



United States Department of the Interior



FISH AND WILDLIFE SERVICE
California/Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825

IN REPLY REFER TO:
AES/CP

Dennis Barry
HCPA Treasurer and Controller
East Contra Costa Habitat Conservation Plan Association
Martinez, CA 94553-0095

Dear Mr. Barry:

Enclosed is a copy of your Endangered Species Act section 10(a)(1)(B) incidental take permit for the Easter Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP). Please thoroughly and carefully read the enclosed permit. Compliance with the Special Terms and Conditions is required for the permit to remain effective. It is important that you are aware of and understand all of the Special Terms and Conditions included in the permit. Acceptance of this permit acknowledges your commitment to comply with all Special Terms and Conditions included in the permit.

Thank you for helping to conserve Federally listed and unlisted species. We look forward to assisting you in implementing the HCP/NCCP.

If you have any questions about this permit please contact Mr. Susan Moore, Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, at (916) 414-6600.

Sincerely,

Deputy Manager

enclosures



FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN ASSOC.
COMMUNITY DEVELOPMENT DEPARTMENT
651 PINE STREET
FOURTH FLOOR, NORTH WING
MARTINEZ, CA 94553-0095
U.S.A.

2. AUTHORITY-STATUTES

16 USC 1539(a)
16 USC 1533(d)
16 USC 703-712

REGULATIONS (Attached)

50 CFR 17.22
50 CFR 17.32
50 CFR 21.23 & 21.27
50 CFR 13

3. NUMBER

TE160958-0

4. RENEWABLE

YES
 NO

5. MAY COPY

YES
 NO

6. EFFECTIVE

07/25/2007

7. EXPIRES

07/25/2037

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

DENNIS BARRY
HCPA TREASURER AND CONTROLLER

9. TYPE OF PERMIT

THREATENED AND ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

Eastern Contra Costa County as defined in Section 1.2.2 of the HCP.

11. CONDITIONS AND AUTHORIZATIONS:

- A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.
- B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.
- C. VALID FOR USE BY PERMITTEE NAMED ABOVE.
- D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ANNUAL REPORT DUE: 03/15

ISSUED BY

TITLE

ENDANGERED SPECIES PROGRAM MANAGER

DATE

07/25/2007

U.S. FISH AND WILDLIFE SERVICE, SACRAMENTO, CALIFORNIA
SPECIAL TERMS AND CONDITIONS FOR PERMITTEE

- D. All sections of Title 50 *Code of Federal Regulations*, parts 13, 17.22, and 17.32, are conditions of this permit (attached).
- E. The authorization granted by this permit is subject to compliance with, and implementation of, the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP or Plan) dated October 2006, the errata sheet dated December 19, 2006, and Implementing Agreement (IA) executed by the East Contra Costa County Habitat Conservancy (the "Implementing Entity"), the County of Contra Costa ("County"), the City of Pittsburg ("Pittsburg"), the City of Clayton ("Clayton"), the City of Oakley ("Oakley"), the City of Brentwood ("Brentwood"), the East Bay Regional Park District ("Park District") and the Contra Costa County Flood Control And Water Conservation District ("Flood Control District"), California Department of Fish and Game, and U.S. Fish and Wildlife Service (Service), all of which are hereby incorporated into the permit. This permit is not effective until all parties sign the Implementing Agreement.
- F. The Permittees, and third persons under the direct control of the Permittees, are authorized to take (harass, harm, injure, or kill) 17 animal species named in Exhibit A, to the extent that take of these species would otherwise be prohibited under Section 9 of the Endangered Species Act of 1973, as amended (Act), and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Of these 17 animal species, take authorization is effective at permit issuance for the eight (8) species currently listed under the Act. For each of the remaining 9 animal species which is not listed as threatened or endangered under the Act, this Section 10(a) permit will become effective with respect to such species concurrent with the listing of the species as threatened or endangered under the Act, to the extent that their take is prohibited by the Act. Take must be incidental to otherwise lawful Covered Activities and Covered Projects as described and defined in the Plan and IA, and as conditioned herein. The amount and nature of the take for each species is described in the Plan.
- G. Take of plant species is not prohibited under the Act and is not authorized by this permit. Plants are included in Exhibit A (attached to this permit) in recognition of the conservation benefits provided for them under the HCP/NCCP. Assurances provided under the No Surprises Rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) extend to all species named in Exhibit A.
- I. The following conditions apply to birds:
- Golden Eagle. Take resulting in mortality is prohibited. Take of active nests is prohibited. Covered activities are generally prohibited within 0.5 mile of active nests. If site-specific conditions or the nature of the covered activity (e.g., steep topography,

coordinate with California Department of Fish and Game and the Service to determine the appropriate buffer size. Harm resulting from habitat loss is authorized in the amount 13,491 acres of foraging habitat.

The Bald and Golden Eagle Protection Act prohibits the taking or possession of, and commerce in, bald and golden eagles with limited exception. Under the Bald and Golden Eagle Protection Act, it is a violation to "...take, possess, sell, purchase or barter, offer to sell, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American eagle, golden eagle, alive or dead, or any part, nest, or egg, thereof...". Take is defined to include pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, and disturb. The bald eagle is not a covered species in the HCP/NCCP, but the golden eagle is a covered species. The Plan complies with provisions of the Bald and Golden Eagle Protection Act for golden eagles.

The golden eagle is a Fully Protected Species under California Fish and Game Code and may not be taken or possessed at any time and no provision of any other law shall be construed to authorize the issuance of permits or licenses to take any Fully Protected Species.

Migratory Birds other than Golden Eagle.

Actions conducted under the HCP/NCCP and IA will comply with the provisions of the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq. (MBTA) with strict avoidance measures for activities effecting MBTA-Covered Species. The western burrowing owl, tricolored blackbird, golden eagle, and Swainson's hawk are Covered Species and protected under the MBTA. The MBTA prohibits the taking, killing, or possessing of migratory birds. The MBTA identifies a variety of prohibited actions including the taking of individual birds, young, feathers, eggs, nests, etc. There are currently no MBTA Covered Species listed under the Act and subject to a Special Purpose Permit at this time. Should any of the MBTA Covered Species become listed under the Act during the life of the Permits, the Permits would also constitute an MBTA Special Purpose Permit for that species for a three-year term as specified under 30 C.F.R. 21.27 subject to renewal by the Cities and County. To the extent that Covered Activities will impact unlisted covered bird species protected by the MBTA, the Covered Activities must comply with the MBTA throughout the Permit Area.

- J. Covered Activities that result in the incidental take of federally listed Covered Species within U.S. Army Corps of Engineers' (Corps) jurisdictional wetlands or other waters of the United States, or where Covered Activities are federally funded or require a Federal permit or authorization, such incidental take is authorized by the Permit provided that appropriate authorization is first secured from the Corps or any other applicable federal agency with jurisdiction. Where Covered Activities require formal section 7 consultation under the ESA, exemption for any associated incidental take by the applicable Federal agency(ies) shall be provided through future formal consultation, while authorization for any associated incidental take by the Permittee(s), Third Party Participants, and

participating Special Entity(ies) shall be provided through this Permit. This permit term and condition does not alter the provisions of Section 16.1 of the IA.

- K. The Management and Monitoring activities will extend beyond the term of the 30-year Permit and pursuant to Section 14.3. of the IA, the Permittees have a permanent responsibility for managing the conservation lands in perpetuity. The Implementing Entity shall develop and begin to implement a detailed plan for long-term funding of the administration and management of the Preserve beyond the terms of the permit (30 years), and shall secure all necessary commitments to collect such funding before developing 7,259 acres (fifty percent [50%]) of the Maximum Urban Development Area as provided in Table 4-3 of the HCP/NCCP) or within fifteen (15) years, whichever comes first. At the end of the 30-year Permit term, the endowment for management shall be maintained in non-wasting account.
- J. With regard to monitoring and enforcement:
1. The Permittees must ensure that Service personnel are given appropriate access (as defined under 50 CFR 13.21(e)(2)) to monitor the species named in Exhibit A in the HCP/NCCP Preserve Areas in perpetuity.
 2. The Permittees must ensure that the Service's Sacramento Fish and Wildlife Office (2800 Cottage Way, Room W-2605, Sacramento, CA, 95825; telephone 916-414-6600) is contacted immediately regarding any violations or potential violations of the Federal Endangered Species Act or Migratory Bird Treaty Act.
 3. Within one (1) working day of finding dead, injured, or sick endangered or threatened wildlife species, the Permittees or its designated agents must orally notify the Service's Sacramento Fish and Wildlife Office. Written notification to the Sacramento Fish and Wildlife Office and the Division of Law Enforcement (2800 Cottage Way, Room W- 2928, California 95825) must be made within five (5) calendar days and must include the date, time, and location of the specimen and any other pertinent information.
- L. Reports shall be prepared as described in Section 11 of the IA. These reports include Compliance Monitoring and development of a Compliance Monitoring database as described in Chapter 8.9 of the Plan, Effectiveness Monitoring as described in Chapter 7 of the Plan, and an Annual Report. The Annual Report shall be submitted no later than March 15 of each year following the Effective Date. One copy of the Annual Report shall be submitted to the Field Supervisor of the Sacramento Fish and Wildlife Office, and one copy shall be submitted to the Assistant Manager for Ecological Services.
- M. A copy of this permit must be in on file in the possession of the permittee, and third parties under its direct control, while conducting taking activities. Please refer to the permit number in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Sacramento Fish and Wildlife Office.

Special-Status Species Proposed for Coverage

Common Name	Scientific name	Status ¹	
		State	Federal
Mammals			
Townsend's western big-eared bat	<i>Corynorhinus townsendii townsendii</i>	CSC	—
San Joaquin kit fox	<i>Vulpes macrotus mutica</i>	ST	FE
Birds			
Tricolored Blackbird	<i>Agelaius tricolor</i>	CSC-1	—
Golden Eagle	<i>Aquila chrysaetos</i>	FP	BGPA
Western Burrowing Owl	<i>Athene cucularia hypugea</i>	CSC-1	—
Swainson's Hawk	<i>Buteo swainsoni</i>	ST	—
Reptiles			
Silvery legless lizard	<i>Anniella pulchra pulchra</i>	CSC	—
Alameda whipsnake	<i>Masticophis lateralis euryxanthus</i>	ST	FT
Giant garter snake	<i>Thamnophis gigas</i>	ST	FT
Western pond turtle	<i>Clemmys marmorata</i>	CSC	—
Amphibians			
California tiger salamander	<i>Ambystoma californiense</i>	CSC	FT
California red-legged frog	<i>Rana aurora draytonii</i>	—	FT
Foothill yellow-legged frog	<i>Rana boylei</i>	CSC	—
Invertebrates			
Longhorn fairy shrimp	<i>Brachinecta longiantenna</i>	—	FE
Vernal pool fairy shrimp	<i>Brachinecta lynchi</i>	—	FT
Midvalley fairy shrimp	<i>Brachinecta mesovallensis</i>	—	—
Vernal pool tadpole shrimp	<i>Lepidurus packardi</i>	—	FE
Plants			
Mount Diablo manzanita	<i>Arctostaphylos auriculata</i>	CNPS 1B	—
Brittlescale	<i>Atriplex depressa</i>	1B	—
San Joaquin spearscale	<i>Atriplex joanquiniana</i>	1B	—
Big tarplant	<i>Blepharizonia plumosa</i>	1B	—
Mount Diablo fairy lantern	<i>Calochortus pulchellus</i>	1B	—
Recurved larkspur	<i>Delphinium recurvatum</i>	1B	—
Round-leaved filaree	<i>Erodium macrophyllum</i>	1B	—
Diablo helianthella	<i>Helianthella castanea</i>	1B	—
Brewer's dwarf flax	<i>Hesperolinon breweri</i>	1B	—
Showy madia	<i>Madia radiata</i>	1B	—
Adobe navarretia	<i>Navarretia nigelliformis ssp. nigelliformis</i>	—	—

¹Status:

Federal

FE Federally Endangered
 FT Federally Threatened
 BGPA Bald and Golden Eagle Protection Act

State

ST State Listed as Threatened
 CSC California Special Concern Species
 CSC-1 Bird Species of Special Concern; First Priority
 FP Fully Protected

California Native Plant Society

1B Rare or Endangered in California and Elsewhere