plan Participants are responsible for submitting project reports and preparing and submitting project information summary sheets and maps to SCWA for annual compliance reporting. Final, approved project information maps shall be submitted in both hard copy and electronic, vector-based (GIS or CAD) formats to the Plan Participant Lead Agency and SCWA to assist with annual reporting requirements. Information shall include required baseline (Section 5.2) and project information. Project information shall clearly identify direct and indirect effects, including grading limits, buffer zones/set backs, and any roads, trails, or other utilities extending beyond the development area that could affect Covered Species or Natural Communities. The preferred format for submitting spatial data is in a GIS format such as ESRI shapefiles or geodatabases. Spatial data may be submitted as Autodesk AutoCAD DWG or DXF files; however, additional processing fees may be required for non-GIS formats (See Section 11). Regardless of the format, all spatial data shall be projected in the State Plane Zone 2, NAD1983 coordinate system. Areas, such as project boundaries, impact areas, preservation areas, or land cover types, shall be stored as simple polygon features. Land cover shall be mapped to the full extent of the project area including required buffers with no duplicates, overlaps, or gaps between features. Land cover types shall be encoded as attributes in GIS files and Layers in CAD files according to the data model template provided by SCWA.

10.4.2 Appeals Process

The Solano HCP Conservation Program has been developed using the best data available to accurately map, identify, and interpret baseline conditions. However, because of the broad coverage and scale of the HCP, errors in the interpretation of habitat conditions at a particular site may occur. Plan Participants and third party applicants may appeal such issues to SCWA and the Resource Agencies. Issues which may be appealed include, but are not limited to:

- Baseline site conditions/vegetation types present at the time the HCP is adopted or other applicable baseline time frames established in the Conservation Program.
- Suitability or desirability of a site for establishing preservation and restoration reserves.
- Habitat suitability for certain species.
- Modifications to survey protocols and time requirements.
- In-fill exemptions provided under certain Conservation Measures.
- Interpretation of Conservation Program (Avoidance and Minimization Measures, Conservation Measures, and Adaptive Management and Monitoring) requirements.
- Findings regarding the acceptability of Management Plans and associated funding requirements.
- Projects approved prior to, but not implemented prior to adoption of the HCP that were not included in the projected take or impacts described in Section 8.0 (pre-approved projects that were assumed to be part of the built environment at the time the HCP was published), may appeal to request coverage under the HCP.

Designations for Natural Community and conservation values, in general, would not be suitable for appeal as these designations are based on broader conservation considerations not site-specific conditions.

Issues that may not be appealed include:

- Compliance with all Avoidance and Minimization Measures and Conservation Measures are mandatory; habitat mitigation ratios, setbacks/buffers, and other requirements may not be modified for individual projects.
- Participation in the HCP.
- HCP Fees.

Appellants should provide sufficient background information and rationale to document their case and to explain how proposed changes or modifications would be consistent with the HCP Conservation Program.

10.5 DEVELOPMENT OF THE RESERVE SYSTEM

The Solano HCP is primarily designed to function as a pay-as-you-go system, with conservation actions completed prior to or concurrent with the loss or conversion of habitats and associated Incidental Take of Covered Species. However, substantial habitat preservation, management, restoration, and enhancement is planned or currently occurring within the region such that a significant portion of the HCP habitat conservation goals and objectives, particularly for vernal pool grassland communities and associated species, are expected to occur well in advance of impacts. In addition, SCWA has committed \$1 million for land acquisition and reserve management.

A number of private and public vernal pool community conservation and mitigation banks have been previously approved or are under consideration in the state and federal Mitigation Banking Review process. Once approved, conservation easements and approved management plans for these banks

will be implemented. Habitat restoration at commercial banks are typically conducted in advance of impacts because of standard banking agreement conditions that limit the availability and/or value of restoration credits until specific performance criteria are achieved. Currently approved or active multi-species, vernal pool mitigation and conservation banks within Solano County include:

Campbell Ranch (approved)	158 acres
Elsie M. Gridley Preserve (approved)	1,800 acres
North Suisun Mitigation Bank (approved)	612 acres
Muzzy Ranch Phase 1 (approved)	735 acres
Muzzy Ranch Phase 2 (in process)	555 acres
Burke Ranch (approved)	960 acres
Noonan Ranch (approved)	200 acres
Dobles (in process)	155 acres
City of Fairfield Highway 113 Property (in process)	50 acres
Pacific Livestock (in process)	<u>160 acres</u>
Total	5,385 acres*

* actual acreage for each site may vary

All of these existing and proposed banks are located within High Value Vernal Pool Conservation Areas (see Figure 4-8). The combined acreage in these banks could provide approximately half of the 10,500 to 11,500 acres needed to fulfill the long-term conservation commitment for this community type specified in the HCP. The establishment of these mitigation and conservation banks will provide substantial vernal pool habitat preservation, restoration, and management before any development or anticipated habitat loss/take of Covered Species occurs. Most of the remaining conservation for this community type is anticipated to occur as specific land dedications for preservation of existing core Contra Costa goldfields populations.

Multi-project mitigation sites for preservation of agricultural foraging habitats for Swainson's hawk and burrowing owl are being or have been established in the region (Figure 3-9). These agricultural mitigation sites include:

Jenny Farms Mitigation Bank (approved)	430 acres
Muzzy Ranch/Dixon SW Developers (approved)	<u>360 acres</u>
Total	990 acres

In addition to conservation and mitigation banks, recent and ongoing programs and efforts by other parties also contribute to habitat conservation in Solano County. The Nature Conservancy owns 1,562 acres and the City of Fairfield and County of Solano own 1,858 acres of the Wilcox Ranch in the Jepson Prairie region, a high priority vernal pool conservation area. The City/County holding is under deed restrictions that mandate the lands be managed to promote vernal pool and associated grassland habitat resources; The Nature Conservancy portion of the ranch is part of their overall reserve system.

Existing vernal pool ecosystem preserves at Jepson Prairie (Solano Land Trust, 1,569 acres), Calhoun Cut (CDFG, 934 acres), Wilcox Ranch East (The Nature Conservancy, 1,528 acres), Wilcox Ranch West (City of Fairfield and Solano County, 1,620 acres), and several smaller individual project mitigation sites covering approximately 500 acres within the Jepson Prairie region, would encompass approximately 16,000 acres of contiguous vernal pool habitat within high priority conservation areas that are expected to be protected and managed for vernal pool and associated habitats and species by the time the HCP is fully implemented.

In other portions of Solano County, the Solano Land Trust, supported by funding from the City of Fairfield and other sources, has purchased and is actively pursuing the purchase of substantial lands within high priority conservation areas for the California red-legged frog and callippe silverspot butterfly within the Tri-City/County Planning Area between Fairfield, Vallejo, and Benicia. The City of Vallejo also owns and manages two additional open space reserves in this area. These areas cover approximately 4,450 acres in this portion of Solano County and include Lynch Canyon (City of Fairfield purchase donated to Solano Land Trust), King and Swett Ranches (Solano Land Trust), and the Sky Valley and Gateway Open Space Reserves (City of Vallejo).

The City of Fairfield provides operational support for the Solano Land Trust through special Mello-Roos tax assessments required for most new residential development in the City. In 2002 and 2003, the City of Fairfield contributed approximately \$1,021,000 to the Solano Land Trust for operations, maintenance, and the purchase of land/conservation easements from three established funding districts. Projected funding over ten years (2002 to 2011) from these three districts is projected to be \$6,079,000. This funding is provided as part of the City's commitment to retain and protect open space in Solano County (Sean Quinn, City Manager, City of Fairfield, pers. comm.).

In addition, approximately 4,150 acres of intermixed upland grassland and oak woodland are located in established open space reserves in the western hills of Solano County within Fairfield and Vacaville. The City of Fairfield currently owns and manages approximately 1,400 acres of land (Rockville Hills Park, Rolling Hills, Serpas Ranch, and others), and approximately 800 acres of oak woodland/ grassland has been set aside as private open space as part of the Rancho Solano development in northeastern Fairfield. The City of Vacaville owns approximately 1,950 acres (Lagoon Valley, Butcher Road, Lyon Road, Glen Eagle and others). The two cities have or are in the process of developing and implementing management plans for most of these open space areas. Since many of these areas provide long-term function and value for upland woodland and grassland community conservation, the Plan Participants are committing these existing open space lands to the conservation program.

The Solano Land Trust also has an active farmland conservation easement program, with about 6,000 acres of agricultural lands currently under conservation easement or fee title ownership. Their long term goal is to establish conservation easements on 20,000 to 40,000 acres of agricultural land over the next 20 years (1,000 to 2,000 acres per year). Although the Solano Land Trust has been reluctant to establish the restrictions on crops and agricultural uses that are required to preserve Swainson's hawk foraging habitat, several of their existing properties have been acquired for Swainson's hawk habitat mitigation with the applicable restrictions (Beelard Trust and Muzzy Ranch). Preservation of agricultural lands under the Solano Land Trust's program, with or without crop/land use restrictions, will contribute to Swainson's hawk conservation.

Section 3.5 provides additional information on these and other habitat reserves and open space areas within Solano County. These areas include oak woodland and grassland communities, riparian habitats, coastal marsh habitats, and agricultural areas. Overall, approximately 76,000 acres, or 13 percent of Solano County, is currently preserved or in the process of being preserved through a long-term preservation mechanism, that provides conservation benefit for Solano HCP Covered Species. If all of the current conservation programs meet their objectives, the extent of preserved lands in Solano County could exceed 130,000 acres or 23 percent of the County.

10.5.1 Reserve Land Acquisition

Commercial and institutional mitigation and conservation banks are expected to provide most of the habitat restoration and preservation for vernal pool habitats/seasonal wetlands, Swainson's hawks, burrowing owls, and a component of riparian habitat conservation. Additional reserve lands will be acquired through fee title, purchase of conservation easements, and direct land dedications. Conservation lands established under the auspices of, or to fulfill the requirements of, the Solano HCP shall only be acquired from willing sellers and shall be located within the Plan Area. Plan Participants will not condemn land or exercise their powers of eminent domain to acquire conservation lands.

The relationship between SCWA and individual reserves (whether a commercial or institutional migration bank or project-specific mitigation bank) with regard to management and monitoring duties is depicted in Figure 7-3. In general, SCWA as lead agency for implementing the HCP will assume responsibility for long term biological effectiveness monitoring, targeted adaptive management studies, and programmatic review of the monitoring program. Individual reserves will be responsible for baseline resource inventory, performance monitoring and attainment of performance criteria for habitat/species restoration and establishment actions, remedial actions, and overall management of the reserves. Monitoring responsibilities are further described in Section 7.0.

10.5.1.1 Mitigation Bank and Reserve Certification. Banks established through federal mitigation banking procedures undergo significant review by the applicable Resource Agencies. These agreements require adoption of an approved resource management plan; identification of an approved, long-term management entity; and provisions for assured funding to adequately manage the preserve in perpetuity (e.g., a management endowment). All of these conditions must be approved by the Resource Agencies acting as the Interagency Review Team (IRT) under current Corps and EPA regulations (Federal Register, Vol. 73, No. 70, Thursday, April 10, 2008). The IRT is typically composed of staff from the USFWS, CDFG, Corps, and EPA from the region(s) in which the bank and its service area are to be located.

Commercial and institutional habitat restoration and species preservation banks established within Solano County to provide compensation for Covered Activities authorized under the Solano HCP must be approved and have signed enabling agreements through applicable state and/or federal mitigation banking procedures.

In addition to the state and federal banking standards, mitigation banks and other established preserves and reserves must include the following requirements consistent with the applicable conservation strategies described in Section 6.0, management activities for Special Management

Species (Section 6.12 and Appendix C), and monitoring and adaptive management requirements described in Section 7.0:

1. Establish in perpetuity conservation easements consistent with California Civil Code 815 et seq. and meet the criteria outlined in Section 10.5.2 of this document.
2. Adopt a Resource Management Plan prepared by a qualified person(s) experienced in the development and implementation of restoration, mitigation, and management plans for the respective communities that meet the minimum criteria outlined in Section 10.5.3. Resource Management Plans shall incorporate the basic requirements and management actions specified by SCWA.
3. Adopt a Restoration and Enhancement Plan prepared by a qualified person(s) that meet the minimum criteria outlined in Section 10.5.4. Funding assurances for construction and performance obligations shall also be provided. Such plans shall incorporate the basic restoration design, monitoring, and performance standards identified in the HCP and specified by SCWA.
4. Provide SCWA, their authorized representatives, and Resource Agencies access to reserve and preserve lands to conduct monitoring and adaptive management studies as described in Chapter 6.0.
5. Agree to alter reserve management activities as appropriate to incorporate new strategies that have been determined to significantly improve species and or/reserve habitat values for covered and regional management species. Future changes in management shall be limited to actions that do not significantly increase management costs (see Section 10.5.5).
6. Establish a management endowment that is acceptable to the long term management entity, meets Solano HCP standards, and is approved by SCWA. This endowment shall be sufficient to provide interim management of the reserve until the long term endowment is fully funded for one year, manage the property in perpetuity consistent with the approved management plan, and include a contingency fund to address reasonably foreseeable changes required for adaptive management.
7. Submit annually sales records, available credits, and monitoring reports to SCWA.
8. Demonstrate compliance with all local Plan Participant and County use permits.

SCWA will certify, by agreement with the bank owners, commercial and institutional mitigation banks, and other established reserves/preserves, compliance with the Solano HCP upon receipt of satisfactory documentation of the above criteria. Bank documentation will be reviewed in consultation with the Resource Agencies as described under Section 10.2.6. In some cases, this local certification may require existing resource management plans and endowment funds be amended.

Because a number of commercial mitigation and conservation banks have and will be approved and established prior to adoption of the HCP, it is likely that some resource credits will have been sold for non-HCP covered projects prior to reserve certification. Bank credits are typically assigned on an aggregate basis for each resource present on the bank (e.g., vernal pool fairy shrimp habitat, constructed vernal pool) and are not typically tied to a specific piece of land. For most of the existing mitigation banks, the entire bank would be monitored and managed following Solano HCP standards even though previously sold resource credits would not be counted toward achieving Solano HCP conservation objectives. Where a substantial portion of the resource credits have been previously allocated and the bank operator does not want to certify the entire bank, SCWA will work with the

bank operator and Resource Agencies to determine if a portion of the bank can be reasonably segregated from the previously sold credits such that a discrete area can be managed and monitored under the HCP criteria. SCWA may determine, at its discretion, that a previously approved bank should not be certified if the resulting reserve area is too small to effectively monitor and manage or does not support the resources to be conserved.

Project impact fees shall provide funding for biological effectiveness monitoring, adaptive management targeted studies, and programmatic review of the monitoring program to be conducted by SCWA on all reserves, including existing mitigation banks certified under the HCP (see Section 11). If SCWA obtains the long term monitoring endowment funds for existing banks from the endowment manager, these funds would be used to offset costs and reduce HCP impact fees.

10.5.1.2 Private, Project-Specific Mitigation Lands. Land set-asides and other private or institutional mitigation sites and reserves not authorized through the federal mitigation bank process shall comply with the Conservation Strategy for the applicable community/species association (see Section 6.0). Individual project mitigation sites shall comply with the same standards and requirements described in Section 10.5.1.1 for commercial and institutional mitigation banks before the site will be considered in compliance with HCP take authorization (except where applicable conservation strategies are designed to manage and restore existing public lands).

SCWA shall approve, in writing, all mitigation sites, including onsite avoidance reserves, prior to issuance of any take authority. For such lands to be acceptable, the following conditions must also be met:

1. The site shall support the natural community/biological resources that meet the applicant's conservation requirements and contribute to the HCP Goals and Objectives.
2. The property shall have no land encumbrances (e.g., easements, hazardous materials) that would significantly conflict with HCP Goals and Objectives and/or inhibit management of the property in the prescribed manner or implementation of adaptive management practices. Acreage and resources within easements may not be counted toward mitigation or conservation requirements.
3. The land shall be located within designated conservation areas for the applicable community/species.
4. The applicant shall provide adequate funding to manage and monitor the site in perpetuity.
5. The site shall obtain and be in compliance with all local Plan Participant and County use permits.
6. The site shall be approved by SCWA, in consultation with the Resource Agencies Committee (see Section 10.2.6).

10.5.1.3 Minimum Reserve Design Criteria. All mitigation sites shall encompass as many of the reserve design principles as possible (see Section 4.2) and contribute to the overall reserve design and conservation approach for the respective natural communities and species intended to be preserved. SCWA may deem small, isolated, onsite avoidance areas or banks unsuitable if such areas do not contribute to the conservation goals and objectives for the respective natural communities and species. The basic criteria for onsite mitigation areas include:

1. The avoided lands contribute to the habitat quality and value of adjacent, protected natural open space lands, in accordance with reserve design principles 6, 7 and 8.
2. The lands are contiguous to riparian or stream habitat corridors, green belts, and designated open space lands, in accordance with reserve design principles 5 and 6.
3. The lands are contiguous to high value conservation areas, in accordance with reserve design principles 6, 7 and 8.
4. The lands are in High Value Conservation Areas and are of sufficient size for conservation activities in accordance with reserve design principles 2 and 3.

Generally, isolated reserves (e.g., currently or likely to be surrounded by incompatible land uses in the future) less than 80 to 100 acres in size shall be avoided. This general guidance does not apply to linear features such as riparian corridors and streams.

Approval Process. Applicants for new mitigation banks and project specific mitigation banks shall submit a package to SCWA that identifies the location of the reserve and provides sufficient background information to demonstrate that the site can achieve desired conservation goals and reserve design criteria³. All proposed reserves should be located within identified High Value Conservation Areas for the applicable species/community (see figures in Section 4.0). SCWA may consider and approve, in consultation with the Resource Agencies, areas outside of designated high value areas provided the site supports the applicable resources/species and is subsequently deemed as having high conservation value.

Once a potential reserve has been preliminarily approved, the following additional information shall be submitted to SCWA for final approval and acceptance of the site:

1. Conduct baseline surveys (following standardized minimum requirements) of the mitigation areas shall be to document the occurrence, distribution, and relative abundance of applicable species and characterize the site's biological resources (e.g., community type such as grassland, oak woodland, oak savanna, canopy cover for oak woodland habitats, and the presence of important habitat features such as wetlands and riparian habitats/stream courses, playa pools, serpentine soils and shallow volcanic rock derived soils or out-crops).
2. Establish in perpetuity conservation easements consistent with California Civil Code 815 et seq. and meet the criteria outlined in Section 10.5.1.
3. Adopt a Resource Management Plan prepared by a qualified person(s) experienced in the development and implementation of restoration, mitigation, and management plans for the respective communities and meet the requirements outlined in Section 10.5.3.
4. Provide funding for the implementation of adaptive management on established reserves (see Section 10.5.5).
5. Adopt a Restoration and Enhancement Plan prepared by a qualified person(s) that meet the minimum criteria outlined in Section 10.5.4. Funding assurances for construction and performance obligations shall also be provided.

³ This information package is equivalent to the Prospectus as defined in Section 332.8(d)(2) of the Corps and EPA Mitigation Guidelines, Federal Register, Vol. 73, No. 70, Thursday, April 10, 2008.

6. Provide SCWA, their authorized representatives and Resource Agencies access to reserve and preserve lands to conduct the monitoring and adaptive management activities described in Section 7.0.
7. Establish a monitoring and reporting program that includes submittal of annual reports to SCWA.

Funding Assurances. Interim and long-term funding for all reserves (mitigation banks and project specific mitigation sites) shall be identified and calculated through a Property Analysis Record (PAR, Center for Natural Lands Management 2008) or other accounting method acceptable to SCWA. SCWA will establish basic standards for labor rates and maintenance activities. Management endowments will be held by SCWA or another approved third party. Other funding mechanisms may be considered and approved by SCWA if the funding is sufficient to cover management of the site in perpetuity. Insurance, property taxes, and legal defense shall be included in the endowment.

For commercial and institutional mitigation banks, endowment principal payments shall be tied to the credit release schedule as follows:

- At least 15 percent of the endowment principal shall be funded prior to the earliest of the second release of established, enhanced, or preserved habitats or species credits;
- At least 40 percent of the endowment principal shall be funded prior to the earliest of the third release of established, enhanced, or preserved habitats or species credits;
- At least 70 percent of the endowment principal shall be funded prior to the earliest of fourth release of established, enhanced, or preserved habitats or species credits;
- 100 percent of the endowment principal shall be funded prior to the earliest of the fifth release of established, enhanced, or preserved habitats or species credits.

Additionally, until the endowment is fully funded, the amount of the endowment principal shall be adjusted annually per the criteria described in Section 10.9.2.2.

For project specific mitigation lands, full payment of the endowment principal will generally be required at the time the project's take permit is issued. For long term, phased projects, SCWA may consider alternative payment schedules if appropriate security is provided for future payments.

Where restoration activities are planned or required to fulfill mitigation requirements, sponsors (banks and private/project specific mitigation projects) shall provide funding assurances for construction and performance. Funding assurances shall be in the form of bonds, letters of credit, or another form acceptable to SCWA. Construction funding assurances shall be released to the project sponsor within 45 days of submitting documentation verifying as-built conditions and year one performance standards for hydrology (for wetland construction) or plant establishment/survival. Performance assurances will be retained until established communities achieve final year criteria (generally 3 to 5 years) or until final performance criteria have been achieved for a minimum of two years without significant intervention (e.g., replanting, irrigation, regrading). Like the long term management endowment, construction and performance assurances are also subject to annual adjustments per the criteria described in Section 11.2.2.

The project applicant (bank sponsor or project specific applicant) will be responsible for all costs associated with interim management and performance monitoring until the reserve endowment has been fully funded for one year.

The bank sponsor and/or project specific mitigation project owner shall be in default if that party fails to observe or perform any obligations or responsibilities required under its Section 10 permit as identified in this HCP. In the event the bank sponsor and/or property owner realizes it is in default, it shall promptly notify SCWA and the Resource Agencies. Once SCWA and the Resource Agencies receive notification or otherwise become aware that the bank sponsor and/or property owner is in default, SCWA and the Resource Agencies may elect to either pursue informal dispute resolution or require the holder to draw upon and expend the financial security necessary to continue bank development, management, or operation, as provided in its operating agreement. If the informal dispute resolution process is invoked, SCWA and the Resource Agencies shall not draw upon financial securities until the informal dispute resolution process has been terminated.

Reporting. All annual reports will be provided to SCWA for review and approval. SCWA will provide summaries for the annual monitoring reports to the Resource Agencies as part of their annual reporting requirements.

10.5.2 Conservation Easements

Conservation easements will be required on all lands established as reserves under the Solano HCP. All conservation easements intended to fulfill Solano HCP conservation measures shall be acquired in perpetuity consistent with California Civil Code 815 et seq. All conservation easements will be held by SCWA or another third party approved by SCWA with an established conservation interest in the resources on the property (e.g., Solano Land Trust, CDFG). SCWA will maintain standard templates that have been approved by the Resource Agencies; however, the terms and conditions of each conservation easement will be developed on a site-specific basis, depending on site conditions and conservation values. In general, the following restrictions/prohibitions will be included in the conservation easement:

1. Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses that may adversely affect the purposes of the Conservation Easement; except as specifically permitted in the Resource Management Plan.
2. Use of off-road vehicles and use of any other motorized vehicles except on existing roadways; operations, maintenance, and monitoring activities and other uses as may be specifically permitted in the Resource Management Plan are exempt from this restriction.
3. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as may be specifically permitted in the Resource Management Plan.
4. Commercial or industrial uses.
5. Any legal or de facto division, subdivision or partitioning of the Easement Area.

6. Construction, reconstruction or placement of any building, billboard or sign, antennas, towers, and facilities for generation of electrical power, or any other structure or improvement of any kind, except as may be specifically permitted in the Resource Management Plan.
7. Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.
8. Planting, introduction or dispersal of non-native or exotic plant or animal species.
9. Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Easement Area except as specifically permitted in the Resource Management Plan.
10. Altering the surface or general topography of the Easement Area, including building of roads; except as specifically permitted in the Restoration Plan or Resource Management Plan.
11. Removing, destroying, or cutting trees, shrubs or other vegetation, (1) except as required by law for (a) fire breaks, (b) maintenance of existing foot trails or roads, or (c) prevention or treatment of disease; or (2) except as otherwise specifically permitted in the Resource Management Plan.
12. Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Area (except as specifically permitted in the Resource Management Plan), and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.
13. Engaging in any use or activity that may violate, or fail to comply with applicable federal, state, or local laws, regulations, or policies.
14. Sufficient water resources (contracted surface or ground water irrigation and onsite groundwater or surface water sources) shall be retained to maintain agricultural uses of the property consistent with crop rotation and other conventional agricultural practices in this region for a period of not less than 7 out of 10 years.

For conservation easements on irrigated, cultivated lands to preserve Swainson's hawk foraging habitat, the following additional restrictions/prohibitions will be required:

1. Planting orchards and/or vineyards for the production of fruits, nuts, or berries except in designated farmstead areas.
2. Cultivation of perennial vegetable crops such as artichokes and asparagus, as well as annual crops such as cotton and rice.
3. Commercial feedlots, which are defined as any open or enclosed area where domestic livestock owned by other than the Grantor are grouped together for intensive feeding purposes.
4. Horticultural specialties, including sod, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers.
5. Commercial greenhouses or plant nurseries.
6. Commercial aquaculture of aquatic plants and animals and their byproducts.

The establishment/acceptance of conservation easements will also be contingent upon receipt and approval of the following:

1. A baseline survey of the property documenting the current conditions and conservation values of the property for applicable Covered Species, including a map showing the location of the subject parcels in relation to other reserve/protected lands and to Solano HCP Priority Areas for Conservation Activities.
2. A preliminary title report and legal description of the property.
3. An assessment of the effects of other existing easements, covenants, restrictions, and any reserved rights on the ability to achieve desired conservation objectives. The land within any such encumbrances shall be excluded from mitigation or conservation credit.
4. A hazardous materials assessment (minimum Phase 1 Environmental Assessment, more detailed assessments may be required if recommended by the Phase 1 assessment).

Plan Participants may reject conservation easements where lands may not be consistent with intended conservation objectives and/or where hazardous materials or other easements, covenants, restrictions, and any reserved rights would significantly restrict the ability to achieve desired conservation objectives.

10.5.3 Resource Management Plans

All reserves and preserves established under the Solano HCP shall have a Resource Management Plan that includes the following minimum requirements consistent with the applicable species/community conservation strategies described in Section 6.0:

- List and prioritize all potential threats to the natural communities present within the preserve/reserve.
- Prepared by a qualified person(s) experienced in the development and implementation of restoration, mitigation, and management plans for the respective communities.
- Control measures and programs for highly invasive exotic and noxious weeds. These programs shall be conducted in perpetuity and include annual surveys to visually assess and identify weed infestations and annual control measures.
- Control measures for invasive and destructive nonnative animal species (e.g., wild pigs, red fox, bullfrog). These programs shall be conducted in perpetuity and shall include annual surveys to visually assess and identify new infestations and appropriate control measures.
- Resource Management Plans for sites in annual grasslands shall include measures for removing thatch and standards for reducing or controlling annual grass heights, particularly in valley floor and vernal pool grassland areas. Livestock grazing is the preferred method of control. Grazing requirements shall specify stocking rates, desired grass maximum heights by season, end of grazing season residual dry matter requirements, and applicable grazing seasons. In smaller urban reserves, fencing requirements shall be sufficient to exclude dogs to minimize harassment/harm to livestock. Where livestock grazing is not practicable, provisions and funding for regular vegetation mowing shall be required. In general, mowing shall be conducted 2 to 3 times per year: 1) at the end of the rainy season to reduce thatch and wild fire fuels and 2) once or twice during the growing season to maintain grass heights between 2 and 6 inches in order to promote forb emergence and conditions preferred by burrowing owls (see Valley Floor Grassland and

Vernal Pool Natural Community, callippe silverspot butterfly and burrowing owl conceptual models in Appendix B).

- Resource Management Plans for sites in agricultural lands (Swainson's hawk and burrowing owl conservation) shall identify the five percent land set asides and locations of the required species habitat components: current and future Swainson's hawk nest trees (Conservation Measure SH 6), artificial burrows and short grass cover areas for burrowing owl Conservation Measure BO 3), and dense vegetation stands for tricolored blackbird (Conservation Measure RSM 14), and Special Management Species (Section 6.1). The Management Plan shall also specify procedures and time lines for establishing, maintaining, and replacing potential nest trees in perpetuity.
- Resource Management Plans for sites in other Natural Communities shall incorporate additional management actions required for Special Management Species (Section 6.12).
- Restrictions on rodent control shall be employed to the maximum extent practicable. Natural habitat reserves and preserves⁴ shall set aside zones where no rodent control will occur. Control activities shall be limited to reserve/preserve edges where ground squirrels and other rodents could conflict with adjacent land uses. The control zone width shall be no more than 450 feet⁵, unless approved by the Resource Agencies. If these distances are reduced, resource management plans shall include additional control efforts to confine rodent activity to the reserve as part of a good neighbor policy.
- Installation and maintenance of artificial burrowing owl burrows/nest boxes shall be identified in the Resource Management Plan and funded as a line item of the management endowment.
- Monitoring programs shall be included to document the status and continued persistence of Covered Species. Covered Species Monitoring shall be conducted in accordance with the Natural Community and Covered Species monitoring requirements specified in Section 7.0. Additional monitoring could be required if unforeseen problems arise that require more frequent monitoring.
- Management and restoration plans shall incorporate measures to protect extant populations of other Covered Species on the reserve/preserves. Reserve and preserve managers should establish other Covered Species native to on-site habitats as part of any restoration and enhancement actions.
- A management endowment shall be established that is acceptable to the long term management entity and of sufficient size to manage the property in perpetuity consistent with the approved management plan.
- The management plan shall specify maintenance requirements and responsibilities for implementation, long term ownership and/or management, annual reporting requirements, and a funding mechanism consistent with the HCP reserve design and management standards.
- Management plans shall include provisions and funding for implementing adaptive management on established reserves (see Section 10.5.5).
- Reserves shall provide annual monitoring reports summarizing management activities over the preceding year. Agricultural reserves shall provide information on planned crops for the

⁴ Irrigated agricultural land preserved for Swainson's hawk and burrowing owl habitat are exempt from rodent control restrictions.

⁵ The 450-foot control zone is based on a review of literature that indicates the home range for a California ground squirrel rarely exceeds 450 feet of a burrow, with an typical home range 150 feet radius of a burrow system.

upcoming season as well as information on compliance with set aside area management requirements. In situations where a specific reserve wishes to deviate from the 50 percent alfalfa (or similar crop type) requirement (Conservation Measure SH 3), SCWA will coordinate with other reserves to arrange offsets.

10.5.4 Restoration and Enhancement

Creation of wetlands and restoration of natural communities and species populations are important components of the Solano HCP Conservation Strategy. The Solano HCP generally follows the definitions for creation, enhancement, restoration, and establishment as defined by the Society for Ecological Restoration:

Creation is defined as the construction or establishment of a habitat or plant community within a different habitat or plant community that previously did not support that community. Created communities are also referred to as artificial habitats.

Enhancement is the increase in biological values of an existing habitat area or feature through changes in management, vegetation, or specific structural features to increase one or more functions based on management objectives. Typically, enhancement involves improving functions in a degraded community or habitat (e.g., after enhancement, an area that technically functions as a wetland, but does not possess any particular values for native species, now supports native species and/or other desirable wetland functions).

Establishment entails the manipulation of the physical, chemical, or biological characteristics of the site to develop a resource that does not currently exist. Establishment increases resource area and functions. Establishment associated with restoration is preferable to creation.

Restoration is the return of an ecosystem to its condition prior to disturbance. In principle, restoration is similar to enhancement and involves converting a severely degraded or altered community through the implementation of management actions, land grading and revegetation activities to promote reestablishment of the habitat conditions, functions, and values associated with the site prior to disturbance. Restoration is distinguished from enhancement in that restoration is conducted where all evidence of the targeted natural community has been eliminated by prior disturbance (e.g., vernal pools and swales have been converted to uplands).

A number of the Solano HCP Conservation Measures refer to “construction” as part of required actions. As referred to in the Solano HCP, construction involves activities such as excavation, grading, and revegetation necessary to create, restore establish, and enhance habitats, primarily wetland communities. To achieve HCP Goals and Objectives, only restoration, establishment, and enhancement activities will be accepted. Creation of habitats (e.g., construction of wetlands in historically upland soil types where wetlands would not naturally occur) will not be accepted as meeting HCP Goals and Objectives.

10.5.4.1 Restoration and Enhancement Plans. Restoration and Enhancement Plans shall be submitted to SCWA for review and approval (Section 10.2.6), with the applicable construction and performance assurances (10.5.1.3), Management Plans and Endowments (see Sections 10.5.3 and

10.5.4) and Conservation Easements/Land Dedications (see Section 10.5.2). Restoration and Enhancement Plans shall be required for unconstructed or phased restoration at existing banks, mitigation banks that have not been previously approved under the federal approval process, or institutional or private mitigation actions (see Sections 10.5.2 and 10.5.3) involving habitat restoration and/or enhancement to fulfill the requirements of the Solano HCP. This condition does not apply to restoration and enhancement action undertaken on mitigation banks approved and/or operating prior to adoption of the HCP.

All Restoration and Enhancement Plans shall follow the general format and meet the content requirements of the U.S. Army Corps of Engineers, San Francisco and Sacramento Districts, Mitigation and Monitoring Proposal Guidelines (December 30, 2004; available at <http://www.spn.usace.army.mil/regulatory/policy/mitigationfinal.pdf>) or applicable updates. In general, acceptable Restoration and Enhancement Plans shall follow the following guidelines:

1. Restoration/enhancement shall occur in similar soil types or in soil types typically associated with the applicable natural community (e.g., vernal pool habitats should not be constructed in upland soil types unless it can be demonstrated that wetlands would naturally occur in such conditions).
2. The size, shape, and depth of the target community/vegetation (e.g., wetlands/vernal pools) shall be of similar size, shape and relative density as natural communities on similar soil types.
3. Plans shall describe site grading, erosion control, channel stabilization, preservation methods, fishery enhancement, and revegetation. Any revegetation program shall use plants indigenous to this region.
4. Construction activities for restoration and enhancement shall be avoided in areas of high habitat quality and relatively natural topography. Construction activities shall be limited to areas where the natural community structure has been eliminated or severely disturbed/altered by past land uses.
5. Revegetation activities shall be limited to native or widespread, non-invasive naturalized plant species common to the region.
6. Specific, measurable criteria shall be established to assess the success of restoration/enhancement activities in meeting desired goals and objectives. Any salvage, recovery, or restoration requirements shall include clearly defined goals focusing on vegetation establishment (stability, succession, reproduction).
7. Reserves shall not establish or restore habitats within or adjacent to easements or other properties where the requirements for avoiding and/or minimizing take of Covered Species would interfere with normal operations and management.
8. Monitoring to assess performance shall occur for a minimum of five years or until fifth year/final performance criteria have been met for at least two years without significant human intervention (e.g., irrigation, replanting, regrading). The monitoring program shall include provision for remedial action as needed to correct deficiencies.
9. Annual reports and a final report, prepared by the property owner and subject to approval by SCWA shall document the success of revegetation efforts. If revegetation is not successful, an additional period of correction and monitoring shall be specified. Monitoring reports shall be submitted annually to SCWA for review and approval and for annual reporting to the Regulatory Agencies.

10.5.5 Framework for Adaptive Management on Reserves

All existing mitigation banks in Solano County are required to include funding in their endowments to modify management activities in response to new information (e.g., adaptive management). Potential modifications that are anticipated and funded for established reserves include, but are not limited to:

- changes in stocking rates or livestock,
- modification of grazing seasons,
- elimination of grazing, and
- increased weed abatement or changes in control methods.

Adaptive management funding at existing banks is generally insufficient to test management hypotheses across the full spectrum of resources at individual banks. Therefore, the Solano HCP (see Section 7.0) provides a basic framework and approach for the adaptive management program. SCWA will oversee and implement the overall adaptive management hypothesis and testing program (see Section 6.0) with funding provided through user fees (see Section 11.0). SCWA will also provide guidance to participating mitigation banks and private reserves/mitigation sites regarding necessary revisions to the management plans. Third parties (e.g., CDFG, Solano Land Trust) currently keep the funding for existing banks and reserves. In the future, SCWA may seek to acquire and administer CDFG endowment funds in order to pool the funds with those of other reserves and mitigation sites administered under the HCP, allowing for more efficient implementation of adaptive management on established reserves.

SCWA will direct and fund other changes in management activities required to address broader, regional issues such as disease and predation. Such changes will be funded through user fees (see Section 11.0 for further discussion of applicable HCP programs and funding commitments).

10.5.6 Good Neighbor Policy

The Solano HCP requires the protection, acquisition, restoration, and management of lands in a coordinated preserve system to conserve Covered Species and Natural Communities. Such conservation actions may result in the expansion (colonization or increased numbers) of some Covered Species populations on private lands adjacent to preserves, potentially restricting the activities of adjacent landowners.

In recognition of this potential effect, the Solano HCP adopts a “Good Neighbor Policy.” The Good Neighbor Policy provides for take of any incremental increases in the population of Covered Species beyond the baseline conditions of adjacent lands. The policy does not provide for take of existing populations or occupied habitat prior to establishing preserve conservation activities and, therefore, would not result in impacts relative to baseline conditions.

The Solano HCP Good Neighbor Policy provides Incidental Take Permit coverage for willing participants on an “opt-in” basis for all agricultural lands within 0.5 mile of any land or property acquired as habitat mitigation for the HCP, including institutional and commercial mitigation banks established and certified by SCWA for conservation purposes. This opt-in approach allows for

landowners to willingly participate in the Plan. Those landowners that do not seek to participate would not be required to do so.

The Good Neighbor Policy is described below:

- Agricultural lands within 0.5 mile of preserve boundaries will be covered for Incidental Take of state or federally listed Covered Species under the HCP Section 10(a)(1)(B) and 2081 Incidental Take permits, if such lands experience increased use or become inhabited by Covered Species as a result of implementing the Solano HCP.
- Incidental Take coverage will be offered to neighboring lands in active agricultural production at the time the preserve is established. For purposes of this HCP, agricultural activities include crop production, animal production, forage production, and grazing activities in which usual and customary agricultural practices are occurring at the time the neighboring HCP preserve is established. For example, if agricultural lands used for crop production lie fallow in accordance with normal crop-rotation practices at the time the neighboring preserve is established, those lands would be considered to be actively used for agricultural purposes. Such coverage shall continue, subject to the terms and conditions of the HCP, the Implementing Agreement, and the Incidental Take Permits, for as long as the neighboring lands are actively used for agricultural purposes consistent with baseline use (see below) and the Solano HCP Incidental Take permits remain in effect. Take coverage does not include conversion of agriculture to other uses.
- Neighboring landowner coverage under the Incidental Take Permits will only be extended to individuals or populations of Covered Species that colonize or expand onto neighboring lands after the adjacent HCP preserve is established. Take coverage will not be provided for individuals or populations of Covered Species that inhabit neighboring lands *prior to* establishing the preserve, as identified in a baseline survey (see below).
- Upon establishment (or certification) of a preserve, SCWA will send a letter to each neighboring landowner whose lands are located within 0.5 mile of the preserve boundary and are actively used for agricultural purposes. The letter will explain the Solano HCP and the landowner's eligibility for coverage under the Good Neighbor Policy. Landowners who are interested in receiving this Incidental Take coverage shall respond to SCWA and request coverage. Prior to receiving coverage under the HCP, SCWA will need to determine the environmental baseline of the adjacent property. Landowners will have the option of either allowing biologists with SCWA to survey their property at no cost or hiring and paying for their own consultants to do so.
- The survey report will address the zone of neighboring landowner protections and will include, at minimum, a description of habitat for Covered Species (extent and quality), records of Covered Species in the general area, and observations of Covered Species within that area. Upon receipt of a biological report approved by SCWA and the Resource Agencies, and the Certificate of Inclusion signed by the landowner, SCWA will grant take coverage to the landowner under the Good Neighbor Program.

SCWA will maintain a record of all correspondence and Certificates of Inclusion sent to neighboring landowners under this policy, as well as signed Certificates of Inclusion returned by landowners. SCWA will notify USFWS, NOAA NMFS, and CDFG annually of the number, location, and size of neighboring lands entered into the Good Neighbor Program. Copies of the certificates will be provided to the Resource Agencies upon request.

10.6 COMPLIANCE MONITORING AND REPORTING

The Implementing Agreements for the Solano HCP require that local agencies prepare annual reports to track habitat losses and gains associated with public and private development projects and the assembly of the habitat preserve system. Annual reports are used to demonstrate that habitat loss is occurring in proportion to development, ensure that the reserve system is being assembled in accordance with the Implementing Agreements, and to make certain that conservation goals and objectives are being achieved.

The Plan Participants have developed an initial GIS-linked database that incorporates species observation records, including the CNDDDB and other miscellaneous sources, and tracking of ongoing and approved projects. As part of several large regional conservation plans in southern California, CDFG and USFWS have worked cooperatively with local jurisdictions, special districts, and SANDAG to develop a GIS-based data management system to meet habitat tracking reporting requirements. This system, referred to as HabiTrak, provides a standardized habitat tracking and reporting system. This program uses standardized input data to produce standardized outputs in the form of reports, maps, and updated digital databases.

CDFG has recently updated and revised HabiTrak and has indicated their desire to have all regional plans such as the Solano HCP use HabiTrak for compliance reporting. The Plan Participants anticipate integrating the existing database into the HabiTrak program to provide annual reporting data. Data to be provided in the annual reports includes:

1. The name and location of Covered Activities authorized under the HCP during the previous reporting period;
2. A cumulative assessment of projects/impacts authorized during the life of the HCP;
3. Area/extent of vegetation communities and type and number of Covered Species affected by each Covered Activity;
4. Required conservation activities (e.g., on site measures implemented, location of offsite measures, payment of mitigation fees);
5. Documentation of compliance with required conservation activities (location of conserved habitat or payment of mitigation fees);
6. Documentation that avoidance and other onsite conservation measures have been implemented and are functional for at least five years following project implementation (or three years following the last significant human intervention such as planting/restocking or irrigation whichever is later);
7. Status of reserve system development with respect to authorized take/habitat loss;
8. Status of HCP adaptive management and research studies;
9. Any significant findings, events, or changes in management at established reserves; and
10. The results and analysis of effectiveness monitoring completed during the reporting period.

Information will be provided in text and graphic formats. Annual reporting dates will be specified in the Implementing Agreements.

The Plan Participants will either expand the existing database system or integrate additional information into the HabiTrak program to provide a comprehensive GIS-linked database to assist in implementing the adaptive management program. The database will incorporate data on effectiveness monitoring and the results of targeted studies, the status of ongoing research and adaptive management, and all relevant reports and baseline studies/assessments.

10.7 RIGHTS, OBLIGATIONS ASSURANCES AND CHANGED/UNFORESEEN CIRCUMSTANCES

10.7.1 Rights and Obligations of SCWA and Permittees

As of the effective date, the Permittees (SCWA and Plan Participants) may Take Covered Species while carrying out Covered Activities in the Plan Area, as further authorized by and subject to the conditions of the Solano HCP Implementing Agreement, the HCP, and the Permits. The Covered Activities include all activities listed in Section 2.3 of the HCP.

The authority issued to the Permittees applies to all of the elected officials, officers, directors, employees, agents, subsidiaries, contractors, and subcontractors; and their officers, directors, employees and agents and eligible third parties who engage in any Covered Activity. SCWA shall conduct an educational program to fully inform all such persons and entities of the terms and conditions of the Permits, and the Permittees shall be responsible for supervising compliance with those terms and conditions. All contracts between Permittees and such persons and entities shall require compliance with the Permits.

10.7.2 General Obligations

The Plan Participants, as Permittees, will fully and faithfully perform all obligations assigned to them, respectively, under the Implementing Agreement, the Permit and the HCP, including but not limited to the terms of Section 5.0 (Avoidance and Minimization), Section 6.0 (Conservation Measures), Section 7.0 (Monitoring and Adaptive Management Program), and Section 10.0 (Plan Implementation).

In the event that USFWS and/or CDFG suspend or revoke the Permits, the Permittees will remain obligated to fulfill their mitigation, enforcement, management, and monitoring obligations, and other HCP obligations, in accordance with the Implementing Agreement and applicable statutory and regulatory requirements for all land development activities authorized for Take prior to the suspension or revocation.

10.7.3 Assurances to Third Party Participants in the Event of a Finding of Unforeseen Circumstances

Pursuant to the “No Surprises” regulations described below in Section 10.7.5, in the event of a finding of Unforeseen Circumstances, USFWS and NOAA NMFS cannot require additional land, water or financial compensation be committed without the consent of the Permittees. To the extent that such assurances are available under federal law, in the event of a finding of Unforeseen Circumstances,

and subject to the Permittees' obligations under Section 10.7.2 of this HCP, the Permittees will not require such commitments from Third Party Participants without their consent with regard to the impacts of Covered Activities on Covered Species beyond those measures required of the Third Party Participant according to the Implementing Agreement, the HCP and the Permits.

10.7.4 Interim Obligations upon a Finding of Unforeseen Circumstances

If the Resource Agencies make a finding of Unforeseen Circumstances during the period necessary to determine the nature and location of additional or modified mitigation, the Permittees shall not appreciably contribute to reducing the likelihood of the survival and recovery of affected species.

10.7.5 Federal Assurances

Section 10 regulations [50 CFR 17.22 (b)(2)(iii)] require that an HCP specify the procedures for dealing with unforeseen circumstances that may arise during implementation of the HCP. In addition, the Habitat Conservation Plan Assurances ("No Surprises") Rule [50 CFR 17.21(b)(5)-(6) and 17.22(b)(5)-(6); 63 F.R. 8859] defines "Unforeseen Circumstances" and "Changed Circumstances" and describes the obligations of the Permittees/Plan Participants, the USFWS, and NOAA NMFS.

The purpose of the No Surprises Rule is to provide assurances to nonfederal landowners participating in habitat conservation planning under the ESA that no additional land restrictions or financial compensation will be required for species adequately covered by a properly implemented HCP, in light of unforeseen circumstances, without the consent of the Permittee(s). Changed Circumstances include changes in circumstances affecting a species or geographic area covered by the HCP that can reasonably be anticipated and accommodated by plan developers, the USFWS, and NOAA NMFS (e.g., the listing of a new species, or fire or other natural catastrophic events in areas prone to such events). The policy defines Unforeseen Circumstances as "*changes in circumstances that affect a species or geographic area covered by the HCP that could not reasonably be anticipated by plan developers and USFWS and/or NOAA NMFS at the time of the Plan's negotiation and development and that result in a substantial and adverse change in status of the Covered Species.*"

In determining whether any event constitutes an unforeseen circumstance, the USFWS and/or NOAA NMFS (collectively referred to as the Service) will consider, but not be limited to, the following factors:

- Size of the current range of the affected species.
- Percentage of range adversely affected by the HCP.
- Percentage of range conserved by the HCP.
- Ecological significance of the portion of the range affected by the HCP.
- Level of knowledge regarding affected species and the degree of specificity of the species' conservation program under the HCP.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

As described in the No Surprises Rule, 50 Code of Federal Regulations, Sections 17.22(b)(5)(C) and 17.32(b)(5)(C), the Service shall have the burden of demonstrating that Unforeseen Circumstances exist using the best available scientific and commercial data. Any findings of Unforeseen Circumstances must be clearly documented and based upon reliable technical information on the biological status and habitat requirements of the affected species.

Except where substantial threat of imminent, significant adverse impacts to a Covered Species exists, the Service shall provide the Permittees written notice of a proposed finding of unforeseen circumstances within sixty (60) calendar days, during which time the Service shall meet with SCWA and any affected Permittee(s) to discuss the proposed finding, to provide an opportunity for an affected Permittee to submit information to rebut the proposed finding, and to consider any proposed changes to the conservation strategies for the Plan Area.

If the USFWS and/or NOAA NMFS determines that the Unforeseen Circumstance will affect the outcome of the HCP, additional conservation and mitigation measures may be necessary. Where the HCP is being properly implemented and an Unforeseen Circumstance has occurred, additional measures required of the Permittee(s) must be as close as possible to the terms of the original HCP and must be limited to modifications within a conserved habitat area or adjustments to lands or waters set aside as part of the HCP Conservation Program. Additional conservation and mitigation measures shall not involve the commitment of additional land or financial compensation, or restrictions on the use of land or other natural resources otherwise available for development/use under the original terms of the HCP without the consent of the Permittee(s). Resolution of the situation shall be documented by letters between USFWS and/or NOAA NMFS, SCWA and the Plan Participants/Permittees.

In other words, in the event that Unforeseen Circumstances adversely affect a Covered Species during the term of the permit, SCWA and the Plan Participants would not be required to provide additional financial mitigation or land use restrictions above those measures specified in the HCP, provided that the HCP is being properly implemented. This HCP expressly incorporates by reference the permit assurances set forth in the Habitat Conservation Plan Assurances (“No Surprises”) Rule adopted by USFWS and NOAA NMFS and published in the Federal Register on February 23, 1998 (50 CFR Part 17). Except as otherwise required by law or provided for under the HCP, including those provisions regarding Changed Circumstances, no further mitigation for the effects of the proposed project on Covered Species may be required from a Permittee(s) who is properly implementing the terms of the HCP and the Permit. The HCP will be properly implemented if the commitments and provisions of the HCP and the Permit have been or are being fully implemented by the Permittee(s).

The Permittee(s) will be responsible for implementing all remediation activities, as described below, from the moment a circumstance occurs to the point when the “changed circumstance” becomes an “unforeseen circumstance.”

10.7.6 State Assurances

Concurrent with the execution of the Implementing Agreement by all Parties, and satisfaction of all other applicable legal requirements, CDFG will issue Permittees a State permit under Section 2081 and 2080.1 of the CESA, authorizing Incidental Take by the Permittees of each State-listed and non-listed Covered Species resulting from Covered Activities in the Plan Area, to the extent permitted by

law. CDFG shall monitor the Permittees' implementation of the HCP and compliance with the State permit. CDFG shall also provide technical assistance and timely review, collaboration and consultation regarding implementation of the HCP, as provided in the Implementing Agreement and the HCP, throughout the duration of the State permit.

Neither CESA or the Fish and Game Code (Section 2080 to 2085) contain a rule or regulation similar to the federal "No Surprises" Rule. However, subject to CESA regulations, CDFG can provide assurances regarding additional mitigation based on the specific minimization and mitigation measures included in individual permits. If an adequate basis exists for determining that the measures in a particular permit will effectively minimize and fully mitigate the impacts authorized during the full term of the permit, CDFG can provide commensurate assurances to the permit holder that additional measures will not be required.

Under the proper findings, CDFG shall not amend, suspend or revoke the Section 2081(b) Permit, nor otherwise impose or seek to impose on a Plan Participant additional mitigation or compensation requirements for Covered Activities than those provided in the Solano HCP, the Implementation Agreements, and the applicable Section 2081(b) Permit, including, but not limited to, commitments of additional land or financial compensation, unless CDFG determines that continuing activities authorized under the Section 2081(b) Permit would jeopardize the existence of a Covered Species, or unless otherwise required by law. If CDFG makes a jeopardy determination, it shall amend, suspend or revoke the permit, or require such additional mitigation or compensation only if, and to the extent, necessary to avoid jeopardy. The amendment, suspension, and revocation of 2081(b) permits are governed by CESA and the Fish and Game Code promulgated to implement CESA

When providing assurances pursuant to this subdivision, the CDFG's determination of the level of assurances and the time limits specified in the Implementation Agreement for assurances may be based on localized conditions and shall consider all of the following:

- Level of knowledge of the status of Covered Species and Natural Communities
- Adequate analysis of the impact of take on Covered Species
- Use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques
- Size and duration of the Plan and the appropriateness of the size and duration of the Plan with respect to quality and amount of data
- Sufficiency of mechanisms for long-term funding of all components of the Plan and its contingencies
- Degree of coordination and accessibility of centralized data for analysis and evaluation of the Plan effectiveness
- The degree to which a range of foreseeable circumstances are considered and provided for under the adaptive management program

10.7.7 Consultations with the USFWS and NOAA Fisheries

Nothing in the Implementing Agreement is intended to alter the obligation of a federal agency to consult with the USFWS and NOAA NMFS pursuant to Section 7 of the ESA (16 U.S.C. § 1536(a)).

Unless otherwise required by law, in any Section 7 Consultation involving the Permittees or a Third Party Participant and a proposed public or private development project in the Plan Area that may adversely affect one or more federally-listed Covered Species, the USFWS and NOAA NMFS shall ensure that the Biological Opinion for the proposed project is consistent with the Biological Opinion issued for the HCP and the federal Permit, provided that the proposed project is consistent with the HCP and the federal permit. Unless otherwise required by law, the USFWS and NOAA NMFS shall not impose measures on an existing or prospective Third Party Beneficiary in excess of those that have been or will be required by this HCP, its Implementing Agreement, and the Permits.

10.7.8 Consultations with the CDFG

Except as otherwise required by law, CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies, any mitigation, compensation or habitat enhancement requirements for impacts to Covered Species resulting from Covered Activities within the Plan Area that are in excess of those that have been or will be required by this HCP, its Implementing Agreement, and the Permits.

10.7.9 Changed and Unforeseen Circumstances

The following sections address several circumstances that may be regarded as Changed or Unforeseen Circumstances and include the following:

- Fire
- Flood
- Drought
- Invasive Species
- Disease and Predation
- Significant Changes in County Land Use Assumptions
- Toxic Spills and Illegal Dumping of Toxic Wastes

10.7.9.1 Natural Communities Lost to Fire. Fire is a natural component of the communities present in the Plan Area; however, in certain situations fire can result in significant adverse consequences to biological resources and Covered Species. Significance is dependent on a number of factors such as timing, reoccurrence interval, community type, and species of concern. Fire in vernal pool habitats is typically considered to be an appropriate management tool and most vernal pool reserves are recommended to have “let burn” policies, except in locations where adjacent, non-preserve lands or structures may be adversely affected. In these habitats, fire suppression activities (e.g., creation of fire breaks, vehicle access) may create more damaging and long term adverse effects than the fire itself. In habitats supporting woody vegetation such as woodlands or riparian habitats, fire can result in the loss of key species and type conversion to other habitats if the intervals between fires are too frequent.

In the event of a fire on a preserve, preserve managers will follow protocols established in the preserve’s Resource Management Plan and work closely with local fire response crews to minimize

impacts on sensitive communities and Covered Species within safety limits. SCWA and the Plan Participants will assess the extent of damage and, if appropriate, implement land management and habitat restoration measures within affected preserves to ensure native vegetation is reestablished through active or passive management. On-going monitoring will be continued to assess natural regeneration and/or reappearance of Covered Species, consistent with the Monitoring and Adaptive Management protocols discussed in Section 7.0. If natural regeneration does not occur at a sufficient rate to restore the habitats for which the reserve was established, SCWA and the Plan Participants will consult with the Resource Agencies to determine appropriate and mutually agreed upon remediation actions consistent with the provision of Section 10.7.1. SCWA and the Plan Participants will provide information on significant fire damage as part of annual reporting.

Fire history data on which to assess Changed Circumstances is not readily available for most of Solano County. Given the number and dispersed nature of planned and anticipated reserves, fire would not affect a significant portion of the reserve system at any one time. Since most of the Solano HCP reserves will be located in grassland dominated areas, the size and consequences of a given fire are likely not relevant for most Covered Species. A rapid reoccurrence of fires and/or occurrence of fires outside the fire season (May through October) could result in changes to reserve system values.

For the purposes of the HCP, a fire frequency of 5 to 10 years can be anticipated for grassland dominated habitats; a fire frequency of 15 to 20 years would be typical for riparian and woodland communities. Fire potential within the Plan Area is typically greatest from June through October when dry vegetation co-occurs with low humidity. Fires that occur at more frequent intervals in the same area may result in "type conversion" of natural communities. Since fires in consecutive years in the same area would be unlikely because of the time needed to develop fuel loads, repeated fires in the same area within less than three years are considered an Unforeseen Circumstance. Fires occurring outside the normal fire season (June through October) during the major portion of the growing season for native plants are also considered an Unforeseen Circumstance.

10.7.9.2 Flooding. Periodic flooding can also be beneficial and desirable; however, in some cases extreme flood events can cause substantial environmental damage. Anticipated issues associated with flooding include bank erosion, loss of riparian plantings and preserved habitat, erosion or failure of impoundments for amphibian breeding habitat, and deposition of debris in wetlands and uplands. During flood events, over bank flows have entrapped native and nonnative fish in vernal pool systems adjacent to Solano County streams. The presence of fish in areas where they are not typically present can significantly reduce or eliminate California tiger salamander and California red-legged frog in affected water bodies for at least one season.

All storms at or below the 50-year event on a given stream are considered a Changed Circumstance, and remedial actions are funded by the Plan. Storms at or below the 50-year event are reasonably likely within the 30-year permit term. Flooding caused by a storm larger than a 50-year event is considered an Unforeseen Circumstance.

Following the flood event, the site will be evaluated to determine appropriate corrective actions needed to restore habitat through active management or natural processes. Corrective actions will be implemented within one year of the failure.

10.7.9.3 Natural Communities are Lost to Drought. Solano County has a Mediterranean climate with roughly 95 percent of the total annual rainfall occurring from October through April. Mean annual precipitation in the Plan Area ranges from 15 inches in the southern Montezuma Hills to 40 inches in the Blue Ridge/Vaca Mountains in northwestern Solano County.

Drought is a natural part of a Mediterranean climate to which species and natural communities have adapted. However, a prolonged drought could seriously damage the preserve system, especially new restoration plantings that have yet to become established and amphibian populations as a result of lost or reduced inundation periods in breeding habitat (e.g., inadequate winter filling and storage).

Consistent with the East Contra Costa HCP/NCCP which covers an area with similar climatic conditions, drought conditions are defined as any water year (October 1 to September 30) in which total rainfall does not exceed 75 percent of mean annual precipitation (East Contra Costa County Habitat Plan Conservation Association 2009). Available data for rain gages in the Plan Area were reviewed to define droughts and estimate their expected frequency of occurrence. Droughts that occur within this expected frequency (duration and frequency) are considered a Changed Circumstance whereas droughts outside this frequency are considered an Unforeseen Circumstance.

Data from the Vacaville rain gage records from October 1, 1951 through September 30, 2008 were reviewed to estimate drought (75% of the average rainfall or mean seasonal precipitation) frequency. The data shows that 15 drought years (26%) were recorded over this 58 year period, ranging in duration from one to four years, with an average drought period of 2 years. One four year drought was recorded (1988 through 1991). Using this data and the assumptions employed in the East Contra Costa HCP/NCCP, eight years of drought ranging in duration from one (53%) to four (6.7%) years are expected during the 30-year permit term. Droughts that occur with greater frequency (e.g., more than two droughts spanning of two years) or any drought for more than four successive years are considered Unforeseen Circumstances.

The Solano HCP Landscape Monitoring requirements (Section 7.4.4) include drought monitoring. Restoration plans require contingency measures to minimize the risk of losing mitigation plantings and restored habitats due to drought. Preventative measures include the following:

- Monitoring County rain data in the plan Area and gages established in the preserve system to determine if the amount of seasonal rainfall at the end of March and April indicates a drought (near 75% of MSP).
- Monitoring mitigation sites that are beyond their establishment periods (i.e., no longer sustained by irrigation) for stress due to low soil moisture or high evapotranspiration rates.

During drought conditions, SCWA will assess damage and initiate the following actions:

- Prepare damage assessment report.
- Recommend actions to improve effects on covered species (e.g., provision of temporary artificial water sources).
- Recommend actions to improve effects on restored habitat (e.g., supplemental irrigation).
- Implement measures through adaptive management.

10.7.9.4 Invasive Species. Disease and predation are naturally occurring phenomena and are expected to occur over the life of the HCP. The significance of such phenomena depends on a number of factors such as timing, community type, and species of concern. In most areas, populations of Covered Species typically occur in equilibrium with normal disease and predation, even if populations occasionally experience severe, but localized reductions in numbers. However, the spread or introduction of diseases, such as the West Nile Virus, bird flu, and Sudden Oak Death Syndrome, could adversely affect the population levels of some species, particularly avian species such as Swainson's hawk, or habitats such as oak woodlands. The Solano HCP incorporates significant requirements for implementing and providing long term funding for the control of aggressive, invasive exotic species in habitat reserves and mitigation lands, including minimum standards for certification of commercial and institutional mitigation and conservation banks (see Section 10.5).

However, a new and aggressive exotic species could invade the preserve system. Similarly, infestations of a new disease that affects covered or dominant species in the Plan Area could significantly affect the preserve system. Large infestations (e.g., affecting greater than 25 percent of the preserve system) of a new or existing disease, exotic plant, or exotic animal can become extremely expensive to control and could heavily tax the operating budget of the HCP. For the purposes of this HCP, infestations of new diseases or invasive exotic species, or spread of existing invasive species beyond 25 percent of the baseline condition within the preserve system are considered Unforeseen Circumstances. The monitoring program will identify existing exotic species in the preserve system so that new exotic species can be identified quickly and removed.

When a disease problem is detected, SCWA will contact CDFG and USFWS to collaborate on determining the best method of measuring, monitoring, and eradicating or controlling the disease before it spreads beyond the 25 percent threshold of Unforeseen Circumstances. Planned responses to invasion by exotic species or disease entail the following:

- Determine the best method for measuring and tracking extent.
- Prepare a damage-assessment report.
- Recommend and plan actions to address the threat.
- Respond through the Adaptive Management Program.

If the infestation results in substantial impacts to natural communities such that it cannot be addressed under the existing operating budget, SCWA shall prepare a report identifying the problem and include a cost analysis for funding a control program. This report shall be submitted to the Resource Agencies for approval.

10.7.9.5 Significant Changes In County Land Use Patterns. The design of the Solano HCP reserve system is based, in part, on the limited threat of urban development on much of the land within Solano County's jurisdiction based on the long term commitment to city-centered urban growth outlined in the County's General Plan and several of the city Plan Participant and County's limited growth measures (e.g., Solano County Measure T, Fairfield Orderly Growth Initiative) and other significant regulatory mechanisms such as the State's Suisun Marsh Protection Act (See Section

3.6 for additional information). While the County and local growth controls have sunset provisions (Solano County Measure T, December 31, 2028) and all land use regulations can be changed by public vote, practice has shown that such growth limits are extremely difficult to eliminate once they are established.

Future changes in land use, with or without current or similar growth restrictions, are not expected to affect the ability to achieve HCP reserve/preserve conservation commitments. The Solano HCP requires habitat mitigation establishment, including establishment of the reserve and funding mechanism prior to issuing any take permits for most species and community types. Changes in current regulatory restrictions, however, are most likely to affect the broader matrix in which the reserve system exists.

A Changed Circumstance will occur if a current or future countywide Orderly Growth Initiative or similar measure expires and is not re-adopted or extended. If such a circumstance occurs, SCWA, the Plan Participants, and the Resource Agencies will review conservation strategies to determine if the reserve design should be shifted to alternative conservation actions that could better address habitat protection and conservation in key habitat areas. Such actions could include altering reserve design criteria (e.g., reduce the areas/locations acceptable for establishing reserves) and transferring funding from management activities on existing lands to increased acquisition of lands through fee title or conservation easements or to other funding mechanisms to provide incentives for habitat conservation.

An Unforeseen Circumstance would occur if the County moves away from its city-centered urban growth practices and allows major new urban or industrial development outside of areas designated in the County 2008 General Plan.

10.8 OTHER MEASURES AS REQUIRED BY DIRECTOR

This section acknowledges that under the federal ESA additional measures may be required by the USFWS. Any such measures would be attached as an Appendix to the Plan and incorporated into the Implementing Agreement.

10.9 REVISIONS AND AMENDMENTS

Two types of changes may be made to the HCP and/or the HCP Permits, Implementing Agreements, and/or its associated documents:

- Minor Amendments
- Major Amendments

Revisions and amendments shall be processed in accordance with all applicable legal requirements, including but not limited to the ESA, CESA, NEPA, CEQA, and any other applicable State or federal regulations.

10.9.1 Minor Amendments

Minor Amendments to the HCP are changes provided for under the operating conservation program, including adaptive management changes, and responses to Changed Circumstances that do not require amendment of the Section 10(a)(1)(B) Permit, 2081 Incidental Take Permit or Implementing Agreement, but do require preapproval by USFWS and CDFG before being implemented. Minor Amendments do not modify the scope or nature of activities or actions covered by the Section 10(a)(1)(B) Permit or 2081 Incidental Take Permit or result in operations under the HCP that are significantly different from those analyzed in connection with the approved HCP. Minor Amendments are changes that do not affect the HCP Impact Assessment or Conservation Strategy, and do not affect the ability of Permittees to achieve the HCP Goals and Objectives.

Minor Amendments to the HCP may include, but are not limited to, the following:

- Formal state or federal listing of HCP Covered Species. All Covered Species in the HCP receive the same level of conservation commitment as if they are already formally listed as threatened or endangered species. If the USFWS formally lists Covered Species in the future, no changes to the terms or conditions of the Implementing Agreement or modifications to the conservation measures are required.
- Designation of critical habitat for HCP Covered Species. The Solano HCP provides a comprehensive, habitat-based conservation program that emphasizes preservation, restoration, adaptive management, and monitoring of lands essential to the continued existence and recovery of Covered Species. This approach is consistent with the overall purpose of the federal ESA to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. ESA regulations specify that the criteria used to designate critical habitat include “those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection” (50 C.F.R. § 424.12(b)). The Solano HCP provides for the protection of “those physical and biological features essential to the conservation” of Covered Species in a manner consistent with USFWS regulations concerning the designation of critical habitat. If the USFWS formally designates critical habitat for Covered Species in the future, no changes to the terms or conditions of the Implementing Agreement or modifications to the conservation measures are required.
- Updating construction windows for the HCP Covered Species in the event that standard construction windows established for species covered by the HCP are revised by the USFWS, NOAA NMFS, or CDFG.
- Modifying maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Section 10(a)(1)(B) Permit, 2081 Incidental Take Permit, or HCP.
- Modifying existing or establishing new Incidental Take Avoidance Measures.
- Changes to alter the wording or implementation of Conservation Measures in a manner that does not materially change associated conservation objectives provided such changes are mutually agreeable to the Plan Participants and the Resource Agencies.
- Modifying reporting protocols for Annual Reports.
- Minor changes to monitoring or reporting protocols.
- Revising mitigation area enhancement and management techniques.

- Approximately 3,250 acres of locally pre-approved, but currently undeveloped projects are present within Plan Participant jurisdictions (see Table 2-8). Many of these projects represent long-term (five to ten years) build-outs. Because of prior local approvals and, in some cases, development agreements, Plan Participants are unable to change existing project approvals or impose additional mitigation measures in conformance with HCP conservation measures and fees. Since these developments must comply with FESA and CESA and are typically conditioned to provide proof of compliance prior to issuance of local grading permits, some pre-approved projects could elect to comply with FESA and CESA through the HCP. In the Solano HCP, these pre-approved projects have been treated as developed (e.g., impacts to biological resources have already occurred) and have not been considered important for the development of the preserve system. Inclusion of pre-approved projects under the HCP/2081 Agreement and the added level of take authorized by the permits shall be considered a minor amendment.
- Any other modifications to the HCP consistent with the HCP Goals and Objectives that the USFWS, NOAA NMFS, and CDFG have analyzed and agreed to, and that will not result in significantly different operations to those analyzed in connection with the approved HCP; adverse impacts on the environment that are new or significantly different from those analyzed in connection with the approved HCP; or take not analyzed in connection with the approved HCP including, but not limited to, 1) the approval or execution of agreements to facilitate execution and implementation of the HCP, and 2) action by SCWA and Plan Participants to delegate any of its duties specified by the HCP to a third party under its direct control.

Minor Amendments may be proposed by the Resource Agencies or SCWA and the Plan Participants. The party proposing a Minor Amendment to the HCP shall circulate the proposed revision along with an explanation of why the revision is necessary or desirable, and a description of why the party believes the effects of the proposed revision are more beneficial than, and are not significantly different from, those described or anticipated under the HCP as originally adopted. If the Plan Participants and the Resource Agencies agree to the proposed revision, SCWA and the Plan Participants shall process and implement the revision.

SCWA, acting on behalf of a Participating Agency, may submit the proposed amendment to the Resource Agencies for review. The Resource Agencies shall each respond in writing within sixty (60) calendar days of receipt of the request. The responses shall either: 1) concur with the proposed amendment; 2) identify additional information necessary to enable the Resource Agencies to approve or disapprove the amendment; or 3) disapprove the amendment. If any of the Resource Agencies disapproves the amendment, it must be processed as a Major Amendment to the HCP, Section 10(a)(1)(B) Permit, and 2081 Incidental Take Permit. If any resource agency disapproves the amendment it shall include in its written response an explanation of its determination.

Resource Agency requests for minor amendments shall follow a similar procedure for submitting proposed revisions to SCWA and Plan Participants for review. SCWA and the Plan Participants shall each respond in writing within sixty (60) calendar days of receipt of the request. The responses shall either: 1) concur with the proposed revision; 2) identify additional information necessary to enable the SCWA and the Plan Participants to approve or disapprove the revision; or 3) disapprove the revision. If SCWA or any of the Plan Participants disapprove the revision, it shall include in its written response an explanation of its determination, and the amendment will not be implemented.

10.9.2 Major Amendments

Major Amendments include amendment(s) to the HCP, Incidental Take permits, Implementing Agreements, and/or NEPA/CEQA document(s).

10.9.2.1 Amendments to the HCP. Major amendments to the HCP will require amendment of the Section 10(a)(1)(B) Permit and 2081 Incidental Take Permit. The following summarizes the types of changes which may require a Major Amendment and the procedures for approval.

Major Amendments may include any of the following changes to the HCP:

- The listing and designation of critical habitat under the ESA or CESA of a new species within the Plan Area that is not an HCP Covered Species, but which may be affected by HCP Covered Activities and for which the SCWA and the Plan Participants seek coverage under the HCP, Section 10(a)(1)(B) Permit, or 2081 Incidental Take Permit.
- Significant changes to the HCP that were not previously addressed including, but not limited to the following:
 - a. Changes to the method for calculating compensation for Incidental Take, which would increase the levels of Incidental Take permitted or increase mitigation required under the HCP.
 - b. Changes to funding except as otherwise provided for in the HCP to account for inflation, adaptive management (including recovery plans), and Changed Circumstances.
- Changes to the Covered Activities, which were not addressed in the HCP as originally adopted, and which otherwise do not meet the revision provisions above.
- Amendments to the city Plan Participants' urban boundaries as shown on Figures 2-2 through 2-7. As discussed above, a Major Amendment to the Plan is anticipated 15 to 20 years from the adoption of the HCP in order to address growth beyond the time frames for the current general plans.
- Extending the term of the HCP Permits past the 30-year term.

Specific procedures for requesting amendments to Section 10(a)(1)(B) Permit are described below.

10.9.2.2 Amendments to the Section 10(a)(1)(B) Permits and 2081 Incidental Take Permit.

Following receipt of a complete application package for a proposed Major Amendment to a Section 10(a)(1)(B) Permit and 2081 Permit, USFWS and/or NOAA NMFS shall publish a notice of the proposed amendment in the Federal Register as required by the FESA. USFWS and NOAA NMFS shall use reasonable efforts to process the proposed amendment within one hundred eighty (180) calendar days of publication, except where longer periods are required by law. The amendment of a Section 10(a) Permit shall be treated as an original permit application. Such applications typically require submittal of a revised habitat conservation plan, a completed permit application form with appropriate fees, and preparation of an environmental review document in accordance with NEPA. However, the Parties acknowledge that specific document requirements may vary based on the nature of the amendment.

10.9.3 Permit Renewal

Upon expiration, the Section 10(a)(1)(B) and 2081 permits may be renewed without the issuance of a new permit, provided that the permit is renewable and that biological circumstances and other pertinent factors affecting Covered Species are not significantly different than those described in the original HCP. To renew the permit, SCWA and Plan Participants shall submit to the Resource Agencies, in writing:

- a request to renew the permit;
- reference to the original permit number;
- certification that all statements and information provided in the original HCP and permit application, together with any approved HCP amendments, are still true and correct, and include a list of changes;
- a description of any take that has occurred under the existing permit; and
- a description of any portions of the project still to be completed, if applicable, or what activities under the original permit the renewal is intended to cover.

If the Resource Agencies concur with the information provided in the request, they shall renew the permit consistent with permit renewal procedures required by Federal (50 CFR 13.22) and State regulations. If SCWA and the Plan Participants file a renewal request and the request is on file with the issuing Resource Agency's office at least 30 days prior to the permit's expiration, the permit shall remain valid while the renewal is being processed, provided the existing permit is renewable. However, SCWA and the Plan Participants may not take listed species beyond the quantity authorized by the original permit. If SCWA and the Plan Participants fail to file a renewal request within 30 days prior to permit expiration, the permit shall become invalid upon expiration.

10.10 SUSPENSION/REVOCAION

The Resource Agencies may suspend or revoke their respective permits if SCWA and the Plan Participants fail to implement the HCP in accordance with the terms and conditions of the permits or if suspension or revocation is otherwise required by law. Suspension or revocation of the Section 10(a)(1)(B) Permit, in whole or in part, by the USFWS and/or NOAA NMFS shall occur in accordance with 50 CFR 13.27-29, 17.32 (b)(8). Suspension or revocation of the 2081 Incidental Take Permit, in whole or in part, by the CDFG shall occur in accordance with Fish and Game Code Section 2820(b)(3)(A-D).

In the event that one or more of the Resource Agencies revoke or suspend one or more of the Incidental Take Permits, the assurances granted to third parties will remain in effect for every third party that fulfills the mitigation obligations imposed by the Plan Participant permit holder in compliance with the Solano HCP as it existed on the date that project approval was originally granted, and that all relevant fees are paid and all applicable conservation measures are implemented.

10.11 SEVERABILITY

If one of the Plan Participants fails to obtain its permits or has its permits revoked for failure to comply with the Solano HCP, less authorized conversion of habitat/take will be covered by the HCP. With regard to funding adequacy, the reduction in authorized conversion of habitat/take would result in a similar reduction in acres of mitigation land to be acquired, restored, managed, enhanced and administered in perpetuity. As a pay-as-you-go system, adequate funding would remain to implement the Solano HCP as it relates to authorized levels of development and associated Covered Activities for the remaining Plan Participants.