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Planning Agreement

by and among

**the East Contra Costa County
Habitat Conservation Plan Association and
the California Department of Fish and Game,
and the United States Fish and Wildlife Service,
regarding the**

**East Contra Costa County
Natural Community Conservation Plan and
Habitat Conservation Plan**

August 12, 2003

DRAFT

TABLE OF CONTENTS

1.	Definitions.....	1
2.	Background.....	2
2.1.	Natural Community Conservation Planning Act.....	2
2.2.	Purposes of Planning Agreement.....	3
2.3.	Regulatory Goals	3
2.3.1.	Compliance with the California Endangered Species Act and the federal Endangered Species Act.	3
2.3.2.	Concurrent Planning for Wetlands and Waters of the United States.....	4
2.3.3.	Section 7 of FESA	4
2.3.4.	Assurances	4
2.4.	Planning Goals.....	5
2.4.1.	Departure from Project-by-Project Planning Approach.	5
2.4.2.	Covered Activities	6
2.4.3.	Natural Communities and Covered Species	6
3.	Planning Area and Participating Parties	6
3.1.	Planning Area.....	6
3.2.	The HCPA and its Member Agencies.....	7
3.3.	California Department of Fish and Game.....	7
3.4.	United States Fish and Wildlife Service	8
4.	Preliminary Conservation Objectives	8
5.	Planning Process	8
5.1.	NCCPA Planning Process.....	8
5.1.1.	Oversight and Coordination.....	9
5.1.2.	Best Available Scientific Information	9
5.1.3.	Data Collection	9
5.1.4.	Independent Scientific Input.....	10
5.1.5.	Public Participation.....	10
5.1.6.	Interim Process for Project Review	12
5.1.7.	Protection of Habitat Land During Planning Process.....	12
5.2.	FESA Planning Requirements	12
5.3.	Implementation Agreement	13
6.	Commitment of Resources.....	13
6.1.	Funding	13
6.1.1.	Local Funding	13
6.1.2.	NCCP Funding.....	14
6.1.3.	USFWS Funding.....	14
6.2.	Assistance from Wildlife Agencies	14
7.	Miscellaneous Provisions.....	14
7.1.	Public Officials Not to Benefit	14
7.2.	Statutory Authority	14
7.3.	Counterparts.....	14
7.4.	Effective Date	15
7.5.	Duration	15
7.6.	Amendments	15

DRAFT

7.7.	Execution by Member Agencies	15
7.8.	Termination and Withdrawal	15
7.8.1.	Funding	15
Exhibit A: Preliminary List of Natural Communities and Species That May be Addressed in the NCCP/HCP and List of Landcover Categories That Have Been Mapped To Assist Preparation of the NCCP/HCP		
Exhibit B: Map of Planning Area		
Exhibit C: Interim Review Process		
Exhibit D: Map of Areas Requiring Reporting During Interim Review Process		

DRAFT

East Contra Costa County Natural Community Conservation Plan and Habitat Conservation Plan Planning Agreement

This agreement regarding the East Contra Costa County Natural Community Conservation Plan and Habitat Conservation Plan (“Agreement”) is entered into as of the Effective Date between the East Contra Costa County Habitat Conservation Plan Association (“HCPA”), the California Department of Fish and Game (“DFG”), and the United States Fish and Wildlife Service (“USFWS”). These entities may be referred to collectively as “Parties” and each individually as a “Party.” The DFG and USFWS may be referred to collectively as “Wildlife Agencies.”

1. Definitions

Terms used in this Agreement that are defined in Fish and Game Code Section 2805 will have the meanings set forth therein. The following terms as used in this Agreement will have the meanings set forth below.

- 1.1. CEQA means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq.*
- 1.2. CESA means the California Endangered Species Act, California Fish and Game Code, Section 2080, *et seq.*
- 1.3. Coordination Group means the committee of stakeholders and agency staff that provides input on the development of the NCCP/HCP.
- 1.4. County means the government of the County of Contra Costa.
- 1.5. Covered Activities means the land development, land use and other activities that will be addressed in the NCCP/HCP and for which the HCPA’s Member Agencies will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 (a)(1)(B) of FESA.
- 1.6. DFG means the California Department of Fish and Game.
- 1.7. EGC means the Executive Governing Committee of the East Contra Costa County Habitat Conservation Plan Association
- 1.8. FESA means the federal Endangered Species Act, title 16, U.S.C.A., Section 1530, *et seq.*
- 1.9. Habitat Conservation Plan or HCP means a plan prepared pursuant to Section 10 of FESA.

DRAFT

- 1.10. HCPA means the East Contra Costa County Habitat Conservation Plan Association, a Joint Powers Authority formed pursuant to the Joint Exercise of Powers Law, Government Code sections 6500 through 6599.1.
- 1.11. Implementation Agreement means the anticipated future agreement that will define the terms for implementing the NCCP/HCP.
- 1.12. Member Agencies means the agencies that are members of the HCPA.
- 1.13. Natural Community Conservation Plan or NCCP means a conservation plan created pursuant to Fish and Game Code, Section 2801, *et seq.*
- 1.14. Natural Community Conservation Planning Act or NCCPA means Fish and Game Code, Section 2801, *et seq.*
- 1.15. NCCP/HCP or Plan means the HCPA's joint natural community conservation plan and habitat conservation plan prepared pursuant to the requirements of Fish and Game Code, Section 2800, *et seq.* and 16 U.S.C. Section 1539 (a)(2)(A).
- 1.16. NEPA means the National Environmental Policy Act, title 14, U.S.C.A., section 4321, *et seq.*
- 1.17. Planning Area means the geographic area the HCPA proposes to address in the NCCP/HCP as depicted / described in Exhibit B.
- 1.18. USFWS means the United States Fish and Wildlife Service.

2. Background

2.1. Natural Community Conservation Planning Act

The Natural Community Conservation Planning Act ("NCCPA") was enacted to form a basis for broad-based planning to provide for effective protection and conservation of the state's wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem or landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. A Natural Community Conservation Plan identifies and provides for the

DRAFT

measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of Planning Agreement

The purposes of this Agreement are to:

- Define the Parties' goals and obligations with regard to development of the NCCP/HCP;
- Agree on the geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species expected to be found in those communities, that are intended to be the initial focus of the NCCP/HCP;
- Identify preliminary conservation objectives for the Planning Area;
- Ensure the inclusion of independent scientific input into the NCCP/HCP development process;
- Ensure coordination between the Wildlife Agencies and between the Wildlife Agencies and the HCPA;
- Establish an interim process during NCCP/HCP development that encourages conditions conducive to achieving the preliminary conservation objectives; and
- Ensure the inclusion of public participation and outreach into the NCCP/HCP development process.

2.3. Regulatory Goals

The HCPA intends that the NCCP/HCP will allow for development and growth compatible with the NCCP/HCP's fundamental goals and consistent with State and federal legal requirements. By agreeing to assume responsibility for development of the NCCP/HCP, and committing staff and financial resources for that purpose, the HCPA intends for the NCCP/HCP to yield numerous benefits in addition to natural resource conservation, including greater regulatory efficiency, streamlining and certainty.

2.3.1. Compliance with the California Endangered Species Act and the federal Endangered Species Act.

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under the CESA, the FESA, or both CESA and FESA. The Parties intend to develop a conservation plan that satisfies the requirements for a habitat conservation plan under Section 10 (a)(2)(A) of FESA, 16 U.S.C. § 1539 (a)(2)(A), and a natural community conservation plan under the NCCPA (the "NCCP/HCP"). The NCCP/HCP is intended to serve as the basis for take permits pursuant to section 10(a) (1)(B) of FESA and section 2835 of the NCCPA. The NCCPA provides that after the approval of a NCCP, DFG may permit the taking of any identified species, both listed and

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non-listed, whose conservation and management is provided for in the NCCP. Take authorization during the interim period for species listed pursuant to CESA shall be provided pursuant to CESA. FESA provides that after the approval of a HCP, USFWS may permit the taking of species covered in the HCP if the HCP meets the requirements of section 10(a)2(A) of FESA. Take authorization for listed species covered in the HCP is effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during the interim period for species listed pursuant to FESA shall be provided pursuant to individual permits issued pursuant to section 10(a)(1)(B) of FESA.

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

The HCPA intends to address impacts to wetlands and waters of the United States in the NCCP/HCP to be consistent with, or meet the requirements of, the Clean Water Act regarding Covered Activities. The HCPA further intends to address in the NCCP/HCP impacts resulting from changes to the bed, bank or channel of rivers, streams and lakes within the Planning Area to meet the requirements of and obtaining all necessary authorizations under Fish and Game Code Section 1601 or Section 1603 for Covered Activities. Based on the NCCP/HCP, the HCPA may seek programmatic permits or authorizations under the Clean Water Act and Section 1601 (or Section 1603) as necessary for Covered Activities. However, such programmatic permits or authorizations are not necessary for approval of the NCCP/HCP or for issuances of incidental take permits.

2.3.3. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the NCCP/HCP, once approved by the USFWS and included as a condition of federal incidental take permits to the Parties, will be adopted by the USFWS and incorporated into future Section 7 consultations between the USFWS and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect species covered by the NCCP/HCP.

2.3.4. Assurances

The Parties anticipate that the USFWS will provide assurances consistent with their regulatory authority upon issuance of federal incidental take permits to the Member Agencies. Specifically, the Parties expect that if the NCCP/HCP meet the criteria for issuance of an incidental take permit under Section 10(a)(2)(A) of FESA, the Member Agencies will receive the assurances identified in the “no surprises” regulations of the United States Department of the Interior at 50 C.F.R. 17.22(b)(5) and 17.32(b)(5) for all

DRAFT

species adequately covered under the NCCP/HCP. Such assurances would be provided upon approval of the NCCP/HCP and issuance of federal incidental take permits to the Member Agencies. In addition, the Parties expect that if the NCCP meets the criteria for a NCCPA take permit under Section 2835 the Fish and Game Code, DFG will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCPA take permits to the Member Agencies. Under Section 2820(f) of the NCCPA, DFG may provide assurances for plan participants consistent with long-term conservation and associated implementation measures in an approved NCCP. In order to ensure that assurances are legally binding, any such provisions will be included in an implementation agreement negotiated between the Member Agencies and the Wildlife Agencies.

2.4. Planning Goals

The NCCP/HCP planning goals include the following:

- Allow appropriate and compatible economic growth and development that is consistent with applicable laws;
- Provide a basis for permits and authorizations necessary to lawfully take certain native species of plants and wildlife, including species that have been listed as threatened or endangered pursuant to the terms of FESA and/or CESA;
- Provide for issuance of take permits for other species that are not currently listed, but which may in the future be listed;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, NCCPA and other applicable laws and regulations relating to biological and natural resources within the Planning Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses and regulatory duplication;
- Compensate willing private landowners for the conservation of natural resources on their property through the purchase of land and/or conservation easements;
- Provide a less costly, more efficient alternative project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime; and
- Provide a “tool box” approach for compliance to maintain flexibility for project proponents.

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

The Parties agree that the process of undertaking habitat conservation planning on a project-by-project basis is costly and inefficient. All Parties expect that the development of a successful Plan will be a less expensive and more effective method of complying with the species conservation

DRAFT

requirements of ESA, NCCPA, and the environmental review processes of NEPA and CEQA than a project-by-project approach. The Parties also agree that a successful Plan can be better for both habitat conservation and economic development than individual project permitting.

2.4.2. Covered Activities

Covered Activities are the activities that will be addressed in the NCCP/HCP and for which the HCPA's Member Agencies will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 of FESA. Covered Activities under the Plan will be limited to land uses over which the Member Agencies have land use authority except they may also include certain agricultural activities and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that permits issued based on the Plan will authorize Covered Activities in the Planning Area to be carried out in compliance with NCCPA and FESA subject to the limitations and conditions identified in the Plan.

2.4.3. Natural Communities and Covered Species

The Parties intend for the NCCP/HCP to address the impacts of taking likely to result from Covered Activities in the Planning Area on natural communities, on certain endangered and threatened species listed under FESA or CESA, and on certain other unlisted species. The purpose of addressing unlisted species will be to provide for the conservation and management of the species and to help ensure that such species do not become listed as threatened or endangered under FESA or CESA. Addressing unlisted species in the NCCP/HCP is also intended to avoid the need to develop new measures or restrictions to mitigate for impacts should such species become listed in the future. It is the Parties' goal to include, at a minimum, measures sufficient to enable the USFWS to issue incidental take permits for certain unlisted species. A preliminary list of natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the NCCP/HCP is attached as Exhibit A. Exhibit A identifies the species that the HCPA and the Wildlife Agencies will initially evaluate for inclusion in the NCCP/HCP. Exhibit A does not necessarily represent the final list of species and natural communities that will be addressed in NCCP/HCP or included in incidental take permits issued by the Wildlife Agencies.

3. Planning Area and Participating Parties

3.1. Planning Area

The area to be comprised by the NCCP/HCP ("Planning Area") is the eastern portion of Contra Costa County depicted in Exhibit B and includes approximately 190,000 acres. The Planning Area includes the watersheds

DRAFT

draining the eastern side of Mount Diablo and portions of the watersheds draining the northern side of Mount Diablo. The Planning Area encompasses a variety of land uses and vegetation types. Rainfall generally decreases from west to east. The topography is more rugged and hilly in the western and southern areas. Existing development and irrigated agriculture predominate in the northern and eastern portions of the Planning Area. Grazed annual grasslands are the most common landcover in the undeveloped portions of the Planning Area. Other natural communities present include oak woodland, oak savannah, chaparral/scrub, riparian scrub and woodland, and permanent and seasonal wetlands. Though some tidal wetlands may exist within the Planning Area, the NCCP/HCP will not attempt to address or seek a permit for impacts to these habitats because tidal wetlands support a distinct suite of species not present elsewhere in the Planning Area and the Member Agencies do not wish to cover activities in such habitats through the NCCP/HCP.

3.2. The HCPA and its Member Agencies

The HCPA is a Joint Powers Authority consisting of the following seven Member Agencies:

- Contra Costa County
- City of Brentwood
- City of Clayton
- City of Oakley
- City of Pittsburg
- Contra Costa Water District, and
- East Bay Regional Park District.

The objective of the HCPA is to manage and fund the development of a joint habitat conservation plan and natural community conservation plan for submission to the governing boards of the Member Agencies and ultimately to the USFWS and the DFG. As part of this planning process, the HCPA is committed to undertaking a collaborative, systematic approach to protecting East Contra Costa County's ecologically significant resources, open space, and agricultural lands, and to ensuring that compatible economic and development activities comply with applicable federal and State environmental laws. The HCPA and its Member Agencies are the local sponsors of the NCCP/HCP.

3.3. California Department of Fish and Game

DFG is the agency of the State of California authorized and empowered to act as trustee for wildlife (as defined in Fish and Game Code Section 711.2) of the State on behalf of its residents. DFG is authorized to develop and approve NCCPs pursuant to the NCCPA, to administer and enforce CESA and other provisions of the Fish and Game Code, and to enter into

DRAFT

agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

3.4. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized and empowered by Congress to administer and enforce FESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with States, local governments, and other entities to conserve threatened, endangered, and other species of concern. This agreement requires coordination with federal Wildlife Agencies with respect to the federal ESA.

4. Preliminary Conservation Objectives

The preliminary conservation objectives of the plan are to:

- Provide for the protection of species, natural communities and ecosystems on a landscape level;
- Protect identified species and their habitats;
- Identify biologically sensitive habitat areas;
- Conserve habitat, and thereby contribute to the recovery of threatened, endangered and other identified plant and animal species covered by the plan (“Covered Species”);
- Reduce the necessity to list additional species;
- Set forth specific habitat-based goals and objectives expressed in terms of the amount and function of various types of habitat to be acquired, protected and preserved;
- Estimate the extent of impacts to species from incidental take caused by Covered Activities;
- Provide an adaptive management and monitoring strategy for Covered Species and natural communities for the duration of the NCCP/HCP.

5. Planning Process

The Parties and Wildlife Agencies intend that this Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the NCCP/HCP that fulfills the requirements of the NCCPA and FESA. The terms of this Agreement will be construed in a manner consistent with this intent.

5.1. NCCPA Planning Process

The process used to develop the NCCP/HCP will incorporate independent scientific input and analysis, and include extensive public participation, with ample opportunity for comment from the general public, as well as solicited advice from key groups of stakeholders.

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5.1.1. Oversight and Coordination

The Executive Governing Committee (“EGC”) of the HCPA will oversee development of the NCCP/HCP. EGC meetings will be open to the public and public notice will be provided at least 72 hours before each meeting. Under the EGC’s direction, the County will act as the “Coordinating Agency” and will supervise and coordinate the conservation planning process and day-to-day development of the NCCP/HCP. The County’s responsibilities include:

- Informing the EGC about progress in the NCCP/HCP development;
- Presenting key issues or decisions to the EGC for its resolution;
- Consulting with the Wildlife Agencies;
- Supervising staff and consultants developing the NCCP/HCP;
- Coordinating with and receiving input from the Coordination Group and the Science Advisors;
- Coordinating public outreach and participation; and
- Serving as the Wildlife Agencies’ point of contact with the HCPA during implementation of this Agreement.

5.1.2. Best Available Scientific Information

The NCCP/HCP will be based on the best available scientific information, including:

- Principles of conservation biology, community ecology, landscape ecology, individual species’ ecology, and other scientific knowledge and thought;
- Information about all natural communities and species of federal, State and local concern on lands throughout the Planning Area; and
- Advice from well-qualified, independent scientists.

5.1.3. Data Collection

The Parties agree that information on a wide range subjects is important for preparation of the NCCP/HCP. Priority for data collection has been given to the data essential to address conservation requirements of natural communities and proposed Covered Species. Comprehensive and uniform information on vegetation and landcover in the Planning Area is a key component of the data that have been collected to assist with preparation of the NCCP/HCP. A summary of the landcover classification system used for the NCCP/HCP is presented in Exhibit A. The science advisory process and analysis of existing information have helped to define data collection needs and have revealed data gaps that will be addressed as the plan develops. All data collected by the HCPA for the preparation and implementation of the plan, that are not proprietary data of some other individual or organization, will be made available to the Wildlife Agencies, if requested, in a digital format.

DRAFT

5.1.4. Independent Scientific Input

The Parties intend that preparation of the NCCP/HCP will be guided by independent scientific input and analysis. For that purpose, an independent Science Advisory Panel has been convened by the HCPA. The role of the Science Advisory Panel is to, at a minimum, provide recommendations, advice, and guidance on 1) scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan; 2) reserve design principles that addresses the needs of species, landscapes, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the Plan; 3) management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan; and 4) data gaps and uncertainties so that risk factors can be evaluated. The Science Advisory Panel consists of six scientists and was assembled by the HCPA, in consultation with the Wildlife Agencies, to provide technical expertise on the affected taxonomic groups, larger scale ecological processes, principles of conservation biology, and conservation and land use planning in practice. An independent facilitator supports the work of the Science Advisory Panel by coordinating meetings, framing questions, and assisting with report compilation. The Science Advisory Panel may be asked to provide additional feedback on key issues during preparation of the NCCP/HCP, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Parties. The HCPA will continue to implement the science advisory process in coordination with the Wildlife Agencies.

5.1.5. Public Participation

The NCCP/HCP will be prepared in an open and transparent process, with input from concerned citizens. The process used to prepare the NCCP/HCP will provide for thorough public review and comment.

5.1.5.1. Coordination Group

The Coordination Group is a defined stakeholder committee charged with synthesizing input from a variety of sources and providing recommendations and advice to the EGC. The Coordination Group consists of Member Agency staff, staff from other involved agencies, including the Wildlife Agencies, and invited stakeholders. The EGC has invited representatives from approximately 15 organizations to serve on the Coordination Group. The invited stakeholders represent a diverse cross-section of the interests and views of the community, including representatives of landowners, developers, and conservationists. The role of the invited stakeholders includes representing the interests of their organization at meetings and reporting on development of the NCCP/HCP to other members of their organization on a regular basis. The Coordination Group meets

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approximately monthly. All such meetings are open to the public and provide for public comment.

5.1.5.2. Outreach

The HCPA, in concert with the Coordination Group, will provide access to information for persons interested in the plan, with an emphasis on obtaining input from a balanced variety of public and private interests representing State and local governments, landowners, conservation organizations, developers, agricultural organizations, and the general public. The Parties expect and intend that public outreach regarding preparation of the NCCP/HCP will be conducted largely by and through meetings of the HCPA, including the EGC and the Coordination Group, both of which are open public meetings with opportunities for public comment. In addition, Member Agencies will include periodic briefings to their city councils or governing boards at public meetings with opportunities for public comment. Other outreach efforts will include maintenance of a project website, invited presentations to interested organizations, and occasional public workshops.

5.1.5.3. Availability of Public Review Drafts

Any draft document associated with the NCCP/HCP that is being considered for adoption by a Member Agency will be available for public review and comment for a minimum of 60 days prior to adoption of that draft document. Preliminary public review documents not considered for adoption shall be made available by a Member Agency a minimum of 10 working days prior to any public hearing addressing these documents. The Parties expect to fulfill this obligation by distributing the draft NCCP/HCP and implementing agreement with the draft Environmental Impact Report prepared for the NCCP/HCP pursuant to CEQA and the draft Environmental Impact Statement prepared for the NCCP/HCP pursuant to NEPA. Other public review documents including draft plans, memoranda of understanding, maps, conservation guidelines, species coverage lists and other planning documents will be made available for public review in a reasonable and timely manner. This obligation will not apply to all documents drafted during preparation of the NCCP/HCPs. However, the HCPA will designate as "public review drafts" various pertinent documents drafted during preparation of the NCCP/HCPs and will make these documents available to the public. The Parties agree the HCPA's internet website (<http://www.cocohcp.org>) will be used to make documents pertaining to the NCCP/HCP available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

DRAFT

5.1.5.4. Public Hearings

Public hearings regarding the NCCP/HCP development and/or approval will be scheduled to complement or integrate with hearings otherwise required by law.

5.1.6. Interim Process for Project Review

The Parties recognize that before the Wildlife Agencies approve the NCCP/HCP, certain projects and activities requiring take authorization under FESA and/or CESA may be proposed within the NCCP/HCP Planning Area. The Parties intend that these projects and activities will not be unduly delayed because of NCCP/HCP preparation. The Parties also agree that projects, actions and activities proposed or implemented within the NCCP/HCP Planning Area during preparation of the NCCP/HCP (“interim projects”) should not compromise the plan’s successful development or implementation. In order to identify the effects of interim projects the Parties agree to establish an interim process during the NCCP/HCP development wherein discretionary projects that are within the Planning Area, that are subject to Division 13, commencing with section 21000, of the Public Resources Code, and that potentially conflict with the preliminary conservation objectives contained in Section 4 of this Agreement are reviewed by DFG prior to the time, or as soon as possible after, the project application is deemed complete. For such projects, DFG shall recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. This interim process for project review is described in Exhibit C. Information developed by the Science Advisors will be considered by DFG and other Parties as part of the interim project review.

5.1.7. Protection of Habitat Land During Planning Process

The Parties and the Member Agencies may elect to preserve or restore, either by acquisition or other means, lands in the Planning Area that contain native species of wildlife or natural communities prior to the completion or approval of the NCCP/HCP. The HCPA will consult with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to credit such lands, in accordance with their biological value, toward the land acquisition or habitat preservation requirements of the NCCP/HCP encompassing the lands, once it is approved. However, lands, or portions of lands, acquired or preserved to mitigate the impacts of specific projects or activities that are approved prior to or during plan preparation will only be considered as mitigation for the resulting loss from those projects, and will not be credited toward the habitat requirements of the NCCP/HCP.

5.2. FESA Planning Requirements

FESA’s requirement for public participation in the development of habitat conservation plans is a minimum 30-day public comment period for all draft

DRAFT

habitat conservation plans. (16 U.S.C.A., §1539(c); 50 C.F.R. Part 17 and Part 222.) However, in conformance with the HCP Handbook and the 5 Point Policy, the USFWS customarily allows for public comment periods of 60 days, 90 days, or even longer, depending on the scale and complexity of individual habitat conservation plans. Further, the issuance of an incidental take permit by the USFWS is a federal action subject to the requirements of NEPA, which similarly requires a minimum 45 to 60 day public review period for all major federal actions significantly affecting the quality of the human environment. For large-scale, regional, or exceptionally complex habitat conservation plans, the USFWS encourages plan preparers to use informational meetings and external review teams. It is the policy of the USFWS to allow a minimum 90-day public comment period for such habitat conservation plans, unless there is significant public participation during their development.

5.3. Implementation Agreement

The NCCPA requires that any NCCP approved by DFG shall include an implementation agreement that contains provisions for:

- conditions of species coverage;
- the long-term protection of habitat reserves and other conservation measures;
- implementation of mitigation and conservation measures;
- suspension or revocation of the take permit;
- amendment of the NCCP;
- implementation of monitoring and adaptive management;
- oversight of plan effectiveness and funding; and
- periodic reporting.

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

6. Commitment of Resources

6.1. Funding

6.1.1. Local Funding

The HCPA recognizes that, as a prospective applicant for State and federal permits, it has the primary responsibility for developing a plan that meets applicable legal requirements and that, as a result, the development and implementation of the NCCP/HCP must be funded primarily from locally derived sources.

DRAFT

6.1.2. NCCP Funding

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate, federal and State funds earmarked for natural community conservation planning. DFG makes no guarantee, however, that such funds will be available or that they will be provided for the NCCP/HCP development. The Parties agree that the HCPA will not provide reimbursement to DFG for its participation in the planning phase of the NCCP/HCP as provided in Fish and Game Code, Section 2810, except as provided in Section 7.8.1 of this Agreement. DFG's commitments and obligations under this Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative.

6.1.3. USFWS Funding

The USFWS agrees to cooperate with the HCPA in identifying and securing, where appropriate, federal and State funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture or Transportation. The commitments and obligations of the USFWS under this Agreement are subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. The Parties acknowledge that this Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

6.2. Assistance from Wildlife Agencies

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

7. Miscellaneous Provisions

7.1. Public Officials Not to Benefit

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

7.2. Statutory Authority

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

7.3. Counterparts

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

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7.4. Effective Date

The Effective Date of this Agreement will be the date on which it is fully executed.

7.5. Duration

This Agreement will be in effect until the NCCP/HCP is approved by DFG and FWS, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment or terminated.

7.6. Amendments

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

7.7. Execution by Member Agencies

Any Member Agency may become a Party to this Agreement by executing it. However, Member Agencies are not required to be Parties to this Agreement.

7.8. Termination and Withdrawal

Any Party may withdraw from this Agreement upon 30 days' written notice to all other Parties, provided the withdrawing party makes all relevant data and materials available to the remaining parties. The withdrawing Party is not required to release data and/or materials that are the intellectual property of an entity other than the withdrawing party. For so long as the Agreement has three or more Parties, it can be terminated only by written agreement of all Parties. If there are only two remaining Parties because of the withdrawal of a Party or for any other reason, either of the remaining Parties may terminate this Agreement upon 30 days' written notice. If a Party terminates its participation, the remaining parties shall conduct a timely assessment of the feasibility of continuing to develop the Plan.

7.8.1. Funding

In the event that State or federal funds have been awarded to a withdrawing party for the NCCP/HCP preparation or implementation, the withdrawing party will return any unspent grant funds to the grantor within 30 days of withdrawing, and provide the remaining Parties with a complete accounting of the use of the funds. In the event of termination of this Agreement, all Parties who received grant funds from another Party will return any unspent grant funds to the grantor within 30 days of termination. None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement.

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SIGNATURES:

Dated: _____, 20__

EAST CONTRA COSTA COUNTY
HABITAT CONSERVATION PLAN
ASSOCIATION

By: _____
Jeff Huffaker, Chair
Executive Governing Committee,
East Contra Costa County Habitat
Conservation Plan Association

Dated: _____, 20__

CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____
Ron Rempel, Deputy Director
Habitat Conservation Division

APPROVED AS TO LEGAL FORM

By: _____
Michael R. Valentine
General Counsel

Dated: _____, 20__

US FISH AND WILDLIFE SERVICE

By: _____
Wayne White, Field Supervisor
Sacramento Office

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Exhibit A: Preliminary List of Natural Communities and Species That May be Addressed in the NCCP/HCP and List of Landcover Categories That Have Been Mapped To Assist Preparation of the NCCP/HCP

NATURAL COMMUNITIES AND OTHER HABITAT TYPES

Agriculture
Chaparral
Grassland
Oak Woodland
Riparian Woodland/Scrub
Wetlands

SPECIES

Mammals

Townsend's western big-eared bat *Corynorhinus townsendii townsendii*
San Joaquin kit fox *Vulpes macrotus mutica*

Birds

Tricolored blackbird *Agelaius tricolor*
Golden eagle *Aquila chrysaetos*¹
Western burrowing owl *Athene cunicularia hypugea*
Swainson's hawk *Buteo swainsoni*

Reptiles

Silvery legless lizard *Anniella pulchra pulchra*
Alameda whipsnake *Masticophis lateralis euryxanthus*
Giant garter snake *Thamnophis gigas*

Amphibians

California tiger salamander *Ambystoma californiense*
California red-legged frog *Rana aurora draytonii*
Foothill yellow-legged frog *Rana boylei*

Invertebrates

Longhorn fairy shrimp *Brachinecta longiantenna*
Vernal pool fairy shrimp *Brachinecta lynchi*
Midvalley fairy shrimp *Brachinecta mesovallensis*
Vernal pool tadpole shrimp *Lepidurus packardi*

Plants

Mount Diablo manzanita *Arctostaphylos auriculata*

¹ A fully protected species under Section 3511 of the California Fish and Game Code, for which take authorization may not be granted, but which can be included to address its conservation needs in the Planning Area.

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Brittlescale *Atriplex depressa*
San Joaquin spearscale *Atriplex joanquiniana*
Big tarplant *Blepharizonia plumosa*
Mount Diablo fairy lantern *Calochortus pulchellus*
Recurved larkspur *Delphinium recurvatum*
Diablo helianthella *Helianthella castanea*
Brewer's dwarf flax *Hesperolinon breweri*
Showy madia *Madia radiata*
Adobe navarretia *Navarretia nigelliformis* ssp. *nigelliformis*

Landcover Categories That Have Been Mapped To Assist Preparation of the NCCP/HCP

alkali grassland
alkali wetland
annual grassland
aquatic
aqueduct
chaparral/ scrub
cropland
landfill
non- native woodland
oak savanna
oak woodland
orchard
pasture
pond
riparian woodland/ scrub
rock outcrops
ruderal
seasonal wetland
slough/ channel
turf
urban
vineyard
wetland (general)
wind turbines

Exhibit B is contained in a separate file.

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Exhibit C: Interim Review Process

I. Purpose: The purpose of the Interim Review Process described herein is to ensure that development/construction projects approved or initiated in the Planning Area before completion of the NCCP/HCP do not compromise the successful implementation of the NCCP/HCP, to facilitate CESA and FESA compliance for interim projects that require it, and to ensure that interim projects are not delayed solely due to preparation of the NCCP/HCP.

II. Notification Process:

- 1) HCPA Member Agencies shall notify DFG and USFWS of proposed development or construction projects in the Planning Area that meet the criteria described in section III of this Exhibit, "Reportable Interim Projects".
- 2) Notification shall occur upon HCPA Member Agency determination that the proposed project is not exempt from California Environmental Quality Act.
- 3) The following information shall be provided:
 - a. The location of the proposed project shall be described on an 11x17, 1:24,000 aerial photo of the site and surrounding area.
 - b. The land cover types present on the site of the proposed development shall be listed. The most current landcover data maintained by the HCPA shall be used to identify the landcover types present.
- 4) DFG and FWS shall each designate one individual to receive notification of interim projects.
- 5) This notification process shall terminate upon completion of the NCCP/HCP or upon termination of the Agreement.

III. Reportable Interim Projects: Proposed development or construction projects, whether conducted by a Member Agency or requiring permits from a Member Agency, that are located in the Planning Area shall be reported as described in section II of this Exhibit, "Notification Process" if they meet all of the following criteria:

- A determination has been made by the Member Agency, on or after the effective date of this Agreement, that the proposed project is not exempt from the California Environmental Quality Act; and
- the proposed project is located in the "Reportable Area" shown in Exhibit D and further explained in section IV of this Exhibit.

Examples of reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments requiring an initial study;
- Rural residential projects ("ranchettes") located within the "Reportable Area" indicated on Exhibit D;

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- Road construction, road widening, and bridge construction;
- New pipelines and treatment plants;
- Construction of new recreational facilities; and
- Communications services projects such as cellular phone antennas.

Examples of non-reportable interim projects include, but are not limited to:

- Residential, commercial, and industrial developments not requiring an initial study;
- Residential, commercial, and industrial developments not located in the “Reportable Area” indicated in Exhibit D;
- Projects only requiring a building permit;
- Projects that only require permits from the Contra Costa County Department of Agriculture;
- Applications for construction of a second unit on a lot with an existing single family home; and
- Road and infrastructure maintenance.

IV. Reportable Area: The “Reportable Area” shown in Exhibit D was created using the HCPA’s landcover map. Urban, turf, landfill, and aqueduct landcover types inside the County’s Urban Limit Line were designated as “non-reportable”. All other areas were designated as “reportable area”. The HCPA’s landcover map has a minimum mapping unit of 10 acres. Consequently, areas of natural landcover smaller than 10 acres inside urban areas may be identified as “non-reportable” and applications in such areas will not be reported by the HCPA. The landcover map was created using aerial photos taken in May of 2000. The landcover map has been updated to account for new development by reclassifying areas that have received full development entitlements from Member Agencies as “urban” in the landcover map.

V. Coordination on Interim Projects: Representatives from the Parties shall meet as needed to discuss interim projects and coordination with the development of the NCCP/HCP. In addition, the Parties shall periodically confer to determine whether input and analysis provided through the science advisory process should be incorporated into this Interim Review Process. Such input and analysis shall inform the Process, and may be used to evaluate the impacts of interim projects, to develop mitigation measures, or to establish monitoring requirements, as deemed necessary or appropriate by the Parties.

Exhibit D is contained in a separate file.