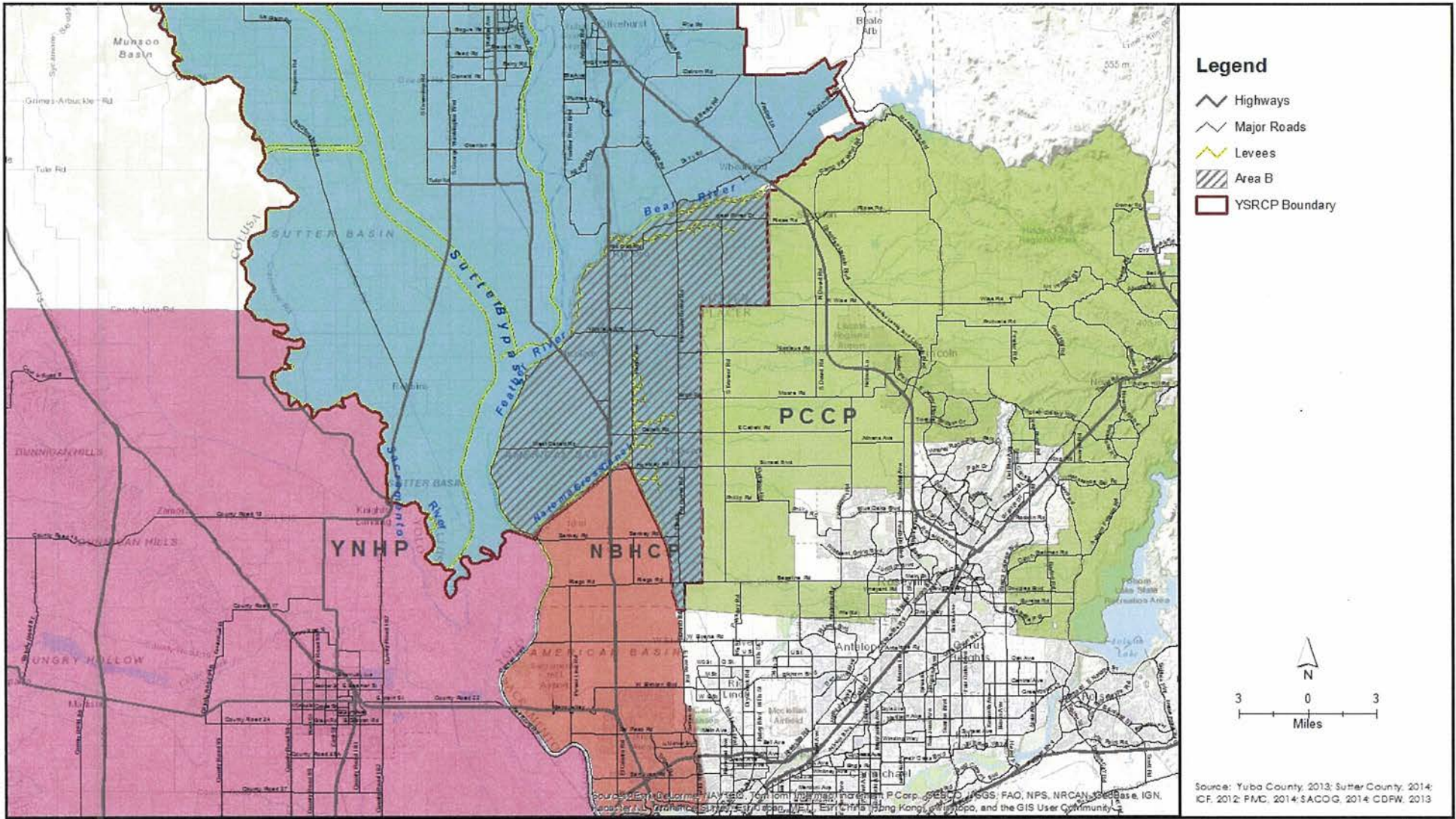


FIGURE 20
OUT-OF-BASIN
MITIGATION AREA
 REVISED NATOMAS BASIN HCP



Area B

with Chapters IV through VI of the NBHCP and this Section.

5.2 Setbacks and Buffers. All Mitigation Lands Acquired by TNBC shall conform to the buffer and setback requirements set forth in Chapters IV and VI of the NBHCP.

5.3 In-Basin Acquisition. A minimum of 80 percent of all Mitigation Lands shall be acquired within the Natomas Basin as provided in the NBHCP. Up to 20 percent of all Mitigation Lands may be acquired outside of the Natomas Basin in Area B if approved by TNBC and the Wildlife Agencies in accordance with the criteria provided in Chapter IV of the NBHCP.

5.4 Coordinating Mitigation Land Acquisition With Agency Acquisitions. Prior to the Acquisition of any parcel of Mitigation Land, TNBC shall provide written notice to the USFWS, CDFG, and both CITY and SUTTER of its intent to Acquire such lands. USFWS and CDFG agree that they will not knowingly interfere or compete with TNBC for the Acquisition or control of such lands and that they will consult with TNBC in formulating any Acquisition plans. As to those lands identified by USFWS or CDFG for acquisition, TNBC, likewise, shall not knowingly interfere with or compete with the affected agency for acquisition or control until TNBC is notified by that agency that it is no longer pursuing acquisition or control of the lands.

not provide take authorization or specify appropriate mitigation for such projects.

e. The Natomas Basin Conservancy (TNBC) (as a Permittee)

TNBC serves as the plan operator established by the City and controlled by the City, Sutter County and other potential Permittees to acquire and manage the system of habitat reserves to be created under the NBHCP. TNBC is also a Permittee. TNBC will seek separate Incidental Take Permits to cover activities related to the acquisition, establishment and management of the system of habitat reserves to be created throughout the Natomas Basin and in Area B (see Figure 20). *(Note: During the final NBHCP approval process by the City Council of the City of Sacramento and the Board of Supervisors of Sutter County, authorization to purchase Mitigation Lands to offset the impacts of development was limited to the Natomas Basin and the "outer" ring around the levees of the Natomas Basin. No authorization to purchase lands to mitigate impacts of Authorized Development in Area B (out of Basin area) was granted by the City Council and the Board of Supervisors.)* The NBHCP includes a number of measures to avoid and minimize the impact of TNBC Covered Activities to Covered Species in Chapter IV, and in addition includes measures to enhance the survival of Covered Species through habitat enhancements and adaptive management provisions.

3. **Plan Operator**

a. Natomas Basin Conservancy

The NBHCP's reserve acquisition and management activities will be implemented by The Natomas Basin Conservancy (TNBC), serving as the "Plan Operator", on behalf of the City, Sutter County, the Metro Air Park Property Owners' Association under the Metro Air Park HCP (MAP) and other potential Permittees. TNBC is an independent non-profit corporation. The habitat mitigation fees and mitigation lands will be transferred to TNBC under the Plan. TNBC's efforts are guided by a Board of Directors, with members of the Board appointed by agencies receiving permits under the NBHCP. The Board is assisted in its efforts by the NBHCP Technical Advisory Committee (TAC), a group of experts with members including representatives of the Wildlife Agencies (U.S. Fish and Wildlife Service and California Department of Fish and Game) and the Permittees.

TNBC, as the Plan Operator, will conduct a variety of actions to acquire, establish and enhance, monitor and manage lands in perpetuity to ensure the continued success within the Natomas Basin of all Covered Species listed within the NBHCP. TNBC will serve, on behalf of the Permittees and the Wildlife Agencies, as the Plan implementation and effectiveness monitor. As development within the Natomas Basin occurs, and as TNBC acquires reserve lands, site specific management plans will be prepared for and adopted by TNBC. Additionally, TNBC may implement adaptive management plans and to the extent provided for under by the NBHCP, management measures proposed in species recovery plans for the Covered Species. Additional responsibilities of TNBC are further detailed in Chapters IV, V and VI.

4. **Third Parties**

three year basis.

- (6) Construction and improvement with no increase to the existing footprint, of flood control and water conveyance facilities, water ditches, canals, pumphouses or maintenance facilities, and other ancillary facilities that are owned or operated by RD 1000 or Natomas Mutual.

The Water Agencies' Covered Activities do not include the construction, maintenance, operation, or closure of river diversion facilities and accompanying fish screens owned or operated by Natomas Mutual in the Natomas Basin.

3. TNBC Covered Activities as Permittee and Plan Operator

As the Plan Operator, TNBC, its authorized agents, and other third parties under its direct control are granted coverage under TNBC's Incidental Take Permits for its Permit Area. TNBC's Permit Area includes the entire Plan Area, as well as, the levees bounding the Natomas Basin and extending to the edge of water immediately outside the Natomas Basin levees, and Area B, as depicted on Figure 20, Out of Basin Mitigation Areas.

(Note: During the final NBHCP approval process by the City Council of the City of Sacramento and the Board of Supervisors of Sutter County, authorization to purchase Mitigation Lands to offset the impacts of development was limited to the Natomas Basin and the "outer" ring around the levees of the Natomas Basin. No authorization to purchase lands to mitigate impacts of Authorized Development in Area B (out of basin area) was granted by the City Council and the Board of Supervisors.)

Within the TNBC Permit Area, TNBC is provided incidental take coverage for managing reserves, preservation activities, creation and restoration activities, enhancing reserves, and monitoring Mitigation Lands.

O. ACTIVITIES NOT COVERED BY THE NBHCP

Specific activities not covered by the NBHCP and its associated Permits include the following:

1. Agricultural Activities. Except as provided for TNBC management of reserve lands, agricultural activities are not Covered Activities under the NBHCP and the NBHCP Permits.
2. Dredging. Except as provided for the Water Agencies' channel maintenance, dredging is not a Covered Activity under the NBHCP and the NBHCP Permits.
3. Additional Regulations. In addition to the Section 10(a)(1)(b) and Section 2081 Permits the NBHCP Permittees shall also comply with all other applicable local, state and federal, regulations, laws or ordinances. This includes, but is not limited to, the following: U.S. Army Corps of Engineers Clean Water Act Section 404 permits; State Water Quality Control Board/Regional Water Quality Control

IV. CONSERVATION PLAN


A. PLAN PURPOSE


This chapter describes the Conservation Plan to be implemented by the Plan Operator, The Natomas Basin Conservancy (TNBC). The Chapter sets forth the guidelines and practices to be used by TNBC including the size and amount of reserves to be established, acquisition criteria for upland and wetland areas to be acquired and managed by TNBC, and reserve management practices to be employed by the TNBC to ensure successful habitat enhancement to support the Covered Species. Chapter V describes related and supportive avoidance and mitigation measures which will be undertaken by the Permittees including the TNBC, Land Use Agencies and Water Agencies. It is important to review both Chapters IV and V in concert in order to understand the full mitigation strategy of the HCP. Finally, Chapter VI describes provisions related to NBHCP implementation and establishes additional procedures and obligations for both TNBC and the other Permittees. (Note that the TNBC is both Plan Operator and a Permittee. The TNBC is a Permittee for purposes of participation in the NBHCP and for receipt of an Incidental Take Permit related to management of the habitat reserves on behalf of the City, Sutter County and other potential Permittees. The TNBC's Permit Area is however, different from the other Permittees in that it includes the entire Natomas Basin Plan Area which includes the water side of the levees surrounding the basin, and **Area B** thereby allowing the TNBC to purchase or otherwise control and operate habitat lands throughout the greater Natomas Basin area.)

(Note: During the final NBHCP approval process by the City Council of the City of Sacramento and the Board of Supervisors of Sutter County, authorization to purchase Mitigation Lands to offset the impacts of development was limited to the Natomas Basin and the "outer" ring around the levees of the Natomas Basin. No authorization to purchase lands to mitigate impacts of Authorized Development in Area B (out of basin area) was granted by the City Council and the Board of Supervisors.)

The NBHCP sets forth a program for the preservation and protection of habitat for threatened and endangered species potentially found in the Natomas Basin. Of the 53,537 acre Natomas Basin, about 7,267 acres were already developed in 1997, leaving a balance of 46,270 acres of undeveloped and agricultural land. The primary objective of the NBHCP is to provide a practical program to promote biological conservation along with Authorized Development in the Permit Areas and Water Agencies Covered Activities. The NBHCP is not intended to cover incidental take of listed species within the Natomas Basin resulting from activities which are not included as Covered Activities or are conducted by entities other than the NBHCP participants outside of the Permit Areas.

Among the mitigation and minimization measures outlined in the Plan, is a program that establishes a multi-habitat, multi-species conservation program to mitigate the incidental take of and expected loss of habitat for state and federally listed species and other species noted as covered by the Plan that would result from urban development and operation of irrigation and drainage systems. Activities covered by the NBHCP could result in incidental take, or take for scientific purposes (see Section VII), of some of the Covered Species (see Table I-1). Thus, the

outer ring of the levees of the Natomas Basin. Acquisition of mitigation lands to offset the impacts of Authorized Development pursuant to the City of Sacramento and Sutter County's Incidental Take Permits may not occur in the area defined by the NBHCP as Area B. Similarly, the NBHCP does not provide for TNBC to acquire Mitigation Lands in Area B to fulfill Metro Air Park's Mitigation Land acquisition obligations. 

Most mitigation lands under the NBHCP will be situated inside the Natomas Basin. However, the Plan recognizes one potential out-of-Basin mitigation area, shown in Figure 20, Out-of-Basin Mitigation Area. Area "B" is a 60,000-acre area of agricultural land, north of the Basin within Sutter County. While the overall habitat values and presence of Covered Species within Area B are not as well documented as within the interior of the Natomas Basin, giant garter snake presence has been confirmed in Area B. Area "B" is not within the Permit Area of Sutter County; thus, incidental take of Covered Species resulting from development in this area would not be covered by the Sutter County's ITP's. However, any take associated with management and habitat enhancement conducted by TNBC in reserve areas within Area "B" would be covered by the TNBC permits (see Section V.A). 

Under the NBHCP, up to 20 percent of the reserve lands may be established in Area "B," if approved in writing by USFWS and CDFG based on available scientific information that a reserve of adequate size, viability, and habitat value can be established in this area and can support a population of giant garter snakes, Swainson's hawk and/or other Covered Species. Acquisition of reserve lands in Area "B" may occur if: (1) the NBHCP Technical Advisory Committee, including its USFWS and CDFG representatives, concur unanimously in a decision to acquire reserve lands in Area "B" and the reasons for such decision are clearly documented in the TNBC's administrative record; or (2) if not unanimous, TNBC submits a proposal for such an acquisition in writing to the USFWS and CDFG, together with an explanation of how and why the acquisition would benefit the NBHCP's reserve system and be consistent with reserve system and overall Plan goals and objectives, and the USFWS and CDFG concur with the acquisition in writing. Generally, the NBHCP assumes that flood bypass areas or other areas in Area "B" that experience deep flooding will not be acceptable as mitigation lands unless they are specially managed to meet giant garter snake needs.

Area B Acquisition Criteria

The purpose of allowing out-of-Basin reserves is to provide an alternative method for achieving the NBHCP reserve objectives that preserve suitable habitat with high habitat values, that reduces the impact of TNBC acquisitions on continuing farming in the Basin, and that allows acquisition of potentially lower cost lands that support the goals and objectives of the NBHCP. At a minimum, such acquisitions must be consistent with the NBHCP's Conservation Strategies (see above, Section IV.C.1), reserve acquisition criteria (see Section IV.C.2), and provide clear benefits to the Covered Species of the NBHCP.

In reviewing Area B acquisitions, the Wildlife Agencies shall consider the effect of acquiring out-of-Basin reserves on the viability of Covered Species populations within the Basin.

In addition to the value of proposed acquisition lands in meeting the biological goals and objectives of the NBHCP, the following factors shall be taken into consideration should TNBC seek to pursue or acquire lands in Area B:

- (1) To preserve a balance, no more than 20% of the total reserve system at any given time shall be located in Area B.
- (2) Area B sites may be considered and purchased when market conditions in the Natomas Basin serve as a limiting factor to successful, timely and cost effective land acquisitions in the Basin. For example, if there is a limited inventory of available land (willing seller at a reasonable price) within the basin, and/or such parcels have limited habitat value or do not meet major portions of the reserve acquisition criteria and goals, then the TNBC Board may seek acquisition of parcels in Area B.
- (3) Specific circumstances under which Area B acquisitions might be appropriate include land costs for appropriate land within the Basin that are in excess of the established fair market land acquisition price established in the latest NBHCP Fee Report, or inability to conclude transactions within a reasonable time frame (approximately 6 months of initiation of negotiations).

If out-of-Basin reserve lands are acquired in Area "B" as described above, TNBC shall be responsible for managing such lands in accordance with Section IV.D below, unless: (1) another reliable, willing reserve manager for such lands is located; (2) management of such lands by another land manager is consistent with all applicable conditions of the NBHCP; and (3) such land manager continues to be subject to and to act under the direct control of TNBC; and (4) delegation of management authority to such a reserve manager is authorized by the USFWS and CDFG in writing and through revision of the NBHCP and Implementation Agreement if necessary. If TNBC desires to delegate ownership or management of any reserve lands to a third party without retaining direct control over such third party, then, in addition to the measures identified in (4) above, such delegation must be processed as an amendment to TNBC's permits and the third party must obtain separate incidental take permits.

The purpose of allowing out-of-Basin reserves is to provide an alternative method for achieving the NBHCP reserve objectives, to reduce the potential cost of establishing reserve areas by allowing acquisition of potentially lower-cost land that supports suitable habitat with high habitat values, and to reduce the impact of TNBC acquisitions on continuing farming in the Basin. However, at a minimum, such acquisitions must be consistent with the NBHCP's Conservation Strategies (see above, Section IV.C.1), reserve acquisition criteria (see Section IV.C.2), and provide clear benefit to the Covered Species of the Natomas Basin.

In summary, it is currently expected that at least 80 percent of the NBHCP's reserve lands will be established within the Natomas Basin, and up to 20 percent of the total mitigation lands required by the Plan may be acquired out-of-Basin pursuant to compliance with the criteria established above.

impact of urbanization on loss of productive agricultural land. However, the NBHCP can adapt to meet changing biological circumstances through: (1) USFWS adoption of a Giant Garter Snake Recovery Plan and CDFG adoption of a Swainson's Hawk Recovery Plan (see Sections VI.H.1 and VI.H.2, respectively); (2) the Plan's Adaptive Management provisions (see Section VI.F); (3) 9,000-acre Overall Program Review as described in Section VI.I; and (4) the Land Use Permittees' Independent Mid-Point Reviews as described in Section VI.J. These provisions allow the NBHCP program to pursue alternatives of greater or lesser proportions of marsh and greater or lesser in-Basin land, and other measures if it is later demonstrated that this is biologically necessary. However, prior to acquisition of Mitigation Lands in Area B, the NBHCP TAC, including USFWS and CDFG representatives, must review and approve the acquisition. The NBHCP further stipulates conditions under which Mitigation Lands may be acquired in Area B (see Section IV.C.2.b of this NBHCP).

within its permit area, that Land Use Agency shall be responsible for satisfying the initial 400-acre managed marsh requirement within the Plan Area.

- (3) Following satisfaction of the requirement to convert the initial 400 acres of managed marsh, TNBC shall continue to convert a portion of all Mitigation Lands to managed marsh consistent with the following guidelines. The proportion of managed marsh within Mitigation Lands shall be based on total sites, and not necessarily on individual units of Mitigation Land. Following acquisition of Mitigation Land, TNBC is allowed one year to complete a Site Specific Management Plan (SSMP) for the site. Within three years of SSMP approval, TNBC shall complete site improvements, including managed marsh conversion as appropriate.

D. ACCOUNTING OF MITIGATION LAND

Each Land Use Agency shall collect Mitigation Fees prior to issuance of an Urban Development Permit (i.e., grading permit or notice to proceed) and promptly transfer the fees to TNBC, identifying by name, location and acreage, each project for which fees have been collected. TNBC shall record collection of fees from Land Use Agencies in chronological order, crediting the oldest project to have paid all required components of the Mitigation Fees with the Mitigation Lands TNBC acquired. Compliance with Phasing of Mitigation with Respect to Development (Section VI.C above) must be satisfied with respect to the entire Plan Area and not for individual Land Use Agency's Permit Areas. If TNBC falls behind on acquiring Mitigation Land, then TNBC must notify all Land Use Agencies and TNBC may not accept additional Mitigation Fees until acquisition of Mitigation Land is in compliance with Section VI.C. The Land Use Agencies shall not allow any development to proceed under the Incidental Take Permits where TNBC has not accepted Mitigation Fees or Mitigation Lands for the development project. Development of lands for which Mitigation Fees have been accepted by TNBC, and which has met all other requirements of the NBHCP would be allowed to proceed under the Incidental Take Permits.

Percentage of Managed Marsh:

A key NBHCP requirement is that at least 25% of habitat Mitigation Lands be established as managed marsh, unless the USFWS requires otherwise based on its future Giant Garter Snake Recovery Plan, ongoing monitoring results, or other new peer-reviewed scientific information. Thus, TNBC will, in its annual report (see Section VI.G below), specify the acreage, location, and type of reserve land (i.e., rice land versus marsh), and the percentage of each with respect to the total lands acquired to date. The 25% managed marsh requirement applies to the entire Natomas Basin collectively (i.e., to all Land Use Agency jurisdictions and Permit Areas), not to each Permit Area individually.

Out of Basin Mitigation Land:

The NBHCP allows for a maximum of 20 percent of the Mitigation Lands to be acquired in Area B outside of the Natomas Basin under certain conditions defined in Chapter IV.2.b, with

approval of USFWS and CDFG. TNBC shall account for all acreage acquired in Area B to ensure that the total amount of such lands does not exceed 20 percent of the total Mitigation Lands. (Note: *During the final NBHCP approval process by the City Council of the City of Sacramento and the Board of Supervisors of Sutter County, authorization to purchase Mitigation Lands to offset the impacts of development was limited to the Natomas Basin and the "outer" ring around the levees of the Natomas Basin. No authorization to purchase lands to mitigate impacts of Authorized Development in Area B (out of basin area) was granted by the City Council and the Board of Supervisors.*)

Metro Air Park:

While Metro Air Park (MAP) is not a Permittee under this NBHCP, there is an accounting relationship that must be considered. Under a separate HCP, and subject to the provisions of that HCP, MAP will utilize TNBC for acquisition and management of habitat reserves. MAP will rely on the County of Sacramento to collect Mitigation Fees, and the County will convey these fees to TNBC. Additionally, TNBC will include information on MAP's urban development and associated habitat mitigation within the TNBC Annual Report. Fees collected by TNBC on behalf of Planned Development in the MAP HCP shall be credited along with fees collected by both Land Use Permittees in chronological order, with the first project among MAP or either Land Use Permittee to have paid Mitigation Fees credited with the habitat Mitigation Lands acquired by TNBC and credited to MAP's mitigation obligation.

Land in Lieu of Fees:


With respect to each project proponent who elects to transfer Mitigation Lands in lieu of the Mitigation Land acquisition fee component of the Mitigation Fees, once TNBC, USFWS and CDFG have approved transfer of the lands, and the other Mitigation Fees have been paid by the project proponent, the project may proceed. TNBC will keep a record of the name, location, and acreage of the project and the Mitigation Lands transferred to TNBC on behalf of the project. That information will be presented in the TNBC annual report.

The findings of the annual accounting shall be published within the TNBC Annual Report described within Section VI.G. Additional data to be included within the Annual Report are described in Section VI.F.

E. MONITORING OF THE NBHCP


Monitoring is an essential element of all HCP's that is designed and implemented to provide the information necessary to assess compliance and project impacts, and verify progress toward the biological goals and objectives for the Plan's Covered Species and habitats. Monitoring efforts must be designed to adequately direct the results of the adaptive management strategy. Integrating the results of NBHCP's monitoring program into the adaptive management strategy is essential. The monitoring efforts play an essential role in determining whether the chosen management strategy(s) is providing the desired outcome (i.e., achieving the biological goals of the HCP). Monitoring shall be performed for the duration of the permit and in perpetuity per the terms of the Plan.

Described below are provisions related to Compliance Monitoring that will apply to the noted parties if and when Incidental Take Permits are issued to the individual party. For instance, Compliance Monitoring data for Water Agencies' activities shall not be required until such time as the Water Agencies apply for and receive permits. Until that time, TNBC will annually contact the Water Agencies and request information on the Water Agencies' canal and ditch maintenance activities. Such information, as provided voluntarily by the Water Agencies, shall be published annually by TNBC.

- a. The compliance monitoring accounting by TNBC of Mitigation Lands shall quantify:
 - (1) Annual acquisitions:
 - a. Acreage (annual incremental and cumulative)
 - b. Location (e.g., within Swainson's hawk zone, within the Basin)
 - c. Land use type/Condition (e.g., vegetation type, vernal pool, Swainson's hawk potential nest habitat, rice land, alfalfa).
 - (2) Take of Covered Species and impacts to habitat (note: no take of habitat; however, habitat disturbance results in take) resulting from implementation of the TNBC Site Specific Management Plans or Covered Activities (including any specimens taken for scientific purposes).
 - (3) Implementation of Incidental Take avoidance measures:
 - a. Preconstruction surveys and avoidance measures used pre- and post ground-disturbing activities within Mitigation Lands
 - b. Take avoidance implemented during maintenance and management
 - c. Success or failure in implementing take avoidance measures
 - d. Recommendations for changing or improving take avoidance measures.
 - (4) Annual financial status
 - a. The amount and source of funds collected
 - b. Funds expended or committed for acquisition
 - c. Funds held by TNBC in reserve
 - d. Summary of expenditures for and revenues from Mitigation Land management
 - e. An accounting of the long-term endowment account
 - f. Funds allocated by TNBC to an entity other than TNBC for monitoring or management
 - g. An accounting of and determination of adequacy of funding for implementing the Operating Conservation Program (e.g.; acquisition, enhancement, land management activities, monitoring and database management).
 - (5) Status of Mitigation Lands within TNBC reserves, including:
 - a. In-Basin:
 - i. Lands managed as marsh
 - ii. Lands managed as rice, including associated fallow land
 - iii. Lands managed as upland reserves
 - b. Out-of-Basin in "Area B" 
 - c. Mitigation for vernal pools, as appropriate.

of the particular management objective. For example, the monitoring interval for focused monitoring efforts would be determined by the longevity and generation time of the Covered Species of interest, or the expected periodicity of specific biological or climatic events or other interactions in which the species may be involved. Monitoring programs might also consider the conditions of the habitat being monitored and the habitat necessary for species dispersal.

Biological Effectiveness Monitoring shall be conducted by TNBC and the results of such monitoring will be published in conjunction with TNBC's Annual Report. The Biological Effectiveness of the NBHCP will be analyzed through the review and analysis of Annual Biological Monitoring reports and Five-Year Monitoring reports, and through the comparison of these surveys with the Baseline Surveys conducted for each TNBC reserve. In compiling and publishing Biological Monitoring data, TNBC shall produce single reports that address all covered species as determined appropriate, rather than producing an individual report for each of the Covered Species. Such comprehensive reports may include as attachments additional studies such as basinwide evaluations of giant garter snake and Swainson's hawk.

Due to the lack of documented occurrences of numerous Covered Species within the Natomas Basin and in Area B, Biological Monitoring efforts shall vary in depth and detail. For instance, Rarely Occurring Species such as Delta tule pea are not known to exist within the Plan Area. Until such time as Delta tule pea or other Rarely Occurring Covered Species are found in the Basin, surveys for such species shall be cursory and discussions within various monitoring reports shall be brief. If such a species becomes established or is later discovered in the Basin, future surveys would focus on locations with identified populations. 

All Biological Effectiveness Monitoring Programs will include thresholds, at which Mitigation Land management must be modified through the Adaptive Management Process to assure success of the Operating Conservation Program. These points will be broad enough to assure that actions are not taken unnecessarily, but specific enough to prevent catastrophic effects to the Covered Species or other aspects of the Plan.

The NBHCP does not identify the specific activities to be conducted within the Biological Effectiveness Monitoring Programs. However, the criteria and guidelines provided in the following sections provide direction for developing suitable NBHCP Biological Effectiveness Monitoring Programs.

b. Utilization of Existing Data Sources and Monitoring Protocols

TNBC shall utilize all existing information, including information on the numbers, distribution, occurrence, or abundance of the other Covered Species that may be available in documenting baseline species presence. In addition, survey protocols for Covered Species shall be incorporated within and shall guide preparation of the NBHCP Biological Monitoring Programs. Information sources could include USGS surveys (in addition to USGS giant garter snake survey information), Species status reviews, Breeding Bird Survey, Audubon Christmas Bird Counts, etc. Other sources of information also may include working groups and species experts, such as the Interagency Western Pond Turtle Working Group, Swainson's Hawk Technical Advisory Committee, etc.

d. Limits on Additional Conservation Measures

Pursuant to the No Surprises Rule, if the USFWS makes a finding of Unforeseen Circumstances in accordance with the procedures described in this section, and determines that additional conservation measures are warranted, such additional conservation measures shall conform to the maximum extent possible to the original terms of the NBHCP, and shall not involve the commitment of additional land, water or financial compensation or additional restrictions on the use of the land, water or other natural resources beyond the level otherwise agreed upon in the NBHCP for the Covered Species without the Permittees' consent.

1. Applicability of the "No Surprises" Protections

In light of the NBHCP Adaptive Management provisions (see Section VI.F), program adaptations for recovery plans (see Section VI.H), Overall Program Review (see Section VI.I), and individual Land Use Agency's Independent Mid-Point Review (see Section VI.J), which allow certain changes to occur throughout the term of the plan, it is necessary to identify aspects of the NBHCP Operating Conservation Program that are subject to the "No Surprises" rule and for which the USFWS may not require additional mitigation for an unforeseen circumstances finding without the consent of the Permittees. The NBHCP Adaptive Management provisions allow the NBHCP to be revised as a result of new recovery plans, new research into the Covered Species, and ongoing monitoring programs. As a result, revisions may be made to the NBHCP's Operating Conservation Program, including reserve land management and enhancement, and monitoring of the Covered Species pursuant to the Plan's Adaptive Management provisions, that may result in additional mitigation provided such revisions meet the requirements of Section VI.E and VI.F. Because such revisions and changes are provided for under the Plan, they are not subject to the restrictions on additional mitigation contained in the No Surprises Rule.

The following elements of the plan are not subject to revision as part of the NBHCP's Adaptive Management provisions or as a result of the overall or individual jurisdiction reviews: (1) the 0.5-to-1 mitigation ratio; (2) the 20 percent limit on the amount of reserve lands that may be potentially acquired out of Basin in Area B; (3) the 75 percent limit on the amount of reserve lands to be converted to managed marsh; (4) any other change not currently described in or provided for under the Adaptive Management program, Changed Circumstances, or other elements of the NBHCP's Operating Conservation Program that would significantly increase the Plan's costs or restrictions on land otherwise available, including any such changes resulting from the 9,000-acre review Overall Review process or Independent Mid-Point Reviews; and (5) any other change not currently described or provided for under the Adaptive Management provisions or other elements of the NBHCP that would significantly affect the Water Agencies' costs or place additional restrictions on the ability of the Water Agencies to provide flood control and irrigation services.

2. Changed Circumstances

Another category of circumstances under the federal "No Surprises" rule is "changed circumstances." This term is defined under the rule as "changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by