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CHAPTER 7. PLAN IMPLEMENTATION

7.1 INTRODUCTION

This chapter provides detailed discussions on a broad range of requirements for the implementation of the NHP. The chapter includes a description of the structure and responsibilities of the Implementing Entity and its relationship with other agencies and organizations and the public. The required schedule for implementation of conservation measures is provided including the timing for the assembly of the NHP conservation lands system. Also included are descriptions of the process by which project proponents may use the Permits, specific requirements for conservation easements under the NHP, allowable activities on NHP conservation lands, and assurances for neighboring landowners to those conservation lands. The chapter includes a discussion of regulatory assurances under the Permits and descriptions of potential changed circumstances and the actions and processes that will be followed in the event of changed circumstances or unforeseen circumstances. Finally, the chapter explains the rationale for the duration of the Permits and identifies the processes for permit renewal, plan modifications and amendments, and permit suspension and revocation.

7.2 IMPLEMENTING ENTITY AND IMPLEMENTATION STRUCTURE

This section describes the organizational structure (Figure 7-1) that will be established to implement the Yolo NHP, and sets out the roles, functions, and responsibilities of the entities that will participate in its implementation. The implementation structure is designed to ensure that sufficient institutional expertise, capacity, resources, and focus are available to accomplish the goals and objectives of the NHP and ensure ongoing compliance with the terms and conditions of the plan and its associated regulatory authorizations. This approach further reflects the commitment to maintain and encourage ongoing collaboration among the public and private parties with interest in the Plan Area. Implementation of the NHP will begin upon execution of the NHP Implementing Agreement, issuance of section 10(a)(10(B) incidental take and NCCPA section 2835 permits, and adoption of local implementing ordinances.

7.2.1 Roles and Responsibilities of Entities Involved in NHP Implementation

The Yolo County Habitat/Natural Community Plan Joint Powers Agency (JPA) will be the NHP Implementing Entity (Figure 7-2) and will be responsible for implementation of the NHP through its Board of Directors, and an Executive Director, and appointed staff and consultants working at the direction of the Executive Director. The JPA will have day-to-day responsibility for plan implementation and oversight. The JPA will coordinate implementation actions with the Permittees, U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (DFW), and a range of stakeholders and other interests. USFWS and DFW will maintain the roles described in this chapter to assure that such implementation is consistent with regulatory authorizations issued pursuant to the NHP.
Figure 7-1. Yolo NHP Organizational Structure
Figure 7-2. Organization and Functions of the Yolo NHP Implementing Entity
7.2.2 The Joint Powers Agency, Board of Directors, and Executive Director

The JPA, under the direction of the JPA Board of Directors, will implement, coordinate, oversee, and report on all aspects of NHP implementation. The Executive Director will use the JPA staff to assure that the NHP conservation measures (including local conservation measures), including those related to protection, restoration, and management of habitat are properly implemented throughout the life of the NHP. The Executive Director will use the JPA staff to implement the adaptive management program; monitoring, data collection, and scientific research efforts; annual and five-year work plans, budget, and report preparation; and the public outreach process. To ensure the commitments reflected in the NHP are carried out in a timely and efficient manner, the Executive Director with JPA Board of Directors approval, will institute procedures to adequately address planning, budgeting, sequencing, oversight, and scheduling needs related to plan implementation.

The JPA will assume responsibility for the implementation of a broad range of actions, including:

- Oversight and coordination of administration of program funding and resources;
- Preparation of annual and 10-year reports, work plans, and budgets;
- Establishment of procedures to implement plan actions;
- Oversight of and engagement in the implementation of conservation measures;
- Management of the monitoring and research and adaptive management programs;
- Implementation of public outreach program; and
- Fulfillment of compliance monitoring and reporting requirements.

The JPA Board of Directors will select the Executive Director after consulting with USFWS and DFW. The general qualifications required of the Executive Director are:

- A minimum 10 years’ experience in the field of natural resources management;
- Familiarity with complex natural resources issues, including water resources issues;
- Experience with State and federal regulatory processes that affect water and other natural resources that fall within the scope of the NHP;
- Experience with multi-stakeholder processes;
- Experience with the administration or management of large-scale programs or projects; and
- Excellent communication skills.
The JPA Board of Directors will provide input to the JPA on the proposed Annual Work Plan and Budget, including the anticipated JPA actions associated with the adaptive management program and the proposed habitat acquisition and restoration projects. The Board’s review of the work plan and budget will focus primarily on the programmatic aspects of the proposed actions. The Annual Work Plan and Budget will be deemed to be “final” once accepted by the Board. The involvement of the Board in NHP implementation is not intended to constrain the Executive Director in day-to-day decision making.

The Executive Director will organize, convene, and provide support for the Board of Directors and its proceedings. The Board of Directors will receive information from the Executive Director and other sources on the implementation of the NHP generally, and will have the opportunity to review the proposed Annual Work Plan and Budget, including the targeted acquisitions of land and the major aspects of anticipated adaptive management actions.

The Board of Directors will be convened by the Executive Director periodically through the year, as needed, to review issues that arise in the implementation of the annual plan. The Executive Director may request that the Board reconvene to consider proposed amendments to the Annual Work Plan and Budget. The Board of Directors will hold a minimum of two meetings per year. The Board of Directors meetings will be public as provided by applicable law.

The JPA’s primary functions and responsibilities are described in the following subsections.

7.2.2.1 Establishing Administrative Capacity

The JPA have the capacity to hire staff and enter into contracts to implement the NHP.

The JPA, with the consent of and pursuant to agreements with any affected agencies, may enlist current employees of the member agencies, as well as employees of other local agencies, who possess the expertise and experience necessary to carry out the tasks associated with NHP implementation.

7.2.2.2 Preparing Budgets and Managing Expenditures

The JPA will develop, propose, and administer budgets for general program administration for acceptance by the Board of Directors. The JPA will establish systems and processes to centralize oversight of implementation budgets and related expenditures.

7.2.2.3 Contracting for Services

The JPA, through the appropriate entity, may contract for services as necessary to implement the NHP, including for professional services related to:

- Acquisition and protection of habitat;
• Habitat restoration and management;
• Monitoring and scientific research;
• Legal and regulatory matters;
• Environmental and technical services;
• Engineering and construction;
• Funding and grant agreements pertaining to state and federal programs and executing sub-grants to third-parties to conduct specific actions; and
• Operations and maintenance.

7.2.2.4 Coordinating with the Permittees

The JPA will convene meetings and facilitate communication with the Permittees. The JPA will maintain frequent contact with Permittees and provide regular updates concerning implementation matters, including progress in meeting NHP timetables, dissemination of information, and maintenance and availability of NHP records and reports.

7.2.2.5 Coordinating with Regulatory Agencies

The JPA will coordinate and collaborate with USFWS and DFW on matters potentially affecting compliance with the terms and conditions of the NHP and its regulatory authorizations.

7.2.2.6 Coordinating with Local Governments and Other Public Agencies

The JPA will serve as the main point of contact for local, state, and federal agencies interested or engaged in NHP implementation issues. The JPA will prepare, publish, and distribute general information about the NHP to those agencies and serve as representative of the NHP in public meetings convened by cities, County, and other public agencies with jurisdiction within the Plan Area.

Where regional conservation plans overlap with or adjoin the Plan Area, the JPA will collaborate and coordinate with the sponsors of those regional conservation plans on the acquisition and management of habitat lands to be preserved and/or restored within areas common to both plans. The JPA will explore opportunities to participate in early conservation actions that may benefit both the NHP and other regional conservation plans.

7.2.2.7 Protecting and Defending Against Legal Challenges

The JPA, in coordination with the Board of Directors, USFWS, DFW, and other appropriate public agencies, will help direct efforts to defend against legal challenges to the NHP or its associated State and federal authorizations. As necessary, the JPA may also provide funding for legal counsel to address the range of legal issues associated with implementation, including:
defense against litigation related to the NHP, liability associated with land acquisition and related
matters, disputes arising out of contractual agreements, and general, routine in-house legal
matters.

7.2.2.8 Overseeing Plan Amendments

In the event that an amendment to the NHP and its authorizations is necessary, the JPA will compile information and prepare documentation necessary to support such an amendment and will seek to obtain approvals from the applicable state and federal agencies.

7.2.2.9 Implementation of the Conservation Measures

The JPA will be responsible for planning, overseeing, and conducting actions set out in the NHP conservation measures including local conservation measures (Chapter 5, Conservation Strategy), and other actions identified in this chapter. The following sets out the tasks and responsibilities of the JPA regarding the implementation of the conservation measures.

7.2.2.9.1 Implementation of the Habitat Protection and Restoration Conservation Measures

The JPA will take actions directly or through other entities to implement conservation measures related to the protection of existing habitat and the enhancement and restoration of habitat, as described in Chapter 5, Conservation Strategy. These measures will primarily involve actions to acquire lands, restore or improve habitat conditions, and manage and maintain conservation lands.

7.2.2.9.2 Acquisition and/or Lease of Property Interests

The JPA may acquire interests in real property to facilitate the implementation of a habitat protection and/or restoration conservation measures. The tasks related to the acquisition of fee interest and/or conservation easements, for the purpose of habitat protection and restoration, will include, among other things:

- Routine “due diligence” review of real property;
- Biological “due diligence” to assess existing habitat and habitat restoration values;
- Appraisal of property, including oversight of the appraisal process;
- Negotiation and execution of the transaction; and
- Receipt of title or easement to lands.
- Select appropriate mechanism or instrument to ensure the protection of conservation lands.
7.2.2.9.3 Management of Land

The JPA will oversee the management and maintenance of lands acquired for conservation and will select entities that will be responsible for carrying out such management and maintenance. Tasks associated with land management will generally include:

- Habitat management;
- Invasive species control;
- Security patrol;
- Liaison with neighboring landowners;
- Mosquito abatement;
- Management of vegetation on flood control facilities to maintain flood flow capacity;
- Species and habitat monitoring;
- Public access management;
- Research activities; and
- Educational services.

7.2.2.9.4 Maintenance of Facilities and Improvements

The JPA will oversee the maintenance of all related facilities and improvements, such as buildings, fences, levees, and roads necessary for support and protection of conservation lands.

7.2.2.9.5 Funding of Activities of Other Entities

The JPA may provide funding to other entities (such as local governments engaged in regional conservation planning processes), subject to appropriate conditions and oversight, to implement habitat and species conservation efforts, both inside and outside the Plan Area, that help advance the biological goals and objectives of the NHP described in Chapter 5, Conservation Strategy.

7.2.2.10 Management of Biological Monitoring and Reporting Programs

The JPA will be responsible for the overall management and oversight of the NHP biological monitoring program with the assistance of the Science Advisor, including the implementation of monitoring-related activities, as described in Chapter 6, Adaptive Management and Monitoring Plan.

The JPA will track plan implementation actions and comply with the reporting requirements of the NHP, as described in Section 7.8, Compliance and Progress Reporting. Reports prepared by the JPA will include, among other things, the results of monitoring and research, an assessment
of overall plan performance, and an accounting of the distribution and expenditures of funding by the various entities engaged in NHP implementation activities.

7.2.2.11 Management of the Adaptive Management Program

The JPA will oversee the NHP adaptive management program with the assistance of the Science Advisor, as described in Chapter 6, Adaptive Management and Monitoring Plan. The JPA will facilitate and coordinate discussion and consideration of adaptive management issues among the various participating entities, including the JPA Board of Directors, USFWS, DFW, and the Stakeholder Group as part of the process of making decisions based on the adaptive management program. The decision-making process for adaptive management changes is described in Section 6.2 Adaptive Management Plan.

7.2.2.12 Implementation of Measures in Response to Changed Circumstances

The JPA will be responsible for recognizing and responding to those changed circumstances identified in the NHP, and for implementing those responses set out in the NHP to address those changed circumstances, as described in Section 7.10 Regulatory Assurances, Changed Circumstances, and Unforeseen Circumstances. The JPA will establish a process to ensure timely engagement of the Board of Directors, Permittees, USFWS, DFW, and the Stakeholder Group in the identification and response to such changed circumstances.

7.2.2.13 Regulatory Compliance Related to NHP Implementation

The JPA will be responsible for ensuring that the NHP is properly implemented, including ongoing compliance with the elements of the NHP and the terms and conditions of the associated regulatory authorizations. The JPA will also identify, seek, and obtain from State and federal agencies any other regulatory permits or authorizations that are necessary for NHP implementation.

7.2.2.13.1 Maintaining Permits/Authorizations and Obtaining Amendments

The JPA will establish a process to ensure compliance with all permits and authorizations related to NHP implementation. If amendments or modifications to any of these permits or authorizations become necessary, the JPA and the other Permittees will work with the applicable agency to develop the necessary documentation and obtain the amendment.

7.2.2.14 Public Outreach

The JPA will implement a public outreach and education program to promote public awareness and provide opportunities for public input on matters concerning plan implementation. General objectives of the outreach program will be to:

- Promote public awareness of and understanding about the NHP’s purpose, specific conservation measures and their implementation;
• Provide streamlined and timely access to information;
• Provide contact with decision-makers; and
• Maintain a transparent process for understanding, clarifying, and addressing public input and comments.

### 7.2.3 Permittees

The NHP provides the basis for the issuance of regulatory authorizations, under the federal ESA and the California NCCPA for the incidental take, damage, or destruction of federal and California listed wildlife and plant species that result from covered activities (Chapter 3, *Covered Activities*). The entities that receive incidental take authorizations for activities covered under the NHP are referred to collectively as the “Permittees.” Incidental take authorizations will be sought by Permittees pursuant to ESA section 10(a)(1)(B) and NCCPA section 2835.

However, the Permittees, including the JPA, may enter into agreements individually, amongst themselves, or with other entities to designate responsibility for carrying out certain actions under the plan.

The following entities are Permittees for the purpose of the NHP and its regulatory authorizations.

- Yolo County HCP/NCCP JPA
- County of Yolo
- City of Davis
- City of West Sacramento
- City of Winters
- City of Woodland

### 7.2.3.1 Local Implementing Ordinances

Permittees will each adopt an implementing ordinance to ensure implementation of the NHP. The implementing ordinance will reference the take permits, the Implementing Agreement, the NHP, and the local jurisdiction’s obligations under the NHP.

### 7.2.4 Science Advisor

The JPA will select a Science Advisor to assist in the implementation of the NHP and to ensure that such implementation decisions are guided by sound scientific information. The JPA will consult with the Board of Directors, USFWS, and DFW in the selection of the Science Advisor.
The Science Advisor will report to the Executive Director. Specifically, the responsibilities of the Science Advisor include:

- Assist in the implementation of the monitoring program and associated research;
- Assist in the implementation of the adaptive management program;
- Support the Executive Director in the preparation of reports and other technical documents; and
- Assist in building sufficient scientific capacity and resources within the JPA.

Minimum requirements for the Science Advisor will be:

- Educational and professional background in relevant scientific discipline,
- At least 10 years’ experience in the management of large programs,
- Experience managing or senior involvement in large scale research or monitoring programs, and
- Knowledge of issues related to the Plan Area.

7.2.5 Permitting Agencies: USFWS and DFW

On the basis of the NHP, USFWS and DFW will issue regulatory authorizations to the Permittees pursuant to the federal ESA and the NCCPA. Consistent with their authorities under these laws, USFWS and DFW will retain responsibility for enforcing the terms and conditions of the permits and regulatory authorizations. USFWS and DFW retain full responsibility to:

- Determine whether implementation of the NHP is proceeding in compliance with the terms and conditions of the regulatory authorizations;
- Enforce the terms and conditions of the regulatory authorizations; and
- Modify, suspend, or revoke regulatory authorizations, consistent with the terms and conditions of the NHP, the Implementing Agreement, and applicable State or federal law.

USFWS and DFW will also provide input on a range of implementation actions that will be carried out by the JPA. The JPA will work closely with USFWS and DFW to ensure ongoing compliance with the permits and authorizations.

7.2.5.1 California Department of Fish and Wildlife

DFW is the agency of the State of California authorized to act as trustee for the state’s wildlife. DFW administers and enforces CESA, the NCCPA, and other provisions of the California Fish and Game Code. DFW is authorized to enter into agreements with federal and local governments and other entities for the conservation of species and habitats, to authorize take
under CESA and the NCCPA, and to provide statutory assurances under the NCCPA. On an
ongoing basis, DFW will coordinate with the JPA and the other Permittees on various aspects of
NHP implementation, including the adaptive management process, and the monitoring program
and associated research. DFW will also maintain responsibility for NHP enforcement, consistent
with the NCCPA and other authorities. DFW owns and manages land within the Plan Area, and
may, at the request of the JPA, enter into agreements whereby it operates and maintains certain
habitat areas that are developed through NHP habitat protection and restoration actions.

7.2.5.2 United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress
to administer and enforce the ESA with respect to terrestrial wildlife, certain fish species, insects
and plants; to enter into agreements with states, local governments, and other entities to conserve
threatened, endangered, and other species of concern; to authorize incidental take under ESA;
and to provide regulatory assurances in accordance with 50 CFR section 17.22(b)(5) and section
17.32(b)(5). On an ongoing basis, the USFWS will coordinate with the JPA and the other
Permittees on various aspects of NHP implementation including the adaptive management
process, and the monitoring program and associated research. The USFWS will also maintain
responsibility for NHP enforcement consistent with the ESA and other authorities.

7.2.6 Technical Advisory Committees

The JPA may establish one or more additional technical advisory committees to better inform
implementation of conservation measures and coordinate habitat enhancement and land
management activities with other entities. Representatives of the USFWS and DFW will serves
as advisors to any technical advisory committees established.

7.2.7 NHP Stakeholder Group

In recognition of the need to have broad community participation during the preparation of the
NHP, the JPA Board of Directors formed an NHP Advisory Committee with a membership
representative of the varied interests in Yolo County, including the environment, education,
agriculture, business, local government, and the community-at-large. The JPA anticipates that
these stakeholders may be interested in participating or commenting on the Plan’s
implementation. A Stakeholder Group will be formed to replace the NHP Advisory Committee
and this Stakeholder Group will continue to provide an avenue for input to the JPA during NHP
implementation.

An NHP Stakeholder Group will be established by the JPA to provide a forum through which
interested public and private entities will consider and discuss matters related to NHP
implementation. This Stakeholder Group input will ensure continuity between development of
the NHP and implementation of the NHP and ensure the timely, efficient, and proper
implementation of the commitments reflected in the NHP. Membership in the stakeholder group is voluntary and members will not be paid.

### 7.2.7.1 Membership

The Stakeholder Group will consist of a range of entities and organizations with an interest in NHP-related matters.

Members of the Committee will at a minimum include but not be limited to:

- Land developers and other interest groups seeking use of the Permits under the NHP;
- Conservation advocacy groups;
- Agricultural interest groups, and
- Other stakeholders whose assistance will increase the likelihood of the success of NHP implementation.

### 7.2.7.2 Function

The JPA will convene and facilitate the Stakeholder Group periodically to exchange information and provide input to the JPA concerning the current significant issues at hand. Stakeholders will have opportunity to inquire about implementation matters, be apprised by the JPA of issues of interest, and make recommendations concerning pending decisions. All Stakeholder Group meetings will be open to the public and noticed on the NHP Website or other appropriate public forum. At least two Stakeholder Group meetings will be held each year.

For the benefit of the Stakeholder Group members and the general public, the JPA will provide information and briefings regarding NHP implementation. To further facilitate access to information and promote transparency in decision-making, the JPA will maintain a publicly available data base of key documents and information, such as annual implementation reports, work plans, and budgets (Section 7.8, Compliance and Progress Reporting).

The Stakeholder Group will develop its own internal organization and process by committee consensus to best coordinate with the various aspects of NHP implementation. The Stakeholder Group process will complement, but not substitute for, ongoing collaboration and communication between stakeholders and the JPA, Permittees, the Board of Directors, USFWS, and DFW. The JPA will organize, help convene, and provide support for the Stakeholder Group and its proceedings.

### 7.3 NHP Implementation Schedule

This section describes the schedule for implementing the NHP conservation measures. The schedule for NHP implementation provides an approximate timeframe and sequence for the completion of actions under the conservation measures described in Section 5.4, Conservation
Measures. Implementation begins in Year 0, the year in which NHP regulatory authorizations are issued by the USFWS and DFW. Based on currently available information, this schedule describes a reasonable estimate of the timing and sequence for implementation of the various conservation actions over the term of the NHP. The actual timing of implementation of some conservation actions may vary from the implementation schedule described here. To facilitate successful implementation of the overall NHP Conservation Strategy, the Implementing Entity must retain a level of flexibility in the schedule. For example, new information that develops over the term of NHP regarding conservation opportunities for achieving the biological goals and objectives for a particular covered species could necessitate adjustments in implementation. Substantial variation from the proposed implementation schedule will be addressed through the adaptive management process described in Section 6.2, Adaptive Management Plan.

7.3.1 Timing of Mitigation Actions and “Rough Proportionality”

The NCCPA requires that the timing and extent of mitigation actions be roughly proportional to the impacts. Section 2801(d) states that: “Natural community conservation planning…provides one option for identifying and ensuring appropriate mitigation that is roughly proportional to impacts on fish and wildlife...” Monitoring plans developed for Natural Community Conservation Plans (NCCPs) must provide “measurements to determine if mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan.” This section describes how NHP will meet this mitigation timing requirement of the NCCPA. For additional mitigation timing assurances see the Jump Start and Stay Ahead provisions described in Section 7.5.6, Jump Start and Stay Ahead Provisions.

The protection and restoration of natural communities and covered species habitats for the mitigation component of the NHP must be implemented in advance of or concurrent with the commensurate impacts of the covered activities. Consequently, the schedule for implementing the mitigation component of the NHP is determined by the timing of when the permanent development and operations and maintenance activities described in Chapter 3, Covered Activities, are implemented. If a covered activity is not implemented, then the mitigation required for that covered activity would not need to be implemented.

The timing of mitigation (i.e., protection and restoration of natural communities and covered species habitats) must be roughly concurrent with the timing of the impact from the covered activity. For habitat protection, the lands acquired (through conservation easement or fee title) must transfer to the Implementing Entity or other land owner approved by the Implementing Entity within one (1) year of the impacts of the covered activities on the resource to be mitigated. For habitat restoration actions, the construction of the habitat restoration must be completed within two (2) years of the impacts of the covered activities on the resource to be mitigated. Restoration completion is defined as completion of construction of the restoration site (all

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1 California Fish and Game Code section 2805(f)(3)(C).
grading completed and plantings installed) such that the only remaining activities are irrigation
and weed control (if necessary), monitoring, ongoing maintenance, and adaptive management.2

As appropriate to specific acquisition funding and agreements, the Implementing Entity may
“borrow” against NHP conservation lands already protected or with completed habitat
restoration that has been implemented for conservation (non-mitigation) purposes until such time
as the mitigation habitat can be protected or restored. See Section 7.5.6, Jump Start and Stay
Ahead Provisions, for additional discussion.

7.3.2 Timing of Non-Mitigation Conservation Actions

Implementation of actions under the NHP conservation measures that are independent of
mitigation will be implemented on the time schedule described in the sections below.

7.3.3 CM1: Protect Landscapes and Natural Communities

The natural communities to be protected under this conservation measure include grasslands,
shrublands and scrub, woodlands and forest, and riparian and wetland. This conservation
measure also provides for the protection and maintenance of agricultural lands cultivated in crop
types that provide habitat for associated covered species. The schedule for protection of each
natural community land cover type is provided in Table 7-1, NHP Land Protection Schedule for
Natural Communities and Species Conservation (i.e., Non-mitigation). The first 10-year
increment of the schedule has lower targets than each of the second through fourth 10-year
increments to provide the time necessary for the Implementing Entity to become established as
the Implementing Entity, develop implementation procedures and processes, develop
partnerships, and gather information necessary to initiate implementation of the NHP. Lands
selected for protection under the NHP must also protect specified biological resources (e.g.,
protection of California tiger salamander breeding ponds and Swainson’s hawk nest sites to
achieve the biological goals and objectives (see Section 5.3, Biological Goals and Objectives).
The schedule for the protection of these specified biological resources is presented in Table 7-2,
NHP Schedule for Conservation (i.e., Non-mitigation) of Specified Biological Resources.

Protection of natural communities is required to mitigate the effects of covered activities on
natural community land cover types and associated covered species habitats (see Table 5-11).
As described in Section 7.3.1, Timing of Mitigation Actions and “Rough Proportionality,” the
schedule for protecting these land cover types is dependent on when covered activities that affect
them are implemented and protection must be implemented in advance of or concurrent with the
timing of the impacts.

In addition to the protection of existing natural communities and covered species habitat, the
NHP requires lands be protected for the restoration of natural communities and covered species

2 Note that all habitat restoration mitigation is in combination with existing habitat protection mitigation such that temporal
impacts of habitat removal are addressed by the protection and management of previously unprotected existing habitat.
habitat. The implementation schedule for natural community restoration is described in separate sections below.

The implementation schedule assumes that monitoring and management of protected and restored natural communities will follow completion of each restoration increment and continue over the term of the NHP as described in CM5, Enhance and Manage Protected Natural Communities.

7.3.4 CM2: Develop an Invasive Species Control Program

The Implementing Entity will prepare an invasive species control program for the NHP conservation lands system within five years of NHP approvals. The Implementing Entity will initiate implementation of the invasive species control program for each natural community and species habitat as lands are acquired and brought into the conservation lands system. The program will be updated on an ongoing basis to address the addition of new conservation lands to the system over the term of the NHP.

7.3.5 CM3: Improve the Permeability of Linear Structures for Native Wildlife

For new proposed projects, the Implementing Entity will coordinate with authorities having jurisdiction over transportation or other infrastructure corridors to include in the project planning and design process wildlife crossings that enable covered species to safely negotiate roads, railroads, canals and other man-made structures that are found to be impeding the permeability of habitat within designated ecological corridors. For existing facilities, the Implementing Entity will work on an ongoing basis with the appropriate jurisdiction to conduct studies of wildlife mortality, identify opportunities to improve permeability of linear structures, and seek funding for implementation.

7.3.6 CM4: Restore Natural Communities and Habitat

7.3.6.1 Valley Oak Woodland Restoration

This conservation measure provides for the restoration of valley oak woodland to achieve the NHP valley oak woodland and associated covered species biological goals and objectives (see Section 5.3, Biological Goals and Objectives, and Table 5-6). The timing and amount of restoration of valley oak woodland the purpose of conservation (i.e., non-mitigation) is provided in Table 7-3, NHP Schedule for Restoration of Natural Communities for Conservation (i.e., Non-mitigation).
<table>
<thead>
<tr>
<th>Natural Community/Land Cover Type</th>
<th>Total</th>
<th>Land Acquisition Target by Implementation Period (acres)</th>
<th>Source: Table 5-9.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Years 1–10</td>
<td>Years 11–20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Protected/Maintained</td>
<td>Percent of Total</td>
</tr>
<tr>
<td>Annual Grassland</td>
<td>2,971</td>
<td>10%</td>
<td>7,427</td>
</tr>
<tr>
<td>Serpentine Grassland</td>
<td>42</td>
<td>50%</td>
<td>43</td>
</tr>
<tr>
<td>Shrublands and Scrub</td>
<td>603</td>
<td>10%</td>
<td>1,206</td>
</tr>
<tr>
<td>Blue Oak - Foothill Pine and Blue Oak Woodland</td>
<td>1,346</td>
<td>10%</td>
<td>2,692</td>
</tr>
<tr>
<td>Closed-Cone-Cypress and Juniper</td>
<td>5</td>
<td>0%</td>
<td>5</td>
</tr>
<tr>
<td>Montane Hardwood</td>
<td>77</td>
<td>10%</td>
<td>153</td>
</tr>
<tr>
<td>Valley Oak Woodland</td>
<td>26</td>
<td>25%</td>
<td>50</td>
</tr>
<tr>
<td>Valley Foothill Riparian</td>
<td>582</td>
<td>15%</td>
<td>970</td>
</tr>
<tr>
<td>Vernal Pool Complex</td>
<td>53</td>
<td>100%</td>
<td>0</td>
</tr>
<tr>
<td>Rice</td>
<td>1,111</td>
<td>25%</td>
<td>2,222</td>
</tr>
<tr>
<td>Total</td>
<td>6,811</td>
<td>12%</td>
<td>14,768</td>
</tr>
</tbody>
</table>
Table 7-2. NHP Schedule for Conservation (i.e., Non-mitigation) of Specified Biological Resources

<table>
<thead>
<tr>
<th>Conservation Action (metric)</th>
<th>Applicable Conservation Measure</th>
<th>Target by Implementation Period</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Years 1–10</td>
<td>Years 11–20</td>
</tr>
<tr>
<td>Protect alkali milk-vetch, Heckard’s pepper-grass, Baker’s navarretia brittlescale, San Joaquin spearscale, and palmate-bracted bird’s-beak occurrences in PU16 (acres of land)</td>
<td>CM1</td>
<td>53</td>
<td>0</td>
</tr>
<tr>
<td>Protect seasonal ponds (number)</td>
<td>CM1</td>
<td>14</td>
<td>35</td>
</tr>
<tr>
<td>Establish suitable Swainson’s hawk and white-tailed kite nesting trees (number)</td>
<td>CM8</td>
<td>100</td>
<td>120</td>
</tr>
<tr>
<td>Protect western yellow-billed cuckoo nest sites (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Protect least Bell’s vireo nest sites (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Protect western burrowing owl nesting burrows (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Protect bank swallow nest sites (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Protect tricolored blackbird nest sites (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Protect Townsend’s big-eared bat maternity/roosting colonies (number)</td>
<td>CM1</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

Source: Table 5-10.

1 CM1, Protect Natural Communities; CM8, Establish Nest Trees for Raptors.
2 The overall target may be achieved in any combination of implementation periods. Less than 5 nest sites may be protected if less than 5 unprotected nest sites are found over the term of the NHP.
3 The overall target may be achieved in any combination of implementation periods. Less than 10 nesting burrows may be protected if less than 10 unprotected nesting burrows are found over the term of the NHP.
4 The overall target may be achieved in any combination of implementation periods. Less than 10 colonies may be protected if less than 10 unprotected colonies are found over the term of the NHP.
### Table 7-3. NHP Schedule for Restoration of Natural Communities for Conservation (i.e., Non-mitigation)\(^1\)

<table>
<thead>
<tr>
<th>Restored Habitat Type</th>
<th>Habitat Restoration by Implementation Period (acres)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Years 1–10</td>
<td>Years 11–20</td>
</tr>
<tr>
<td></td>
<td>Restored</td>
<td>Percent of Total</td>
</tr>
<tr>
<td>Valley oak woodland</td>
<td>25</td>
<td>25%</td>
</tr>
<tr>
<td>Valley foothill riparian</td>
<td>38</td>
<td>25%</td>
</tr>
<tr>
<td>Giant garter snake habitat (mosaic of emergent wetland, open water, and upland)</td>
<td>85</td>
<td>25%</td>
</tr>
<tr>
<td>Total</td>
<td>133</td>
<td>22%</td>
</tr>
</tbody>
</table>

Source: Table 5-9.

\(^1\) Habitat restoration acreages provided are for measures to contribute to species recovery and natural community conservation (“conservation”) and do not include habitat restoration acreage to address the mitigation of impacts of covered activities on natural communities and covered species (“mitigation”).
7.3.6.2 Fresh Emergent Wetland Restoration

This conservation measure provides for the restoration of giant garter snake habitat including fresh emergent wetland, open water, and uplands to achieve the biological goals and objectives for the conservation of this species (see Section 5.3, Biological Goals and Objectives, and Table 5-6). The timing and amount of restoration of giant garter snake habitat for the purpose of conservation (i.e., non-mitigation) is provided in Table 7-3.

Restoration of fresh emergent wetland is required to mitigate the effects of covered activities on fresh emergent wetland and associated covered species habitats (see Tables 5-7 and 5-12). As described in Section 7.3.1, Timing of Mitigation Actions and “Rough Proportionality,” the schedule for implementing fresh emergent wetland habitat restoration actions is dependent on when covered activities that will affect fresh emergent wetland habitats are implemented and must be implemented in advance of or concurrent with the timing of the impacts.

7.3.6.3 Valley Foothill Riparian Restoration

This conservation measure provides for the restoration of riparian habitats to achieve the NHP valley foothill riparian natural community and associated covered species biological goals and objectives (see Section 5.3, Biological Goals and Objectives, and Table 5-6). The timing and amount of restoration of valley foothill riparian forest and scrub for the purpose of conservation (i.e., non-mitigation) is provided in Table 7-3.

Restoration of valley foothill riparian is required to mitigate the effects of covered activities on riparian land cover types and riparian-associated covered species habitats (see Tables 5-7 and 5-12). As described in Section 7.3.1, Timing of Mitigation Actions and “Rough Proportionality,” the schedule for implementing riparian habitat restoration actions is dependent on when covered activities that will affect riparian habitats are implemented and must be implemented in advance of or concurrent with the timing of the impacts.

7.3.7 CM5: Enhance and Manage Protected Natural Communities

This conservation measure provides for the ongoing enhancement and management of all natural community lands protected and restored under the NHP. Implementation begins when each parcel of land is protected and brought into the NHP conservation land system. Within two years of protection of land parcels (in fee title or easement right), the Implementing Entity will conduct assessments to collect information on the ecological condition and function of the acquired parcels. These surveys are in addition to the biological and physical surveys conducted prior to bringing lands into the NHP conservation land system. Based on results of the assessments, the Implementing Entity will develop management plans within one year of completing the assessments for individual newly protected conservation lands or will incorporate management actions for the new lands into management plans for existing conservation land units. The management plans will describe enhancement and management actions necessary to achieve the biological objectives established for the restored habitat and protected existing habitat.
Subsequent habitat enhancement and management actions will be implemented in accordance with the enhancement and management schedule for each management plan. Ongoing updates to management plans will be made as new information regarding site conditions and appropriate management prescriptions becomes available over the term of the NHP.

7.3.8 CM6: Restore Covered Plant and Vernal Pool Shrimp Species Habitat and Establish Occurrences

This conservation measure provides for the restoration of covered plant and vernal pool shrimp species habitat and establishment of occurrences is required to mitigate the effects of covered activities on occurrences of these species (see Table 5-12). As described in Section 7.3.1, *Timing of Mitigation Actions and “Rough Proportionality,”* the schedule for implementing these habitat restoration and species occurrence establishment actions is dependent on when covered activities that will affect covered plant and vernal pool shrimp species are implemented and must be implemented in advance of or concurrent with the timing of the impacts.

7.3.9 CM7: Increase the Abundance of Covered Plant Species in NHP Protected Occurrences

Under this conservation measure, the Implementing Entity will implement habitat enhancement and management actions to increase the abundance of covered plant species plants in NHP protected occurrences. These actions will be implemented within one year of completing management plans for NHP conservation land parcels that support covered plant species occurrences. These activities will continue over the term of the NHP as necessary to maintain target species plant abundance levels.

7.3.10 CM8: Establish Nest Trees for Raptors

Under this conservation measure, the Implementing Entity will undertake actions to establish native trees on NHP conservation lands that will support nesting habitat for Swainson’s hawk and other raptors as they mature. The timing and number of native raptor nesting trees planted for the purpose of conservation (i.e., non-mitigation) is provided in Table 7-2.

7.3.11 CM9: Improve Protection and Management on Existing Public and Easement Habitat Lands to Maintain or Enhance Covered Species Occurrences and Habitat

Under this conservation measure, the Implementing Entity will work with land owners and managers of public and easement habitat lands (PEHL) to develop and implement management methods that would benefit of covered species on those lands. While the Implementing Entity cannot control the actions of federal and state agencies, the Implementing Entity will seek to develop and complete Memoranda of Understanding (MOUs), Memoranda of Agreement (MOAs), and cooperative agreements with all federal and state agencies that own and manage...
existing protected lands (PEHL Category 1) and other PEHL within the Plan Area shown in Figure 5-2 by Year 15 of NHP implementation.

7.4 SPATIAL CRITERIA FOR CONSERVATION LANDS

The NHP includes conservation land assembly principles described in Section 5.2.3.4, Spatial Criteria for Conservation Lands Assembly that are consistent with and designed to achieve the ecological requirements of covered species and natural communities and the regulatory requirements of the NCCPA. The Implementing Entity will systematically apply the conservation land assembly principles when evaluating each parcel of land under consideration for acquisition in fee title or easement right in seeking to achieve the biological goals and objectives (see Section 5.4.1.1.1, Pre-Acquisition Surveys and Evaluations and Section 5.4.1.1.2, Site Selection Criteria). The assembly principles include emphasis on ecosystem process and habitat functions, habitat-related requirements for associated covered species, and broad ecological and land management characteristics. The Implementing Entity will identify potential conservation lands based on the extent to which those lands meet the identified assembly principles.

Over the course of implementing the NHP, the Implementing Entity may revise the assembly principles, consistent with new scientific information and in coordination with USFWS and DFW, to improve the effectiveness of conservation lands in achieving the NHP biological goals and objectives.

7.5 IMPLEMENTATION PROCESS

7.5.1 Application Process for Use of Take Permits

Permittees, or third-party project proponents authorized by Permittees through certificates of inclusion (COI), may take covered species under the ESA section 10(a)(1)(B) and NCCPA section 2835 permits (Permits) once compliance with the NHP has been verified by the Permittee and the Implementing Entity. Non-Permittee project proponents seeking coverage under the NHP will submit an application for third-party take authorization to the appropriate Permittee and the Implementing Entity. The jurisdiction with land use authority for the project or activity will be responsible, working with the Implementing Entity, for the review and approval process for the application. The Implementing Entity will support Permittees in the approval process regarding compliance with the conditions of the NHP and the issued Permits.

It is anticipated that most applications for coverage under the Plan will be private property owners in the participating cities and the County. These jurisdictions will be responsible for, with support from the Implementing Entity, determining the completeness of each project application. If the application is complete and the applicant has complied with all relevant terms of the NHP as determined by the Implementing Entity and the appropriate local Permittee, take authorization will be granted as part of the normal project review process (e.g., grading permit
issuance, EIR certification). The local Permittee will be responsible for reporting the relevant details of approved projects to the Implementing Entity.

### 7.5.1.1 Application Package and Review Process for Proposed Projects

To request use of the Permits, project proponents will prepare an application package and submit to the Permittee with jurisdiction over the activities at the project site and to the Implementing Entity. The following steps must be taken by project proponents (whether Permittees or third-party applicants), Permittee, and Implementing Entity with each use of the Permits:

1. **Verify Covered Activities.** The Implementing Entity and Permittee will verify that activities under a proposed project are included in the NHP covered activities. The activities proposed by the project proponent must be included in Chapter 3, *Covered Activities*, and must be described by the project proponent in their application for use of the Permits.

2. **Complete Biological Surveys.** The project proponent will conduct required biological surveys (see Section 5.4.4, *Avoidance and Minimization Measures*) and submit survey report(s) to the Implementing Entity. Project proponents are responsible for conducting these surveys and preparing survey reports following all of the NHP requirements. Project proponents may contract with and provide funding to the Implementing Entity to conduct the surveys and prepare survey reports. Project proponent must provide a map of the land cover types on the project site using the same or a compatible classification system as the NHP Land Cover GIS (see Table 2-1).

3. **Determine Impacts.** Calculation must be provided by the project proponent to the Implementing Entity of the impacts of the project’s covered activities on natural communities (and all land cover types within a natural community classification) in acres (or linear feet for stream channels), covered species habitat in acres (or linear feet for covered species with stream channel habitat) using the habitat modeling methods and classification (e.g., breeding habitat, foraging habitat) for each species presented in Appendix A, *Covered Species Accounts*, and species occurrences in units appropriate to the species (e.g., occurrences of plants, nests of raptors). See Section 7.5.5, *Tracking of Impacts and Conservation Targets*, for appropriate data sources for impact calculations.

4. **Optional Step – Dedication of lands.** If the project proponent wishes to dedicate lands to the NHP conservation land system to avoid impacts and reduce NHP mitigation fee costs, they must identify such conservation lands at the project site that meet NHP requirements for conservation lands (e.g., natural community type, species habitat, assembly rules, connectivity). The Implementing Entity will determine if land dedication meets the NHP requirements for conservation lands.

5. **Submit AMM Implementation Plan.** Project proponent will prepare a plan for implementation of AMMs. Based on the results of steps 1 and 3, above, applicable AMMs must be identified by the project proponent and included in an AMM
implementation plan submitted to the Implementing Entity. Project proponents must include a construction monitoring plan in the AMM implementation plan and must provide the construction monitors. Project proponents may prepare this plan or may contract with and provide funding to the Implementing Entity to prepare the plan for them. Project proponents may also contract and fund the Implementing Entity to conduct the construction monitoring.

6. **Confirmation that all NHP Requirements Met.** The Implementing Entity will review, for the Permittees, all applications from project proponents (or from Permittees if they are the project proponents) to confirm that all NHP requirements have been met.

7. **Complete Environmental Compliance.** Project proponent and/or Permittee will complete all project specific environmental compliance (e.g., CEQA document(s) prepared by the CEQA lead agency), other permitting, and local authorizations.

8. **Local Project Approval.** Approval of the project by the authorizing entity (one of the Permittees), typically a city or the County will be completed through the jurisdictions normal process.

9. **Payment of Fees.** The project proponent will pay mitigation fees (Section 8.2.1.1.2, *Calculation of Fees for Individual Projects*) to the city or County jurisdiction to be passed on to the Implementing Entity. Cities and the County may elect to have project proponents pay their fees directly to the Implementing Entity. All Permittees when conducting their own projects will pay fees directly to the Implementing Entity.

10. **Authorization to use Permits.** Permittee or Implementing Entity authorize project proponent to use Permits, through a certificate of inclusion, with conditions and time limit specified by the Permittee/Implementing Entity and in full compliance with the NHP.

Figure 7-3, *Process for Project Proponents Use of Permits* provides a graphical depiction of the process described above. The Permittee with land use jurisdiction over the proposed project, and with the input of the Implementing Entity, will make the final decision regarding the approval of a third party use of the Permits for take authorization. The Permittees, through their land use authority and other permitting authority will maintain the role of ensuring NHP compliance by third parties.

Some proposed projects or activities will involve covered activities that are not subject to regulation by a Permittee’s land use authority. These projects will apply for take authorization directly through the Implementing Entity following the same procedures as listed above.

### 7.5.1.2 Authorization for Use of Permits for Agricultural and Rangeland Practices (Enrollment)

Farmed agricultural lands are a major land use in the Plan Area, primarily within the Valley Landscape Unit. Agricultural lands provide important habitat for a number of the covered
species as well as other native wildlife. DWR agricultural land use types that provide habitat functions for one or more covered species are field crops (i.e., irrigated crops), grain/hay (i.e., dryland hay, wheat, oats), rice, pasture (i.e., irrigated grass and alfalfa pasture), and truck/nursery/berry crops (e.g., tomatoes, melons). Citrus/tropical (e.g., olives, oranges), deciduous fruits/nuts (e.g., almonds, prunes), and vineyards generally do not provide habitat for covered species. The working landscape with its on-going agricultural practices is an important element for maintaining existing habitat for covered species in the Plan Area.

Similarly, livestock production is a major agricultural land use in Plan Area, mainly conducted in natural communities (e.g., grassland, oak woodland and forest, and shrub and scrub communities) and primarily within the Hill and Ridge Landscape Unit. As such, on-going rangeland management practices within the existing working landscape are an important consideration for maintaining the existing ecological functions of natural communities and associated covered species and other wildlife habitats in the Plan Area.

To help ensure that farming practices on crop lands and rangeland management practices in natural communities that are on-going on lands not in the NHP conservation lands system continue to maintain ecological functions as habitat for covered and other native species, landowners may voluntarily enroll in the NHP and receive take coverage under the certificates of inclusion to the Permits. Agricultural and rangeland practices covered under the NHP are described in Section 3.3.3, Agricultural and Livestock O&M Activities. Additional information on farming-related covered activities is provided in Appendix E, Yolo County Agricultural Practices.
Figure 7-3. Process for Project Proponents’ Use of Permits
1. Farmers and ranchers that wish to voluntarily enroll their working lands into the NHP and receive take authorization for the covered activities described in Section 3.3.3, *Agricultural and Livestock O&M Activities* must follow the following steps to prepare an NHP enrollment application package.

2. **Conduct Baseline Surveys.** The landowner will conduct surveys for all covered species and covered species habitat (i.e., natural habitat that may be present between agricultural fields and not the actively cropped fields themselves that may provide habitat) and identify all occurrences of species and habitat on the property on a map. Examples include nest trees for Swainson’s hawk and white-tailed kite and occurrences and occupied habitat of giant garter snake. The landowner may contract with and fund the Implementing Entity to conduct the baseline surveys. A baseline survey report, including maps of locations, will be provided to the Implementing Entity describing the location and quality of occupied habitat, location of occurrences, and estimate of number of individuals within each occurrence for all covered species on the property.

3. **Identify Covered Practices.** The landowner will provide to the Implementing Entity a written description of the on-going and expected future agricultural practices on the property by the applicable covered activity categories described in Section 3.3.3, *Agricultural and Livestock O&M Activities*, and Appendix E, *Yolo County Agricultural Practices*.

4. **Review of Enrollment Application.** The Implementing Entity will review the enrollment application and determine if it meets all requirements of the NHP, specifically the covered activities and the required avoidance of take of covered species as described in Tables 4-4 and 5-20.

5. **Enrollment and Authorization.** The Implementing Entity will authorize take through a Certificate of Inclusion specifically for agricultural practices. Authorized take may not result in the property falling below the baseline conditions for covered species occurrences and habitat. The Implementing Entity may add any conditions, as appropriate to the NHP, to the Certificate of Inclusion to ensure that NHP goals and objectives are met.

There is not requirement under the NHP that farmers and ranchers enroll in the NHP or request certificates of inclusion. It is a voluntary “opt-in” program.

The Implementing Entity will maintain a record of all applications provided by and certificates of inclusion provided to farmers and ranchers under this program, and any signed certificates of inclusion returned by landowners. The Implementing Entity will notify USFWS and DFW annually of the number, location, and size of lands covered under Agricultural and Rangeland Practices Certificates of Inclusion. Copies of the certificates of inclusion will be provided to the USFWS and DFW upon request.
7.5.2 Payment of Fees and In-lieu Land Dedication

Mitigation fee payment requirements under the NHP are described in Section 8.2.1.1 Mitigation Component of Local Share Funding. Mitigation fees under the NHP include a “Base Mitigation Fee (Base Fee),” a “Valley Foothill Riparian Restoration Mitigation Fee” (Riparian Fee), a “Fresh Emergent Wetland Restoration Mitigation Fee” (Emergent Wetland Fee), a “Covered Plant and Vernal Pool Shrimp Species Occurrence Replacement Mitigation Fee” (Plant and Shrimp Fee), and a “Channel and Levee Maintenance Fee” (Channel and Levee Fee). The method for calculating mitigation fees for individual proposed projects is described in Section 8.2.1.1.2, Calculation of Fees for Individual Projects.

The Base Fee is charged for all NHP natural communities and covered species habitat (including agricultural lands that support covered species habitat) removed from baseline conditions. Section 8.2.1.1.3, Land Dedication In Lieu of Fees (Avoidance of Resources to Reduce Fee), provides a description and examples of fee requirements where habitat lands within a project site are dedicated to the NHP as conservation lands.

The mitigation requirements for valley foothill riparian and fresh emergent wetlands are presented in Table 5-11. The mitigation requirements for impacts on covered plants and vernal pool shrimp species occurrences and supporting habitat are described in CM6: Restore Covered Plant and Vernal Pool Shrimp Species Habitat and Establish Occurrences in Section 5.4.4, Conservation Measures. The following is a summary of mitigation requirements (from Table 5-11) and fee payment requirements (see Section 8.2.1, Local Share Funding Sources) for these resources.

- Mitigation and fee requirements for impacts on valley foothill riparian habitat:
  - For each acre of valley foothill riparian habitat removed by a covered activity:
    - Mitigation requires 2:1 protection and 1:1 restoration; payment of Base Fee and Riparian Fee required.
  - Riparian habitat avoided that meets NHP conservation lands requirements: No mitigation; no fee payment.

- Mitigation and fee requirements for impacts on fresh emergent wetlands:
  - For each acre of fresh emergent wetlands removed by a covered activity: Mitigation requires 1:1 restoration; payment of Base Fee and Emergent Wetland Fee required.
  - Fresh emergent wetlands avoided and that meets NHP conservation lands requirements: No mitigation; no fee payment.

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3 Mitigation and fee payment are required only for impacts on the following valley foothill riparian vegetation types: cottonwood-valley oak-willow (ash-sycamore), valley oak, mixed cottonwood-willow, mixed willow, riparian scrub, riparian woodland/forest, valley oak alliance, white alder (mixed willow). No mitigation or fee payment is required for impacts on the following valley foothill riparian vegetation types: blackberry super alliance, coyote brush, giant reed series, bramble and other, and tamarisk alliance.

4 No fee is required for impacts on fresh emergent wetland at wastewater treatment facility treatment ponds.
• Mitigation and fee requirements for impacts on covered plants and vernal pool shrimp species occurrences:
  o For each acre of covered plants and vernal pool shrimp species occurrences and supporting habitat removed by a covered activity: Mitigation requires 1:1 restoration; payment of Base Fee and Plant and Shrimp Fee required.  
  o Covered plants and vernal pool shrimp species occurrences and supporting habitat avoided and that meets NHP conservation lands requirements: No mitigation; no fee payment.

For all other natural communities and agricultural lands that support covered species habitat, the calculation of acreage of impacts is based on planning surveys conducted by the project proponent. The Base Fee, Riparian Fee, and Emergent Wetland Fee are calculated from these acreages. The Plant and Shrimp Fee is based on the size of the occurrence removed as determined by planning surveys conducted by the project proponent.

Channel and Levee Fee is paid annually by flood control, water and irrigation, and reclamation districts that opt into the NHP.

More information on the use of the NHP GIS land cover database in NHP implementation is provided in Section 7.5.5, Tracking Impacts and Conservation Targets.

7.5.3 Acquisition of Land and Property Rights

The Implementing Entity may acquire rights or title to land through various means to implement the NHP and create the system of NHP conservation lands. The Implementing Entity may acquire rights or title to conservation lands via fee title, conservation easement on private land, or land dedication to the Implementing Entity. In most instances, conservation easement rights are preferred, as they allow for continued land use practices in the working landscapes of Yolo County (e.g., farming, ranching, and other land uses) and can be less costly to acquire and maintain compared to fee title acquisitions. In some instances, fee title acquisition will be necessary, such as for conservation lands where habitat will be restored, for conservation lands that require frequent access and more intensive habitat management, and instances where landowners are only interested in fee title sale of the land. In all cases, the JPA’s Board of Directors must approve fee title acquisitions of land by the JPA.

All acquisition of land or property rights for protection of habitat by the JPA will be with willing sellers whether the protection of the land is via fee title or conservation easement.

NHP conservation lands may also be protected through a property right or fee title by the Permittees or other appropriate parties (e.g., federal or state government agencies, local agencies, land trust or conservancy) as long as the property owner provides NHP-level protection and

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5 No fee is required for impacts on fresh emergent wetland at wastewater treatment facility treatment ponds.
management requirements and implements all applicable NHP conservation measures, monitoring, and adaptive management.

Improving the level of protection and management of habitat on public and easement habitat lands (PEHL) category 2 (Figure 5-2) up to NHP-level protection and management requirements is a means by which natural community and species habitat conservation targets can be met. For example, existing private easements, such as certain easements that are not as protective as permanent conservation easements or existing conservation easements that do not meet all of the NHP criteria for conservation lands, may be augmented to meet NHP standards (see Section 7.9, Conservation Easement Requirements, for the minimum requirements for NHP conservation easements). For local, state, and federal lands that are in PEHL Category 2, changes in land designations by the local, state, or federal agency within the context of their respective agency regulations and mission may be used to bring the level of protection and management up to NHP standards and qualify those lands as part of the NHP conservation lands and counted toward conservation targets and meeting the biological objectives for natural communities and covered species habitat.

All land included in the NHP conservation lands must have a conservation easement the purpose of which is natural community and species conservation and management that meets the minimum requirements for NHP conservation easements described in Section 7.9, Conservation Easement Requirements. Conservation easements on working lands (e.g., rice land, irrigated cropland, irrigated pasture, and rangeland) will incorporate the dual goals of protecting species and habitats along with protecting the agricultural values and sustainability of agricultural and grazing operations; keeping these viable for future generations of agriculturalists. Required easement conditions to meet NHP conservation land standards are presented in Section 7.9, Conservation Easement Requirements.

7.5.4 Mitigation

The NHP requires mitigation for impacts on natural communities and covered species habitat. Each natural community and covered species has a specified mitigation requirement for habitat protection and restoration based on the amount of the resource adversely affected by covered activities (see Table 5-11 for natural community requirements and Table 5-12 for covered species requirements). In all cases, the protected natural communities and species habitat must be of equal or higher function to function of the resources removed. Restoration of natural communities and species habitat is required to replace habitat function lost. Mitigation is only necessary when a covered activity that would affect covered species or natural communities is planned for implementation. The Implementing Entity, however, may implement mitigation actions early to get a “jump start” on mitigation requirements prior to impacts (see Section 7.5.6, Jump Start and Stay Ahead Provisions). This action would involve the Implementing Entity acquiring conservation lands (rights or title) or purchasing mitigation bank credits ahead of impacts to ensure that mitigation stays ahead of impacts per the Stay Ahead Provision.
Mitigation has geographic requirements by Planning Unit and/or Landscape Unit for all natural communities and covered species habitats. The geographic requirements for each natural community and covered species are provided in Tables 5-11 and 5-12, respectively.

### 7.5.5 Tracking of Impacts and Conservation Targets

The Implementing Entity will track the amount of impact on natural communities and species habitat and the achievement of conservation targets, both mitigation and conservation, for natural communities and covered species habitat types.

#### 7.5.5.1 Tracking of Impacts

Limits on the amount of permanent direct effects (i.e., removal by covered activities) for each natural community allowable under the NHP are provided in Table 4-3a–4-3c. The limits on the amount of permanent direct effects (i.e., removal by covered activities) for covered species occurrences allowable under the NHP are provided in Table 4-4. The limits on the amount of permanent direct effects (i.e., removal by covered activities) for each covered species modeled habitat allowable under the NHP are provided in Table 4-5a–4-5c.

For the purpose of tracking impacts on natural communities removed by covered activities and protected through conservation measures, calculations will be based on planning surveys conducted by project proponents.

For the purpose of tracking impacts on covered species modeled habitat removed by covered activities and protected through conservation measures, will be based on the habitat models presented for each covered species in Appendix A, Covered Species Accounts, except in cases of species habitats for which the NHP requires measurement based on field surveys (e.g., covered plant species occurrences).

The tracking of impacts will be based on the NHP “baseline conditions,” which are the existing ecological conditions as described in Chapter 2, Existing Ecological Conditions. The purpose of identifying baseline conditions is to allow for an analysis of change in natural communities and species habitat based on a point in time. The calculation of the acreage of the permanent direct loss of natural communities and modeled covered species habitat from the implementation of covered activities is based on land uses as the baseline conditions described in Chapter 2, Existing Ecological Conditions. The surveyed boundaries of natural communities as required under the avoidance and minimization measures (Section 5.4.4, Avoidance and Minimization Measures, see AMM1: Conduct Planning Surveys and Table 5-17), verified by the Implementing Entity, will be used to calculate the impact and the impact fees of proposed projects.

Each Planning Unit has an impact limit for both the permanent direct loss of natural communities and of modeled covered species habitat (see Tables 4-3b-c and 4-5b-c). The cumulative acreage of these impacts (both natural community and species habitat) must be tracked by the Implementing Entity for each Planning Unit continuously (i.e., as use of the Permits are...
approved for each successive project the cumulative impact acreage is calculated) and covered
activities that would remove one of these resources must cease once the impact acreage limit has
been reached for that resource, until coordination and agreement is reached with USFWS and
DFW on any necessary changes to impact distributions for species habitat or natural
communities. Note that once a species habitat impact acreage limit is reached, additional
acreage the natural community that supports that species habitat may not be removed, even if
there is additional acreage remaining with the natural community impact limit. Similarly, once a
natural community impact acreage limit is reached, additional acreage the species habitat that
falls with that natural community may not be removed, even if there is additional acreage
remaining with the species habitat impact limit.

7.5.5.2 Tracking of Conservation Targets

As conservation lands are brought under protection to assemble the conservation land system, the
Implementing Entity will track the achievement of conservation targets for acreages of natural
communities (Table 5-5b-d) and modeled covered species habitat (Table 5-7) by Planning Unit
and Landscape Unit using the NHP Land Cover GIS and modeled covered species habitat
(Appendix A, Covered Species Accounts) to cumulatively sum the protection of each resource
relative to the NHP baseline conditions described in Chapter 2, Existing Ecological Conditions.
Tracking of the achievement of natural community and covered species habitat restoration
targets (Table 5-6) will be based on the measured acreage footprint of the completed restoration
projects (i.e., all grading completed and plantings installed).

7.5.6 Jump Start and Stay Ahead Provisions

NCCPA requires that the timing and extent of mitigation actions be roughly proportional to the
impacts. The NHP may meet these requirements of the NCCPA, in part, through “jump start”
and “stay ahead” provisions (see also Section 7.3.1, Timing of Mitigation Actions and “Rough
Proportionality”). Jump start refers to initiation of habitat conservation (both protection and
restoration) prior to impacts of covered activities on species habitats. Stay ahead refers to
maintaining at least some of the Jump Start to ensure that the conservation of each habitat at a
given time is always adequate to achieve the mitigation requirements for the specific habitat
prior to the implementation of covered activities that impact that habitat. The Implementing
Entity will ensure that all natural communities and species habitat is conserved in roughly
proportional timing (see timing requirements in Section 7.3.1, Timing of Mitigation Actions and
“Rough Proportionality”) in order to stay ahead of impacts on natural communities and species
habitat.

The NHP implementation schedule (see Table 7-1 for habitat protection, Table 7.2 for special
species actions, and Table 7.3 for habitat restoration) requires that natural community protection
and restoration actions contributing to the conservation of covered species be implemented by
specified points in time during NHP implementation. Habitat and natural community mitigation
actions are required to be implemented within specified timeframes relative to the covered
activities that result in the impacts to be mitigated (see Section 7.3.1, *Timing of Mitigation Actions and “Rough Proportionality”*).

Since NHP conservation actions to contribute to the conservation of species are set on a fixed time schedule and mitigation actions will follow the less certain, market-based timing of land development, it is not known whether protection of existing habitat and restoration of habitat for conservation will initiate sooner and get ahead (Jump Start) of the land development. The Implementing Entity will seek to implement protection and restoration of habitat early in NHP implementation to achieve a Jump Start. Once the Jump Start is achieved, the Implementing Entity will strive to Stay Ahead of impacts of covered activities. As appropriate to specific funding sources and agreements, the Implementing Entity may use habitat protected and restored for the purpose of natural community and covered species conservation for the purposes of Jump Start and Stay Ahead for the impacts of covered activities on natural communities until mitigation actions to protect and restore natural communities and habitat can be implemented. This “borrowing” against conservation actions for mitigation purposes will be “paid back” prior to the end of the 50-year permit term. At a minimum, the Implementing Entity will meet the requirements for the timing of mitigation identified in Section 7.3.1, *Timing of Mitigation Actions and “Rough Proportionality”*.

7.6 **ALLOWABLE ACTIVITIES IN NHP CONSERVATION LANDS**

The following discretionary and non-discretionary activities may be conducted on NHP conservation lands. In many instances, these activities will involve both the continuation of ongoing activities on properties and new activities related to implementation of NHP conservation measures. Within the restrictions on allowable uses detailed in conservation easement deeds (see Section 7.9, *Conservation Easement Requirements*), the following activities may be allowable on NHP conservation lands at the discretion of the Implementing Entity.

- Habitat management activities as provided for in CM5, *Enhance and Manage Protected Natural Communities*;
- Habitat restoration as provided for in CM4, *Restore Natural Communities and Habitat* and CM6, *Restore Covered Plant and Vernal Pool Shrimp Species Habitat and Establish Occurrences*;
- Biological and physical resources monitoring as described in Section 6.3, *Monitoring Program*;
- Directed studies that support the NHP adaptive management decision making process and non-NHP related research approved by the Implementing Entity;
- Controlled recreational uses (e.g., hiking, bird watching, and non-commercial fishing and hunting) and facilities to support such uses (e.g., trails, check-in kiosks, interpretive signs) as approved within conservation lands management plans and Implementing Entity approved conservation easements;
• Commercial recreational uses (e.g., waterfowl or upland bird hunting during legal hunting seasons on NHP protected lands) as approved within conservation lands management plans and Implementing Entity approved conservation easements;

• Access for emergencies and public safety (e.g., fire suppression, flood control, and emergency response);

• Use of non-public roads on conservation lands to provide land manager, local landowner, and recreational access to adjoining lands as approved by the Implementing Entity;

• Access to and maintenance of water conveyance infrastructure by water districts;

• Access to and maintenance of existing road and utility infrastructure (e.g., maintenance of below and above ground electric transmission lines, below and above ground cable and telephone lines, and underground pipelines) on conservation lands consistent with pre-existing easements and any other in-perpetuity agreements attached to property titles;

• Ongoing agricultural and grazing practices and other land uses (including customary fallowing and rotation practices that are necessary to maintain production of target crop types over time) as allowable under Implementing Entity approved conservation easements;

• Ongoing use of approved pesticides, herbicides and other agro-chemicals in accordance with EPA labels and their recommended application that, for rice land application, are not harmful to reptiles and amphibians;

• In rice conservation easements, crop rotations involving non-rice crops (e.g., row crops, corn) are allowable provided that the following conditions are met:
  o Conveyance channels customarily used for rice farming on the respective parcel must be filled with water to provide habitat for giant garter snakes during the active season of the species (March through October);
  o After 500 acres of rice have been protected under the NHP, no more than 20 percent of the rice within NHP conservation lands may be rotated to upland crops in any given year, contingent upon approval by the Implementing Entity;
  o Berms, levees, and other potential hibernation habitat for giant garter snakes may not be removed, altered or otherwise compromised during the hibernation season (November through February) to avoid disturbance of hibernating snakes, unless Implementing Entity has determined through protocol surveys that snakes are unlikely to be present.

• Non-commercial wood cutting as allowable under Implementing Entity approved conservation easements;

• Educational tours of conservation lands (e.g., school science classes) as authorized by the Implementing Entity; and
• Access for and implementation of specified mosquito abatement treatments as agreed to by the Implementing Entity.

The Implementing Entity must, in all cases, ensure that the intended conservation benefits and conservation values of the conservation lands as stated in the NHP Conservation Strategy are not compromised.

7.7 NEIGHBORING LANDOWNER ASSURANCES

The NHP requires the development of a conservation lands system that may eventually encompass approximately 76,000 acres of lands in the Plan Area for mitigation and conservation of species and natural communities (Tables 5-9 and 5-10). Habitat on these conservation lands will be protected, restored, enhanced, and managed for the benefit of ecosystem functions, natural communities, and covered species. NHP implementation is expected to result in the expansion of populations of covered species and individuals or populations of these species could move to and colonize adjacent lands not within the conservation lands system. In recognition of this potentiality, the NHP includes a process by which neighboring landowners may receive assurances through certificates of inclusion under the NHP ESA section 10 and NCCPA section 2835 permits. The neighboring landowner assurances process provides for take of any incremental increases in the number of individuals or populations of covered species above the baseline conditions on neighboring lands. The assurances do not provide for take of existing populations or occupied habitat prior to the establishment of adjacent conservation lands and, therefore, would not result in impacts relative to baseline conditions.

The NHP will provide certificates of inclusion for incidental take by neighboring landowners engaged in agricultural and rangeland activities that agree to participate, i.e., it is an “opt-in” process and landowners that do not wish to participate would not be required to do so.

The process for neighboring landowners to opt into coverage of their agricultural or rangeland activities under the NHP is the same as the enrollment process for the Agricultural and Rangeland Practices Certificate of Inclusion described in Section 7.5.1.2, Authorization for Use of Permits for Agricultural and Rangeland Practices (Enrollment). As all agricultural and rangeland practices described in Section 3.3.3, Agricultural and Livestock O&M Activities, and Appendix E, Yolo County Agricultural Practices, are covered under the NHP, there is no difference between the issuance of a certificate of inclusion by Implementing Entity for agricultural and rangeland neighboring NHP conservation lands and for agricultural and rangeland that is not near NHP conservation lands.

7.8 COMPLIANCE AND PROGRESS REPORTING

The Implementing Entity will prepare, on a regular basis, planning documents and implementation reports to provide an accounting of compliance with the NHP and its associated authorizations and to facilitate interagency coordination, scientific exchange, and public
outreach. Under the ESA, habitat conservation plans are required to establish monitoring programs to assess the effects of plan implementation on covered species. In addition, the USFWS Five-Point Policy recommends that such plans provide for annual reporting on matters related to compliance with permit terms and conditions. Similarly, the NCCPA requires that implementation agreements include “provisions for periodic reporting to USFWS and [DFW] and the public for purposes of information and evaluation of plan progress.” The Implementing Entity will, over the term of the NHP, submit various reports and plans to USFWS and DFW that serve the following purposes:

- Provide the necessary data and information to demonstrate that the NHP is being properly implemented;
- Identify the effect of plan implementation on covered species and on the effectiveness of the Conservation Strategy at advancing the NHP’s biological goals and objectives;
- Document actions taken under the adaptive management program (e.g., process, decisions, changes, results, corrective actions); and,
- Describe schedules and costs related to the implementation of actions over one-year and five-year timeframes.

Throughout the course of plan implementation, the Implementing Entity will prepare the following documents:

- Annual Workplan and Budget;
- Annual Progress Report; and
- Ten-Year Comprehensive Review.

These documents will provide the information necessary to enable USFWS, DFW, other state and federal agencies, local agencies, stakeholders, and the general public to assess on an ongoing basis the progress and performance of the NHP toward meeting the NHP biological goals and objectives, and to make informed recommendations to the Implementing Entity regarding NHP implementation. To accommodate access to this information, these reports will be available to the public and posted on the NHP website.

### 7.8.1 Annual Workplans and Budgets

On an annual basis, the Implementing Entity will prepare a workplan and budget for the upcoming implementation year through the term of the NHP. The workplan will identify planned actions for the implementation of conservation measures and the monitoring and adaptive management plans in the coming year. The budget will identify planned expenditures...

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6 50 CFR. § 17.22(b)(3) and 50 CFR § 222.307(b)(5).
7 Five-Point Policy for HCPs, 65 FR 106.
8 California Fish and Game Code § 2820(b)(7).
and sources of funding for those expenditures. At a minimum, the Annual Workplan and Budget will contain the following information:

- A description of the planned actions to implement conservation measures, including bringing lands under protection for the conservation land system, and the entities that will carry out the actions;
- A description of the planned monitoring actions and any anticipated directed studies to be undertaken, and the entities that will conduct the monitoring and directed studies;
- A budget reflecting the costs of implementing the planned conservation actions and monitoring along with all other costs for operating the Implementing Entity in the workplan year, and a summary of the projected and actual budgets for all prior implementation years; and
- A description of the sources of funding to support the budget.

The Annual Workplan and Budget will be provided to USFWS, DFW, Permittees, and the NHP Stakeholder Committee for review. The Workplan and Budget will be completed and approved by the JPA Board of Directors no later than one month prior to the beginning of the upcoming implementation year.

### 7.8.2 Annual Progress Reports

At the end of each implementation year, the Implementing Entity will prepare an Annual Progress Report. These reports will provide a summary of the activities carried out during the previous implementation year. Annual progress reports will be completed within 3 months of the close of each reporting year to provide sufficient time to compile data and complete analyses of monitoring data. The Implementing Entity will develop a standardized format for annual progress reports. Final annual progress reports will be maintained in the NHP implementation database (see Section 6.3.3.3, *Database Development and Maintenance*).

Each annual progress report will provide the following information.

1. Documentation of the implementation of habitat conservation measures (protection/enhancement/restoration) in relationship to the implementation schedule described in Section 7.3, *NHP Implementation Schedule*, including the following information:
   - A summary of the completed or in-progress habitat conservation actions, including information related to type, extent, and location of restored, enhanced, and existing protected habitats and natural communities. The report will document, on an annual and cumulative basis, the habitat conservation actions that have been carried out.
• A summary of all land management activities undertaken on NHP conservation lands and a discussion of overall and site-specific management issues encountered by the Implementing Entity.

• Identification of habitat protection, restoration, or enhancement actions that have not been implemented in accordance with the implementation schedule (i.e., behind or ahead of schedule) and an explanation for the deviation from the schedule.

2. An assessment of the nature and extent of the impacts of covered activities on natural communities and covered species, including the following information:

• A description of each covered activity conducted, the entity responsible for the covered activity, and the location of habitat permanently or temporarily removed or disturbed by the covered activity;

• A cumulative summary of all impacts of NHP covered activities on covered natural communities and covered species habitats, habitat mitigation implemented to address these impacts, and a description of how implementation of conservation measures is roughly proportional in time and extent to the impacts on covered species and their habitats;

• Amount of authorized take of species habitat and reporting of any observed harassment or mortality of covered species; and

• The status of the NHP conservation lands system assembly with respect to authorized take/habitat loss.

3. An evaluation of the results of monitoring and directed studies, including the following:

• A description of monitoring activities undertaken during the reporting period and a summary of monitoring results, data analysis results, and the knowledge gained from monitoring that is valuable to adaptive management.

• A description of all NHP directed studies conducted during the reporting period, a summary of study results to date, and a description of how these results were or will be integrated into implementation.

4. A description of adaptive management activities, including the following:

• A description of the adaptive management decisions made during the reporting period, including how existing information was used to guide these decisions and the rationale for the actions.

• A description of the use of independent scientists or other experts in the adaptive management decision-making processes.

• A description of adopted and recommended changes to the conservation measures, avoidance and minimization measures, and monitoring plan (e.g., monitoring protocols, variables, analytical methods) through the adaptive management process based on interpretation of monitoring results and research findings.
5. A financial report describing the following:
   • Funds provided to the Implementing Entity and the source of those funds.
   • Annual and cumulative expenditures by cost category.
   • Deviations in expenditures from the annual budget and other relevant information as appropriate.

6. A description of implemented actions to respond to changed circumstances, including the following:
   • A description of the changed circumstance and its effects on covered species and natural communities.
   • A description of the actions taken to address the changed circumstance and the effectiveness of those actions, including the outcomes of actions to address changed circumstances from earlier years.

7. A description of any unforeseen circumstances occurrences and the process taken to address.

8. A summary of any administrative changes, minor modifications and revisions, or formal amendments to the NHP proposed or approved during the reporting period.

7.8.3 Ten-Year Comprehensive Review

As described in Section 6.2.6, Program Status Reviews, the NHP adaptive management plan requires 10-year reviews of NHP implementation to provide the Implementing Entity with a longer term and methodical process to periodically evaluate its progress toward achieving the biological goals and objectives and assessing its implementation procedures. The Implementing Entity will prepare a Ten-Year Comprehensive Review document and make available to the USFWS, DFW, and Stakeholder Group within six months following the end of each NHP 10-year implementation period.

The objectives of the Ten-Year Comprehensive Review are:

• To provide an overview of the status of NHP implementation, including implementation of conservation measures and the progress made toward achieving biological goals and objectives;
• To assess covered species trends and habitat conditions associated with NHP implementation relative to overall trends and conditions for covered species and natural communities based on all relevant information (i.e., not limited to NHP data and reports);
• To evaluate the relevance of the various monitoring actions, directed studies and outside research to the implementation of conservation measures; and
• To evaluate changes that have been made in the implementation of the NHP and set out potential modifications that may be advisable in the future based on new information and lessons learned.

The primary purpose of the Ten-Year Comprehensive Review is to provide a periodic, program-level assessment of the progress made under the NHP toward achieving the biological goals and objectives. As such, the Review will be focused on identifying and evaluating broad ecological trends within the Plan Area, including covered species abundance, distribution, and population growth rate; ecological processes and stressors; natural community distribution, function, and diversity; habitat restoration extent and functionality; and other relevant measures.

In contrast to the Annual Progress Reports, the Ten-Year Comprehensive Reviews will require the analysis and synthesis of data collected over time, utilizing data and information compiled from various sources. The Review will look back over the entire implementation period (not just the prior ten years since the last review) to build on cumulative data and knowledge. Ten-Year Comprehensive Reviews will include critical evaluations of the information and assumptions upon which the NHP has been based and of the efficacy of the conservation measures in light of monitoring data and the analysis and synthesis of information through the adaptive management process.

The Ten-Year Comprehensive Review will also include an evaluation of the NHP’s monitoring program, assessing such issues as the program’s capacity to adequately measure the NHP’s progress toward achieving biological goals and objectives. The Review will discuss the lessons that have been learned during the course of implementation and reach conclusions regarding how best to approach monitoring into the future. The Review will also afford an opportunity to evaluate the NHP biological goals and objectives and assess their continued relevance in light of new information that has become available.

The Implementing Entity will post the Ten-Year Comprehensive Review on the NHP website and include a summary of the Review to assist stakeholders and the public in their understanding of the report.

7.9 CONSERVATION EASEMENT REQUIREMENTS

7.9.1 Introduction

Voluntary permanent conservation easements (hereafter referred to “conservation easements”) on private lands are an important tool that will be used by the Implementing Entity together with fee title acquisition of conservation lands9 to fulfill the land conservation targets under the NHP. Conservation easements are voluntary, legally binding agreements between a landowner and an easement holder that restrict certain uses of the land to protect certain wildlife, fish, and plant

9 All lands acquired by the JPA in fee title will also have permanent conservation easements that meet the minimum requirements described in this appendix.
species and natural communities while allowing the continued use of the land by the landowner. Under the NHP, the conditions of conservation easements must provide sufficient protection of a sufficient amount of land to achieve the NHP biological goals and objectives. A number of entities may be holders of NHP conservation easements (e.g., the Implementing Entity, Permittees, land trusts, USFWS, and DFW), however, the Implementing Entity must always be granted the right of enforcement of the easement and access for monitoring. Although conservation easements can include a variety of restrictions and stewardship commitments, only those that are permanent and meet other statutory and regulatory requirements, including specific substantiation requirements, are considered as viable tools for implementing land conservation under the NHP.

The primary use of conservation easements on private lands under the NHP will be to provide the combined benefit of species and natural community conservation and continued economically viable use of rangelands and certain agricultural lands across the working landscape of the Plan Area. The NHP includes acreage targets for the protection of grassland, shrubland and scrub, oak woodland, and oak savanna natural communities for the benefit of a number of NHP covered species and it is expected that a substantial portion of these targets will be achieved through voluntary conservation agreements with ranch owners such that livestock ranching could continue on these rangelands. The NHP includes targets for the protection of rielands that provide habitat for giant garter snake and it is expected that a substantial portion of this target will be achieved through voluntary conservation agreements that allow for the continuation of rice growing agriculture practices in conjunction with the conservation of this species.

This section establishes the minimum NHP requirements for conservation easements. This section includes a description of the minimum content for a conservation easement to qualify as under the NHP and a list of the minimum restrictions a conservation easement must contain to qualify as under the NHP and meet NHP biological goals and objectives.

### 7.9.2 Minimum Content of a NHP Conservation Easement

A NHP conservation easement is a recorded in-perpetuity deed restriction conveyed to the Implementing Entity, Permittee, USFWS, DFW, or other appropriate entity (e.g., a land trust) that restricts the uses of the subject property in a manner that will achieve the intended conservation goals and objectives. NHP conservation easements must state a specific conservation purpose, such as the protection of specified natural communities, covered species habitat, and agricultural uses that support habitat. The following describes the minimum content of NHP conservation easements.

1. **Conveyance Form.** This section of the easement contains the identification of the parties, a description of the parcel(s), required words of conveyance, and a statement of consideration. All persons with ownership interest in the property must be a party to the deed.
2. **Recitals.** The recitals identify the nature of the agreement and describe the intent of the parties in establishing the conservation easement. It also identifies the conservation values that warrant protection, and the statutory foundation for the transaction.

3. **Purposes Clause.** This establishes the foundation for easement interpretation. The purposes clause is the basis for determining compliance with the inconsistent use provision of the U.S. Department of the Treasury Regulations (26 CFR 1.170A-14).

4. **Holder’s Affirmative Rights.** This section must grant the Implementing Entity the right to enforce the restrictions of the easement and the right to access the land for monitoring purposes. Ancillary rights related to these two primary functions of the holder are also granted.

5. **Restrictions and Reserved Rights.** This section identifies the land use restrictions, allowable and prohibited uses and activities, the requirement for prior approval of certain activities by the Implementing Entity, and those rights reserved by the landowner. All rights and restrictions will be directly relevant to the conservation purposes of the easement and must be unambiguous and quantifiable.

6. **Administrative Provisions.** This section must include all provision required by the applicable Federal Treasury Regulations (26 CFR 1.170A-14), including provisions establishing the easement holders and the Implementing Entity’s rights and remedies in case of a violation. The easement must include an environmental indemnity to ensure that the easement holder will not be liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (42 U.S.C. §§ 9601 et seq.) or the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. §§ 6901 et seq.). Additional administrative clauses governing, among others, procedures for enforcement, notices, required approvals, issuance of compliance certificates may be included.

7. **Signatures of Necessary Parties.** All owners and the easement holder must sign the document. Signatures must be notarized.

8. **Exhibits.** The legal description of the property is incorporated as an Exhibit at the end of the conservation easement. The easement may also be clarified by attaching maps and other relevant information.

### 7.9.3 Minimum Restrictions of a NHP Conservation Easement

The Implementing Entity will develop performance standards and minimum conservation easement requirements for NHP conservation easement properties. In particular, the Implementing Entity will identify standard restrictions on allowable uses, and develop a list of inconsistent uses for each conveyed easement to clearly identify the intended objectives, methods and assurances that each conservation easement is expected to provide for achieving the conservation objectives of the property. These performance standards will represent the minimum conservation easement requirements. The Implementing Entity may negotiate additional requirements and restrictions with each property owner on a case by case basis. At
minimum, the *Restrictions and Reserved Rights* section of each NHP conservation easement must:

1. Identify the conservation purpose and the natural communities and habitat for covered species that are addressed by the conservation easement.
2. Identify the conservation actions that may be implemented by the Implementing Entity on property (e.g., habitat improvements, control of non-native species).
3. Identify the range of crops and rotation practices allowable under the easement and/or the range of crops and practices that are not allowable under the easement for active agricultural fields that are included in NHP conservation lands.
4. Grant in-perpetuity protection of the subject natural communities and habitat values, permanently restricting the use of the property.
5. Allow the Implementing Entity to designate a successor or easement holder at its discretion.
6. Protect the land surface from mineral extraction.
7. Prevent the separation of water rights from the property.
8. Prevent subdivision and other improvements that reduce the property’s conservation values.
9. Allow the easement holder and Implementing Entity access to the property to determine compliance with and to enforce the easement.
10. Allow the easement holder and Implementing Entity and its designees (e.g., contractors to the Implementing Entity; USFWS, DFW, and research scientists) access to the property to conduct NHP required biological monitoring and documentation of baseline conditions, implement habitat improvements covered under the conservation easement, and control nonnative species.
11. As applicable, a land use management plan (e.g., livestock grazing regimes), including monitoring schedules and metrics, and a schedule for updating the plan.
12. Provide standards for easement enforcement, amendments, and modification procedures.
13. Provide a clear set of deed restrictions and limitations on allowable uses, including commercial (e.g., woodcutting), agricultural, and recreational uses.
14. Clearly describe activities and actions by the landowner that require prior consent from the Implementing Entity (e.g., dike/levee construction or any project involving mechanical movement of earth; changes to water control structures; planting trees and vegetation; change in land use; change in application of pesticides/herbicides).
15. Prohibit the removal, filling, or other disturbances of soil surface, any changes in topography, surface or subsurface water systems, wetlands, or natural habitat unless such activities are approved by the Implementing Entity, except for active agricultural fields.
for which normal farming practices will continue and for which the easement will
identify the allowable range of crops and rotation practices and specify prohibitions.

16. Declare that all terms and conditions of the easement run with the Property and shall be
enforceable against the landowner or any other person or entity holding any interest in the
property.

17. Provide for the notification of the Implementing Entity at least 30 days prior to the
transfer of title to the Property.

18. Entail provisions in case a property interest is taken by public authority under power of
eminent domain.

7.10 REGULATORY ASSURANCES, CHANGED CIRCUMSTANCES, AND
UNFORESEEN CIRCUMSTANCES

7.10.1 Regulatory Assurances

ESA regulations and provisions of the NCCPA each provide for regulatory and economic
assurances to parties covered by approved HCPs and/or NCCPs concerning their financial
obligations under a plan. Specifically, these assurances are intended to provide a degree of
certainty regarding the overall costs associated with species mitigation and other conservation
measures, and add durability and reliability to agreements reached between Permittees and
USFWS and DFW. That is, if unforeseen circumstances occur that adversely affect species
covered by an HCP or NCCP, USFWS and DFW will not require additional land, water, or
financial compensation or impose additional restrictions on the use of land, water, or other
natural resources.

The assurances provided under the ESA and the NCCPA do not limit or constrain USFWS or
DFW, or any other public agency, from taking additional actions to protect or conserve species
covered by an NCCP and HCP. The state and federal agencies may use the variety of tools at
their disposal and take actions to reduce the effects of other stressors to ensure that the needs of
species affected by unforeseen events are adequately addressed.

7.10.2 Regulatory Assurances under the ESA – The No Surprises
Rule

Under the No Surprises Rule, once an incidental take permit has been issued pursuant to an HCP,
and its terms and conditions are being fully implemented, the federal government will not require
additional conservation or mitigation measures, including land, water (including quantity and
timing of delivery), money, or restrictions on the use of those resources.\(^{10}\) If the status of a
species addressed under an HCP unexpectedly declines, the primary obligation for undertaking

\(^{10}\) 63 FR 8859.
additional conservation measures rests with the federal government, other government agencies,
or other non-federal landowners who have not yet developed HCPs. As explained by USFWS:

Once an HCP permit has been issued and its terms and conditions are being fully
complied with, the permittee may remain secure regarding the agreed upon cost of
conservation and mitigation. If the status of a species addressed under an HCP
unexpectedly worsens because of unforeseen circumstances, the primary
obligation for implementing additional conservation measures would be the
responsibility of the Federal government, other government agencies, and other
non-Federal landowners who have not yet developed an HCP.\footnote{Id. at 8868. The No Surprises rule was promulgated jointly by the Department of the Interior (USFWS) and the Department of Commerce (NMFS).}

However, the USFWS may, in the event of unforeseen circumstances, require additional
measures provided they are limited to modifications within conserved habitat areas or to the
conservation plan’s operating conservation program for the affected species, and that these
measures do not involve additional financial commitments or resource restrictions without the
consent of the permittee. These assurances are provided to all HCP permittees that properly
implement their plans.

The assurances provided by the No Surprises rule, however, are not absolute and are tempered
by other regulatory provisions of the ESA. The “Permit Revocation” rule moderates the scope of
the No Surprises rule, providing that in instances where a species covered by an HCP is
threatened with extinction, assurances may be nullified and the USFWS may revoke the HCP
permit.\footnote{50 CFR § 17.22(b)(8).} The USFWS may exercise this authority even if a permittee is in compliance with the
terms and conditions of the permit, provided the permitted activity would appreciably reduce the
likelihood of the survival and recovery of the species in the wild.\footnote{69 FR 71723, 71727.}

\subsection*{7.10.3 Regulatory Assurances under the NCCPA}

Under the NCCPA, DFW provides assurances to permittees commensurate with the long-term
conservation measures and associated actions that will be implemented under the plan. In its
determination of the level and term of the assurances to be provided, DFW takes into account the
conditions specific to the plan, including such factors as: the level and quality of information
regarding covered species and natural communities, the sufficiency and use of the best available
scientific information in the analysis of impacts on these resources, reliability of mitigation
strategies, and appropriateness of monitoring techniques, including the use of centralized
information to evaluate the effectiveness of the plan; the adequacy of funding assurances; the

\footnote{Id. at 8868. The No Surprises rule was promulgated jointly by the Department of the Interior (USFWS) and the Department of Commerce (NMFS).}

\footnote{50 CFR § 17.22(b)(8).}

\footnote{69 FR 71723, 71727.}
range of foreseeable circumstances that are addressed by the plan; and the size and duration of
the plan.  

The assurances provided under the NCCPA will, at a minimum, ensure that if there are
unforeseen circumstances, no additional financial obligations or restrictions on the use of
resources will be required of the Permittees without their consent. Specifically, the NCCPA
directs that, “[i]f there are unforeseen circumstances, additional land, water, or financial
compensation or additional restrictions on the use of land, water, or other natural resources shall
not be required without the consent of plan participants for a period of time specified in the
implementation agreement, unless [DFW] determines that the plan is not being implemented
consistent with the substantive terms of the implementation agreement.”  

Like the provision in
the ESA regulations, however, the NCCPA requires that DFW suspend or revoke a permit, in
whole or in part, if the continued take of a covered species would jeopardize its continued
existence.

### 7.10.4 Changed Circumstances

This section addresses future changed circumstances affecting the covered species. Federal
regulations define the concept of changed circumstances and set forth the parameters of the
Permittee’s potential responsibilities in response to such changed and unforeseen circumstances.

Generally, a “changed circumstance” is a change in the circumstances affecting a covered
species that can be reasonably anticipated, which allows a plan to be developed in advance to
respond to the change. Changed circumstances typically include unplanned but relatively
predictable events, such as fires, flooding, and other natural occurrences like an invasion of pests
or non-native plants. Changed circumstances can also include occurrences such as an illegal
dumping or accidental spill of toxic materials. An HCP should identify potential changed
circumstances and prescribe the required response to such circumstances. Anticipating and
addressing changed circumstances adds to the conservation value of an HCP by reducing the
potential risks to the covered species associated with changed circumstances. This approach also
provides the USFWS and DFW with additional assurance that the Permittees will take certain
actions if identified changed circumstances occur, while providing the Permittees with assurance
that their future responsibilities are defined and not open-ended.

#### 7.10.4.1 Changed Circumstances Defined

Changed circumstances are defined under the Federal “No Surprises” rule as changes in
circumstances affecting a species or geographic area covered by a conservation plan that can
reasonably be anticipated by plan developers and the USFWS and that can be planned for (e.g.,

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14 DFW bases its determination of the level of assurances on multiple factors. See Fish and Game Code section
2820(f).
15 Fish and Game Code § 2820(f)(2).
the listing of a new species, or a fire or other natural catastrophic event in areas prone to such
events.16

7.10.4.2 Changed Circumstances Provided for in the NHP

The changed circumstances described in this section represent all changed circumstances to be
addressed by the Permittees under the NHP. These changed circumstances provisions reflect
changes in circumstances that can reasonably be anticipated to occur to the conservation lands
system established under the NHP.

Each of the defined changed circumstances includes an assessment of risk, a description of
preventative measures, and a summary of planned responses (measures to be undertaken in the
case of changed circumstances). Preventative measures are those measures that are or will be
undertaken by the Permittees to reduce the potential for occurrence of the changed circumstance,
or that reduce the potential for damage to the habitat resulting from a changed circumstance
event. Planned responses are the specific responses that will be undertaken in the event of a
changed circumstance. Planned responses will not include any actions beyond those expressly
identified in this section, nor for any event not specifically identified as a changed circumstance.

The following changed circumstances can reasonably be anticipated:

1. Floods
2. Drought
3. Levee Failures
4. Fire
5. Invasive Species
6. Long-term Changes in Precipitation and Temperature
7. Toxic or Hazardous Spills
8. New Species Listings

Each of these changed circumstances and the planned response is explained below.

1. Floods

Nature of the Changed Circumstance

The effects of floods on Yolo NHP conservation lands and covered species depend on several
factors, including the severity of the flood event, its duration, and the type of habitat affected.
Flood events are a natural process that maintain aquatic, riparian, and wetland ecosystems and
small flood events are expected have relatively minor effects on protected natural communities

16 50 CFR §17.3; 50 CFR §222.102.
and covered species. Furthermore, many of the covered species are either adapted to flooding (e.g., the giant garter snake and western pond turtle), would likely not be present or nesting during winter flood events (e.g., Swainson’s hawk, western burrowing owl), or are capable of fleeing flooded areas (e.g., bank swallow, tri-colored blackbird). More severe flood events, however, can have deleterious consequences on protected resources, including erosion of protected habitats, deposition of sediment and debris on conservation lands that damage habitat functions for covered species, and loss of vegetation plantings in restored riparian habitats.

Flood damage to protected natural communities and habitats caused storms at or below a 50-year flood event on a given stream are considered to be a changed circumstance that are reasonably foreseeable over the term of the Yolo NHP. Larger flood events are considered to be an unforeseen circumstance.

**Planned Response**

Following a flood event, affected conservation lands will be inspected within 30 days of the event by the Implementing Entity to evaluate the extent of damage to the protected habitats and evaluate the need for implementing actions to rehabilitate affected habitat functions. If the habitat functions are unlikely to naturally reestablish the former conditions through natural processes at a similar or greater rate than with implementation of remedial management actions, the Implementing Entity will identify and implement, within 1 year of the flood event, management actions necessary to restore affected habitat conditions.

2. Drought

**Nature of the Changed Circumstance**

The Plan Area is characterized by a Mediterranean climate, with cool, wet winters and warm, dry summers. El Niño and La Niña climatic events typically cause large annual fluctuations in precipitation levels (Minnich 2007, Reever-Morghan et al. 2007). Precipitation primarily occurs in the form of rain from October through April, with very little precipitation in May through September. Drought is a natural part of Mediterranean climates and drought conditions experienced over the term of the NHP could result in the loss of restored riparian and wetland habitats and NHP maintained agricultural habitats. Drought is defined as two or more consecutive water years with 75 percent or less than mean seasonal precipitation as measured at the Woodland rain gage in the Valley Landscape Unit and as averaged between the Knoxville Creek rain gage and Brooks rain gage in the Hill and Ridge Landscape Unit.

**Planned Response**

NHP conservation land management plans (see CM5, *Enhance and Manage Protected Natural Communities* in Section 5.4, *Conservation Measures*) include drought monitoring and protection measures to minimize the risk of losing restored habitats and agricultural habitats to drought. Preventative measures include the following actions.
• Monitoring Yolo County rain data and gages to determine if the seasonal rainfall at the end of March and April indicate a drought (near 75% of mean seasonal precipitation).

• Monitoring habitat restoration 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.

In the event of drought conditions, the Implementing Entity will evaluate habitat restoration sites to assess the degree of effect on habitat development and functions. Following the evaluation, the Implementing Entity will prepare a report that documents effects of drought on restoration sites and identifies management actions that will be implemented through the adaptive management process (see Section 6.2, Adaptive Management Plan) to alleviate the effects of drought (e.g., providing supplemental irrigation of riparian plantings). For droughts that affect the availability of water for irrigation of NHP protected agricultural habitats, the Implementing Entity may, if practicable, purchase additional water supplies necessary to maintain crop types that support the target habitat functions of the agricultural land or acquire natural habitat areas to replace the habitat functions provided by the affected agricultural habitat.

3. Levee Failures

Nature of Changed Circumstance

During the course of NHP implementation, levee failures could occur within the Plan Area that may affect benefits to covered species provided by the NHP. To guide responses to such events, levee failures will be considered a changed circumstance under the NHP if the failure: (a) significantly diminishes the function of NHP restored or protected natural communities as habitat for covered species, as jointly determined by the Implementing Entity, USFWS, and DFW or (b) precludes implementation of habitat conservation measures.

Planned Response

Following repair of the levee, the Implementing Entity will, to the extent practicable, identify and undertake actions through the adaptive management process to restore the degraded or lost habitat on NHP conservation lands. The Implementing Entity will coordinate restoration efforts with, and potentially seek funding from, the entity or entities with responsibility for repair and rehabilitation of the levee. Should a levee failure occur with no subsequent repair, the Implementing Entity will assess the new habitat conditions to determine the ability of the site to continue to achieve one or more of the NHP biological objectives. If the change in the habitat condition adversely affects the ability to meet NHP biological objectives, the Implementing Entity will identify and implement revised habitat enhancement and management measures for the affected lands that would achieve biological objectives within the funding allocated for changed circumstances or with additional funding provide by the entity responsible for the failed levee. If, under the new conditions, the affected habitat is no longer capable of achieving NHP biological goals and objectives, no specific responses would be required under the NHP.
4. Fire

Nature of Changed Circumstance

Fire is defined as any fire on conservation lands not prescribed by the Implementing Entity that removes a sufficient extent of vegetation such that the intended habitat functions of the protected land for covered species is substantially degraded, as jointly determined by the Implementing Entity, DFW, and USFWS.

Fire may substantially degrade the intended habitat functions of natural communities and covered species habitats protected and/or restored under the NHP. The risk of fire is greatest for protected lands in the Hill and Ridge Landscape Unit, which support extensive areas of natural vegetation. Lands within the Valley Landscape Unit are primarily characterized by intensively managed agriculture, which generally do not provide the conditions for uncontrolled or extensive fire events.

Planned Response

To minimize the risk of fire, the Implementing Entity will identify conservation lands with a high risk of fire (e.g., grasslands situated near roadways) and implement fire risk reduction measures on those lands, including:

- Establishing and maintaining fuel breaks around high risk conservation lands;
- Coordinating with state and local fire agencies to improve fire suppression preparedness for conservation lands; and
- Developing post-fire monitoring plans.

In the event of a fire, the Implementing Entity will assess the proportion of the protected habitat area that has burned and its likely effects on habitat use by covered species. The Implementing Entity will make an initial determination of whether or not a changed circumstance exists due to the fire and will notify USFWS and DFW of the fire event. If a changed circumstance is determined to exist, the Implementing Entity will implement an appropriate post-fire monitoring plan for a two-year period following the fire to assess the recovery of vegetation and wildlife. If over the course of the monitoring period it is determined that vegetation is not recovering sufficiently in the burned area to reestablish the functions of the affected habitat, the Implementing Entity will develop and implement through the adaptive management process a habitat restoration plan to enhance recovery of the affected habitat area to the extent practicable. Elements of habitat restoration plans may include provisions for planting and caring for native vegetation and controlling the establishment of invasive plant species.
5. Invasive Species

Nature of Changed Circumstance

A changed circumstance that involves the introduction of an invasive species will be considered to have occurred if the Implementing Entity, USFWS, and DFW jointly determine that such a species is present and has been established within the Plan Area and that the presence of the invasive species will substantially diminish the benefits to covered species provided by the NHP conservation measures.

Planned Response

As described in Section 6.3, Monitoring Program, the Implementing Entity will take steps to detect, through the monitoring program and through collaboration with other responsible entities, the establishment of new invasive species in the Plan Area. If a new invasive species is discovered, the Implementing Entity in coordination with USFWS and DFW will conduct an assessment to determine the possible threats of the invasive species to covered species, natural communities, and ecosystems in the Plan Area. The Implementing Entity, through the adaptive management process, will identify and implement measures to reduce and/or control the adverse effects of new non-native species on the functions provided by habitat restored and protected under the NHP (e.g., control of non-native plant species in restored and protected habitats). If methods to adequately reduce and/or control adverse effects of the non-native species are not available or practicable, the Implementing Entity will identify alternative design, implementation, and management approaches to future habitat restoration actions to avoid or minimize potential adverse effects of the invasive species on covered species. If such modifications are not practicable, the Implementing Entity, through the adaptive management process, will identify and implement alternative conservation measures that provide equivalent levels of benefit to applicable covered species.

6. Long-Term Changes in Precipitation and Temperature

Nature of Changed Circumstance

Long-term changes in precipitation and temperature will be considered a changed circumstance in the event that such changes in the timing and amount of rainfall and ambient air temperature in the Plan Area as a result of climate change are of a magnitude sufficient, as jointly determined by the Implementing Entity, USFWS, and DFW, to diminish the benefit to covered species provided by NHP restored and protected natural communities.

Planned Response

Changes in precipitation and temperature patterns may affect vegetation composition and structure of NHP protected, enhanced, and restored habitat areas. In the event of this changed circumstance, the Implementing Entity will identify and implement actions through the adaptive
management plan to the extent such actions would help to moderate the ecological effects of changes in precipitation and temperature. Such adaptive management responses may include expanding the range of environmental gradients to provide for shifting species distributions and habitats. Measures beyond those contemplated by the adaptive management plan would likely be impracticable and ineffective given the magnitude and pervasiveness of such changes within Plan Area and, as such, are not provided for under the NHP.

7. Toxic or Hazardous Spills

Nature of Changed Circumstance

Toxic or hazardous spills will be considered a changed circumstance if the spills of chemicals into Yolo NHP restored and protected natural communities could significantly reduce the ecosystem and habitat functions they support as jointly determined by the Implementing Entity, USFWS, and DFW.

Planned Response

The Implementing Entity will respond to toxic or hazardous spill events that occur in habitat areas that have been protected, enhanced, or restored through NHP actions. For a spill event that is caused by a NHP action, the Implementing Entity will coordinate its response with DFW’s Office for Oil Spill Prevention, the Regional Water Quality Control Board, and other state or federal regulatory entities as appropriate to the nature of the spill event to curtail the immediate spread and minimize the effects of the spill. The Implementing Entity will also identify and undertake management measures sufficient to remediate the effects of the toxic substance on covered species and affected habitats (i.e., removal or isolation of the material) and restore the ecological functions of the degraded habitat. If the affected habitat areas cannot be feasibly and effectively restored, the Implementing Entity, through the adaptive management process, will identify and implement measures to contain the ecological effects of the spill and compensate for the loss of habitat functions at other locations that provide equivalent or greater ecological benefits to the affected covered species.

If the spill event is not caused by a NHP action, the Implementing Entity will coordinate with responsible regulatory agencies and the party(ies) responsible for the spill event to identity the measures that will need to be funded and/or undertaken to adequately remediate the effects of the spill and restore the ecological functions of the affected habitat. The Implementing Entity will monitor actions to ensure that any such remediation and restoration actions on NHP conservation lands are conducted in an appropriate manner.
8. New Species Listings

Nature of the Changed Circumstance

The USFWS or DFW may list additional species as threatened or endangered under the ESA or CESA (including CESA designated candidate species which may receive protection from take) that are not NHP covered species. In the event that USFWS or DFW lists a species not covered by the NHP, the provisions of this changed circumstance will be automatically triggered.

Planned Response

Upon a new listing of a species under State or federal endangered species laws, the Implementing Entity will undertake the following measures:

- Evaluate the potential impacts of covered activities on the newly-listed or candidate species and conduct an assessment of the presence of suitable habitat in areas of potential effect.

- Implement measures to avoid impacts to the newly listed species until such time as the NHP has been amended to include the newly listed species as a covered species.

In the event that a species not covered by the NHP becomes listed as threatened or endangered or designated as a candidate species, or is proposed or petitioned for listing, the Implementing Entity may request that USFWS and DFW add the species to the relevant take authorizations issued pursuant to the NHP. In determining whether to seek take coverage for the species, the Implementing Entity will consider, among other things, whether the species is present in the Plan Area and if the covered activities could result in the take of the species. If such take coverage is sought, the NHP and its authorizations will be amended. Alternatively, the Implementing Entity, on behalf of the Permittees, could seek new and separate take authorizations.

7.10.4.3 Changed Circumstances Notification

If the USFWS, DFW, or the Permittees becomes aware of the existence of a changed circumstance, each shall immediately notify the other. Thereafter, through a changed circumstance notice, the USFWS shall identify the planned responses described in Section 7.10.4.2, Changed Circumstances Provided for in the NHP, that the USFWS deems necessary to respond to the changed circumstance.

7.10.5 Unforeseen Circumstances

This section addresses future “unforeseen circumstances” affecting the covered species. Federal regulations define the concepts of unforeseen circumstances and set forth the parameters of the Permittee’s potential responsibilities in response to such unforeseen circumstances.
Unforeseen circumstances are events that could not be reasonably anticipated during the development of the NHP. Because of the unpredictable nature of unforeseen circumstances, response measures to such events are not included in the NHP. The difference between a “changed” and an “unforeseen” circumstance might depend upon the severity of the event. For example, flooding up to a certain defined point might qualify as a “changed circumstance,” whereas an even larger flooding event would be an “unforeseen circumstance.” Likewise, a small fire that affects only limited acreage could be a “changed circumstance,” but a large fire that destroys hundreds or thousands of acres could be considered unforeseen.

### 7.10.5.1 Definition of Unforeseen Circumstances

The USFWS defines unforeseen circumstances as those changes in circumstances that affect a species or geographic area covered by an HCP that could not reasonably have been anticipated by the plan participants during the development of the conservation plan, and that result in a substantial and adverse change in the status of a covered species.17

Similarly, unforeseen circumstances are defined in the NCCPA as changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more covered species.18 The NCCPA further provides that, in the event of unforeseen circumstances, DFW shall not require additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources without the consent of the plan participants for a period of time specified in the Implementation Agreement as long as the plan is being implemented consistent with the substantive terms of the Implementation Agreement.19

### 7.10.5.2 Procedures to Address Unforeseen Circumstances

Under ESA regulations, if unforeseen circumstances arise during the life of the NHP, the USFWS may not require the commitment of additional land or financial compensation, or additional restrictions on the use of land, water, or other natural resources other than those agreed to in the NHP, unless the NHP authorized entities consent. Within these constraints, the USFWS may require additional measures, but only if: (1) the USFWS proves an unforeseen circumstance exists; (2) such measures are limited to modifications of the NHP’s operating conservation program for the affected species; (3) the original terms of the NHP are maintained to the maximum extent practicable; and (4) the overall cost of implementing the NHP is not increased by the modification.

The USFWS bears the burden of demonstrating that unforeseen circumstances exist. A finding of unforeseen circumstances must be clearly documented, based upon the best available scientific

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17 50 CFR §17.3; 50 CFR §222.102.
18 Fish and Game Code §2805(k).
19 Fish and Game Code §2820(f)(2).
and commercial information and made considering certain specific factors. These factors include
the following: (1) size of the current range of the affected species; (2) percentage of range
adversely affected by the conservation plan; (3) percentage of range conserved by the
conservation plan; (4) ecological significance of that portion of the range affected by the
conservation plan; (5) level of knowledge about the affected species and the degree of specificity
of the species' conservation program under the conservation plan; and (6) whether failure to
adopt additional conservation measures would appreciably reduce the likelihood of survival and
recovery of the affected species in the wild. If such a finding is made and additional measures
are required, the NHP Permittees will work with the USFWS to appropriately redirect resources
to address the unforeseen circumstances.

7.10.6 Applicability of Other Federal Endangered Species Act
Issues to the NHP

7.10.6.1 Future Recovery Plans

Recovery plans under the ESA delineate actions necessary to recover and protect federally listed
species. However, these plans are not intended to establish obligations of Permittees to
undertake specific tasks. ESA recovery plans will have no effect on the implementation of the
NHP except to the extent that they may contribute information to the NHP Adaptive
Management Plan. Any recovery plan that is developed after the approval of the NHP and is
applicable to any covered species within the NHP Plan Area will:

- Not require any additional water, land, or financial compensation be provided by the
  Permittees;
- Be finalized only after the USFWS has conferred with and requested input from the
  Implementing Entity on the preparation of the recovery plan; and
- In no way diminish the take authorizations provided pursuant to the section 10 permit(s)
  issued for the NHP.

7.10.6.2 Future Section 7 Consultations

The USFWS will evaluate the direct, indirect and cumulative effects of the covered activities in
its internal biological opinion that will be issued in connection with the NHP and issuance of the
section 10(a) permit(s). Accordingly, in any consultation under ESA Section 7 that occurs after
the approval of the NHP, the USFWS will ensure that any biological opinion issued in
connection with the proposed project that is the subject of the consultation is consistent with the
NHP biological opinion. The proposed project must be consistent with the terms and conditions
of the NHP and the Implementing Agreement. Any reasonable and prudent measures included
under the terms and conditions of a biological opinion issued subsequent to the approval of the

20 50 CFR §17.22(b)(5)(iii)(C); 50 CFR §222.307(g)(3)(iii).
NHP with regard to the covered species and covered activities will, to the maximum extent appropriate, be consistent with the measures of the NHP and the Implementing Agreement. The USFWS will not impose measures in excess of those that have been or will be required by the Permittees pursuant to the NHP, section 10 permit(s), and Implementing Agreement.

7.10.7 Assurances to Third Party Participants

Third parties may receive take authorization pursuant to Section 7.5, Implementation Process. Once take authorization has been provided to a third party, it will remain in effect for that covered activity, even if the permits issued by DFW and USFWS to the Permittees are suspended or revoked, as long as the third party participant fully complies with the conditions of the NHP, the Implementing Agreement, the Permits, and the conditions imposed on the covered activity when take authorization was granted and implementation of the covered activity would not jeopardize the continued existence of a covered species.

7.11 Permit Duration and Renewal, Plan Modifications and Amendments, Permit Suspension and Revocation

7.11.1 Permit Duration

The Permittees are seeking take authorizations from USFWS and DFW with terms of 50 years. The term of the take authorizations issued under the NHP would begin from the date of their issuance. Prior to their expiration, the Permittees may apply to USFWS and DFW to renew their take permits. The Permittees will initiate the permit renewal process prior to the expiration of the initial 50-year period and with ample time to allow for the review and processing of the permit renewal.

The proposed 50-year term is necessary to achieve the overall NHP goals. Many of the key elements of the NHP will require substantial commitments of funding and an extended period of time to fully realize. The duration of the permits must be sufficient to justify such expenditures of funds and allow for proper sequencing and effective implementation of the actions contemplated by the NHP. The assembly of the conservation lands system through both fee title purchases and conservation easements with willing sellers to achieve the NHP habitat protection and restoration targets will require decades. Funds must be raised and willing sellers found to protect over 76,000 acres of habitat (Table 5-9). Restored habitat, especially riparian forest types, requires time to mature and achieve full ecological functions as habitat for covered species and other native species. A permit term of 50 years provides a practicable time frame in which to carry out the activities that will be authorized under the NHP and will maximize the benefits to species and their habitats.
7.11.2 Administrative Actions That Do Not Require Modification or Amendment

The administration and implementation of the NHP will require frequent and ongoing interpretation of the provisions of the NHP. Actions taken on the basis of these interpretations that do not substantively change the purpose or intent of the NHP’s provisions will not require modification or amendment of the NHP or its associated authorizations. Such actions related to the ordinary Implementing Entity administration and implementation of the NHP may include, but are not limited to, the following:

- Clerical corrections to typographical, grammatical, and similar editing errors that do not change the intended meaning or to maps or other exhibits to address insignificant errors.
- Adaptive management changes to conservation measures, including actions to avoid, minimize, and mitigate impacts and those that contribute to conservation, or modifications to habitat management strategies developed through and consistent with the Adaptive Management Plan described in Chapter 6, Adaptive Management and Monitoring Plan.
- Variations in the day-to-day management of NHP conservation lands, such as adjusting habitat management techniques and timing on the basis of observed changes in conditions in response to prior management actions;
- Adaptations to the design of directed studies;
- Adjustments to monitoring protocols to incorporate new protocols approved by USFWS and DFW.

7.11.3 Minor Modifications

As part of the process of NHP implementation, the Implementing Entity will likely need to make minor changes (“Minor Modifications”) to the NHP from time to time to respond appropriately to new information, scientific understanding, technological advances, and other such circumstances. Minor Modifications will not involve changes that would adversely affect covered species, the level of take, or the obligations of Permittees. The process for implementing Minor Modifications is set forth in Section 7.11.3.1, Procedures for Minor Modifications or Revisions.

Minor Modifications may include, but are not limited to, the following circumstances:

- Minor corrections to land ownership descriptions;
- Changes to survey, monitoring, reporting and/or management protocols that do not adversely affect covered species or habitat functions and values;
Transfers of targeted habitat acreages among NHP planning areas, provided such change does not preclude meeting preserve assembly requirements, significantly increase the cost of the NHP management or preclude achieving covered species and natural community goals and objectives;

Extensions of earth moving or ground disturbance outside the rights-of-way limits analyzed in the NHP for covered activities involving infrastructure development or habitat restoration;

All project-level adaptive management actions (Section 6.2.1.1, Project-Level Adaptive Management),

Plan-level adaptive management actions that to do not involve major changes in NHP commitments and require a formal amendment to implement (Section 6.2.1.2, Plan-Level Adaptive Management),

Updates/corrections to the vegetation or other resource maps and/or species occurrence data; and,

Other proposed changes to the NHP determined to be insubstantial and appropriate for implementation as a Minor Modification

7.11.3.1 Procedures for Minor Modifications or Revisions

The Implementing Entity, USFWS, or DFW may propose Minor Modifications by providing written notice to the Implementing Entity, Permittees, USFWS, and DFW. Such notice will include a description of the proposed Minor Modifications, an explanation of the reason for the proposed Minor Modifications, an analysis of its environmental effects including any impacts to Covered Species, and an explanation of why that party believes the effects of the proposed Minor Modifications would not:

- Significantly differ from, and would be biologically equivalent to, the effects described in the NHP, as originally adopted;
- Conflict with the terms and conditions of the NHP, as originally adopted; and
- Significantly impair implementation of the NHP Conservation Strategy.

USFWS, DFW, and the Implementing Entity may submit comments on the proposed Minor Modification in writing within sixty (60) days of receipt of notice. If any Implementing Entity does not concur with the proposed Minor Modification for any reason, the Minor Modification will not be incorporated into the NHP. If USFWS and DFW do not concur that the proposed Minor Modification meets the requirements for a Minor Modification, the proposal must be approved according to the Amendment process (see Section 7.11.4, Amendment). The Permittees, Implementing Entity, USFWS, and DFW may utilize the informal dispute resolution process set forth in the NHP Implementing Agreement (Appendix L, Implementing Agreement) to resolve disagreements concerning proposed Minor Modifications.
If the Implementing Entity is in agreement regarding the proposed Minor Modification, and USFWS and DFW concur that the requirements for a Minor Modification have been met and the modification should be incorporated into the NHP, the NHP will be modified accordingly. If USFWS or DFW fail to respond within the 60-day period to the written notice, the agency failing to respond will be deemed to have approved the proposed Minor Modification.

### 7.11.4 Amendments

Under some circumstances, it may be necessary to make changes to the NHP that are more significant than administrative actions or minor modifications described above. Any proposed changes to the NHP that do not qualify for treatment under Section 7.11.2, Administrative Actions That Do Not Require Modification or Amendment, or Section 7.11.3, Minor Modifications, will require an Amendment to the NHP. Amendment to the NHP will also require corresponding amendment to the Authorizations/Permits, in accordance with applicable laws and regulations regarding permit amendments. The Implementing Entity will be responsible for submitting any proposed Amendments to USFWS and DFW.

Amendments to the NHP will likely occur infrequently. The process for making Amendments is set forth in Section 7.11.4.1, Process for Amendment. Amendments include, but are not limited to, the following:

- Substantive changes to the boundary of the NHP Plan Area.
- Additions of species to the covered species list.
- Substantial changes in implementation schedules that would have significant adverse effects on the covered species.

#### 7.11.4.1 Process for Amendment

Amendments will involve the same process that was required for the original approval of the NHP. In most cases, an Amendment will require review and comment, CEQA/NEPA compliance, and an intra-USFWS section 7 consultation. Amendments will be subject to review and approval by the Implementing Entity and Permittees. USFWS and DFW will use reasonable efforts to process proposed Amendments within one hundred thirty-five (135) days after submittal.

### 7.11.5 Suspension of the Federal Permit

Under certain circumstances defined by federal regulation, the USFWS may suspend, in whole or in part, the regulatory authorizations they issue under the NHP. However, except where the USFWS determines that emergency action is necessary to avoid irreparable harm to a covered species, it will not suspend an authorization without first (1) identifying the facts or action/inaction which may warrant the suspension and providing the Implementing Entity a reasonable opportunity to implement appropriate responsive actions and (2) attempting to resolve
the issue through the informal dispute resolution process set forth in the NHP Implementing Agreement (Appendix L, Implementing Agreement).

### 7.11.6 Reinstatement of Suspended Federal Permit

If the USFWS suspends the federal permit, as soon as possible but no later than 10 days after the suspension, USFWS will meet and confer with the Implementing Entity and Permittees to discuss how the permit(s) can be reinstated. At the conclusion of the meeting, the USFWS will identify reasonable, specific actions needed to address the suspension. Upon performance or completion of the actions, the USFWS will immediately reinstate the federal permit.

### 7.11.7 Revocation of the Federal Permit

Unless immediate revocation is necessary to avoid the likelihood of jeopardy to a federally listed threatened or endangered species, the USFWS will not revoke the federal Permit(s) unless the Permittees fail to fulfill their obligations under the NHP, and only after (1) identifying the actions/inactions that may warrant the revocation and giving the Implementing Entity a reasonable opportunity to implement appropriate responsive actions and (2) completing the informal dispute resolution process described in the NHP Implementing Agreement (Appendix L, Implementing Agreement). The USFWS will revoke or terminate a federal Permit(s) to avoid the likelihood of jeopardy to a listed species only in accordance with the federal Permit Revocation Rule as described below.

#### 7.11.7.1 The Federal Permit Revocation Rule

The “Permit Revocation Rule” allows the USFWS to nullify regulatory assurances granted under the No Surprises rule and revoke the section 10 permit if continuation of a permitted activity would jeopardize the continued existence of a species covered by an HCP and the impact of the permitted activity on the species has not been remedied in a timely manner. In the event that USFWS determines that continuation of a covered activity would jeopardize the continued existence of a federally listed threatened or endangered species, the USFWS would work with the Implementing Entity and the Permittees to find a remedy and obviate the need for permit revocation. The USFWS would engage in the following process prior to taking any steps to revoke the NHP permit to address the likelihood of jeopardy:

1. The Implementing Entity and USFWS would determine, through the adaptive management process, whether changes can be made to the NHP’s operating conservation program to remedy the situation.
2. The USFWS would determine whether the USFWS or other State and federal agencies can undertake actions that would remedy the situation.

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21 69 FR71723.
3. The Implementing Entity and the USFWS will determine whether there are additional voluntary conservation actions that the Implementing Entity could undertake to remedy the situation.

The USFWS would only begin the revocation process if it is determined that the continuation of an NHP covered activity would jeopardize the continued existence of one or more federally listed threatened or endangered species and that no remedy can be found and implemented. The USFWS would follow the administrative procedures set out in NHP Implementing Agreement (Appendix L, Implementing Agreement) and the regulations implementing the Permit Revocation Rule.22

7.11.8 **Revocation of the State Permit**

The NCCPA requires that implementing agreements include specific terms and conditions that, if violated, result in suspension or revocation of the section 2835 take permit. Such terms and conditions must include suspension or revocation of the permit if the plan participants fail to provide adequate funding to implement the plan; do not maintain proportionality between impacts on habitats or covered species and conservation measures; adopt or approve changes to the plan that are not consistent with the objectives and requirements of the approved plan without concurrence of USFWS and DFW; or allow the level of take to exceed the permit limits.23

The DFW must also suspend or revoke a section 2835 take permit if continued take would result in jeopardy to a species.24

If the Permittees violate the terms and conditions of the State permit, or if necessary to avoid jeopardizing the continued existence of a listed species, DFW may suspend or revoke the permit in whole or in part. However, unless immediate revocation is necessary to avoid the likelihood of jeopardy to a listed species or to address rough proportionality, DFW will not suspend or revoke the State permit without first (1) notifying the Implementing Entity and Permittees of the action/inaction that may warrant the suspension or revocation and providing the Implementing Entity and Permittees with a reasonable opportunity to take appropriate responsive action and (2) attempting to resolve any disagreements regarding the implementation or interpretation of the NHP in accordance with the informal dispute resolution process provided in the NHP Implementing Agreement (Appendix L, Implementing Agreement).

7.11.8.1 **Failure to Maintain Rough Proportionality**

The NCCPA requires revocation of a section 2835 take permit, in whole or in part, if the plan participants do not maintain rough proportionality between impacts on habitats or covered

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22 50 CFR §§13.28 and 13.29.
23 California Fish and Game Code §2820(b)(3).
24 California Fish and Game Code § 2823.
species and conservation measures and do not, within 45 days, remedy such condition or develop a plan with the DFW to provide a remedy.\textsuperscript{25}

Rough proportionality will be maintained by implementing the conservation measures substantially in accordance with the agreed upon schedule described in Section 7.3.1, Timing of Mitigation Actions and “Rough Proportionality.” If DFW determines, after conferring with the USFWS and the Implementing Entity, that rough proportionality is not being maintained, the Implementing Entity, Permittees, and DFW will meet and confer and, within 45 days of DFW’s determination, agree on adjustments to the implementation schedule to expeditiously regain rough proportionality. Adjustments to the implementation schedule may include any of a variety of commitments or adjustments to NHP implementation designed to regain rough proportionality, including advancing and/or accelerating plans to acquire, restore, or enhance lands of the appropriate land cover type. The Implementing Entity will implement all actions set forth in the agreed upon adjusted implementation schedule. As an alternative to the agreement, the Implementing Entity may regain rough proportionality within forty-five (45) days by implementing the actions according to the existing implementation schedule.

### 7.11.8.2 State Permit Suspension and Revocation Steps

In the event that such circumstances for permit revocation or suspension were to arise under the NHP, the DFW would work with the Implementing Entity and the Permittees to obviate the need for permit revocation or suspension. The DFW would engage in the following process prior to taking any steps to revoke the NHP permits:

1. In the event of a failure to maintain rough proportionality, the NHP Implementing Entity will work with DFW to remedy the situation through schedule adjustments as described in Section 7.11.8.1, Failure to Maintain Rough Proportionality, and in accordance with the NHP Implementing Agreement (Appendix L, Implementing Agreement). Note that the NHP monitoring program is designed to identify such issues and that the Implementing Entity must report on such issues in the Annual Progress Reports.

2. For other situations that could result in permit revocation or suspension or if rough proportionality cannot be regained through schedule adjustments, the Implementing Entity, Permittees, and the DFW would determine, through the adaptive management process, whether other changes can be made to the NHP’s operating conservation program to remedy the situation.

3. The DFW would determine whether the DFW or the USFWS or other State and federal agencies can undertake actions that would remedy the situation.

4. The Implementing Entity and DFW will determine whether there are additional voluntary conservation actions that the Implementing Entity could undertake to remedy the situation.

\textsuperscript{25} Fish and Game Code § 2820(c).
The DFW would only begin the revocation or suspension process if no solutions are found and it is determined that the continuation of an NHP covered activity would result in jeopardy to a species or violate any of the terms and conditions for permit revocation or suspension identified in the NHP Implementing Agreement (Appendix L, Implementing Agreement).