

Metro Air Park Special Planning Area

IMPLEMENTATION AGREEMENT

FOR THE

METRO AIR PARK

HABITAT CONSERVATION PLAN

COUNTY OF SACRAMENTO

December 4, 2001

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**IMPLEMENTATION AGREEMENT FOR THE
METRO AIR PARK HABITAT CONSERVATION PLAN
County of Sacramento, California**

THIS IMPLEMENTATION AGREEMENT FOR THE METRO AIR PARK HABITAT CONSERVATION PLAN is entered into as of the ____ day of _____, 2001 (the "Effective Date"), by and among the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America ("USFWS"), the CALIFORNIA DEPARTMENT OF FISH AND GAME, a subdivision of the Resources Agency of the State of California ("CDFG"), the METRO AIR PARK PROPERTY OWNERS ASSOCIATION, a non-profit mutual benefit corporation ("MAPPOA" or "Permittee"), and THE NATOMAS BASIN CONSERVANCY, A California Non-profit Public Benefit Corporation ("NBC" or "Conservancy") (hereafter collectively referred to as "Parties").

1. RECITALS and PURPOSES

The Parties have entered into this Agreement in consideration of- the following facts and assumptions, intentions and expectations [Capitalized terms are defined in Section 2 hereof]:

1.1 Purpose. This Implementation Agreement ("Agreement") describes the mechanism for the implementation of the regional Natomas Basin Habitat Conservation Plan ("NBHCP") as it applies to the approximately 1,892.2± acre Metro Air Park Special Planning Area ("MAPSPA") and the approximately 123 acres of off-site infrastructure improvements, by and through the Metro Air Park Habitat Conservation Plan ("MAPHCP"), cooperative federal, state and local programs for the conservation of those plant and animal species listed on Exhibit B (collectively the "Covered Species" and their habitats in this portion of the Natomas Basin. The purposes of this Agreement are to a) ensure the implementation of each of the terms of the MAPHCP; b) to describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and c) to provide assurances to the Permittee that as long as the terms of the MAPHCP are properly implemented, no additional mitigation will be required of the Permittee except as provided in this Agreement or required by law.

1.2 Habitat. The Covered Species are found in and may use or inhabit portions of the Natomas Basin area which is situated northeasterly of the confluence of the American River and Sacramento River. MAPPOA lands are located easterly of the Sacramento International Airport. Consequently, urban growth and the infrastructure associated therewith, and Rice Farming foreseeable in this area over the next fifty (50) years may result in a diminution of habitat and an unintentional incidental takings of individuals of the Covered Species incidental to the normal course of this Urban Development and Rice Farming.

1.3 Protection. This Agreement is intended to ensure the implementation of the MAPHCP, a long-term program for the protection of the Covered Species and their habitats within the Natomas Basin. This Agreement also establishes terms and conditions that support issuance of a permit by the USFWS under Section 10(a)(1)(B) of the Endangered Species Act ("ESA") and an Incidental Take Permit from CDFG under Section 2081 of the California Endangered Species

Act, California Fish and Game Code section 2050, et seq. ("CESA"), separate and apart from incidental take permit PRT-823773 and the CESA Management Authorization issued December 31, 1997 to the City of Sacramento and NBC, to allow the taking of the Covered Species within the Permit Area incident to Urban Development and associated infrastructure improvements, Rice Farming and NBC management for a period of fifty (50) years. Collectively, the State and Federal incidental take permits are referred to as "Permits."

1.4 Conservation. The intent of the Parties is to participate in a basin-wide conservation program that is established and implemented under the auspices of the Conservancy to minimize and mitigate the impacts of take of the Covered Species and their habitats within the Natomas Basin, to provide an opportunity for individual project proponents in the MAPSPA to obtain incidental take authorization through MAPPOA under the ESA and CESA for a broad array of plant and wildlife species, including both currently listed species and species that may be listed in the future, and (except as otherwise specified in Section 4 of this Agreement) to minimize the review of individual projects by the USFWS and CDFG and standardize to the extent practicable and appropriate project-specific plant and wildlife mitigation measures for all impacts of taking Covered Species by the parties to this Agreement pursuant to the ESA, the CESA, and the California Environmental Quality Act.

1.5 Phasing. Implementation of the MAPHCP is anticipated to be phased in over approximately fifty (50) years in two tiers in order to satisfy MAPHCP related obligations. Tier One mitigation by MAPPOA for approximately 191 acres of initial infrastructure will occur first. Thereafter, mitigation will be required either upon grading permit issuance as each individual landowner applies for and obtains Tier Two approval for development of individual properties within the balance of the Metro Air Park project comprising approximately 1742 acres or upon approval of subsequent offsite infrastructure development comprising approximately 82 acres, as explained further in the Agreement and the MAPHCP.

1.6 Mitigation. It is the intention of the Parties that the actions under this Agreement will adequately mitigate the individual and cumulative impacts of Rice Farming and Urban Development by MAPPOA, its landowner members and other third parties under MAPPOA's direct control on Covered Species within the MAPSPA. The mitigation to be accomplished comprises the progressive establishment of a system of biological reserves representing 0.5 acres of reserve land for each 1.0 acre developed to be managed for the benefit of all of the Covered Species and the establishment of a 200-acre Swainson's Hawk reserve specifically to benefit the Swainson's Hawk, as described in this Agreement and the MAPHCP.

1.7 Local Land Use Authority. The parties to this Agreement intend that nothing in the MAPHCP or in this Agreement shall be interpreted to mean or operate in a manner that expressly or impliedly diminishes or restricts the local land use decision making authority of the County of Sacramento, provided that the Parties acknowledge that should the County exercise its land use authority in a manner that conflicts with the terms and conditions of the MAPHCP, USFWS or CDFG may revoke the Permits.

1.8 MAPPOA as Permittee. This Agreement also establishes the conditions under which MAPPOA is willing to act as Permittee under the Section 10(a)(1)(B) Permit and a Section 2081(b) Permit on behalf of those landowners in the Metro Air Park Special Planning Area ("Permit Area") of the Natomas Basin who are, or become during the permit term, signatories to the MAPPOA Covenants, Conditions & Restrictions in Exhibit G to this Agreement and certain third parties constructing infrastructure improvements under the direct control of MAPPOA in order to allow the taking of the Covered Species incidental to Urban Development and Rice Farming within

the Permit Area. MAPPOA's Permit will also authorize the incidental take of the Covered Species by NBC with respect to the management and other activities and responsibilities that the NBC assumes on behalf of the MAPPOA pursuant to this Agreement and the MAPHCP.

1.9 Voluntary Participation. This Agreement and the MAPHCP establish several mechanisms for landowners within the Permit Area to minimize and mitigate the direct, indirect and cumulative effects of development on the Covered Species and their habitat and thereby to receive the protection of the Section 10(a)(1)(B) Permit and Section 2081(b) Permit contemplated by this Agreement. As provided in Section 3.1.14 of this Agreement, an individual landowner or developer may choose from among several specified mechanisms for implementation of such mitigation, although it is anticipated by the Parties that mitigation will primarily occur through the payment of fees.

1.10 Rice Farming. The parties to this Agreement acknowledge and agree that the Section 10(a)(1)(B) Permit and Section 2081(b) Permit will apply to usual and customary Rice Farming activities conducted by or under the control of MAPPOA landowners in the MAPSPA, in accordance with the Best Management Practices ("BMPs") described in the MAPHCP and this Agreement upon submission of an application for a Certificate of Inclusion by such landowner and issuance of same by MAPPOA or on Habitat Mitigation Requirement lands acquired by the NBC in accordance with management plans approved by the NBC.

1.11 USFWS Authorities. USFWS is authorized to enter into this Agreement pursuant to the ESA (16 U.S.C. 1531 et seq.), the United States Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f) et seq.)

1.12 CDFG Authorities. CDFG is authorized to enter into this Agreement pursuant to CESA (California Fish and Game Code Section 2081(b)).

1.13 Integrity and Viability of MAPHCP. The Parties agree and understand that other potential Permittees identified in the MAPHCP and NBHCP will not be executing this Agreement, but may in the future separately become Permittees under separate Agreements or otherwise (i.e., Counties of Sacramento, Sutter, etc.). The biological viability of the MAPHCP is not compromised by the failure of the other potential Permittees to execute this Agreement at this time, in that impacts to the Covered Species in the Permit Area arising from Urban Development and Rice Farming within the Permit Area and management activities carried out on behalf of the MAPPOA by the NBC, as contemplated in the MAPHCP, will be adequately minimized and mitigated by the MAPPOA's and the NBC's fulfillment of their obligations under this Agreement. The mitigation strategies developed in the MAPHCP are designed to allow for separate and independent implementation of Plan mitigation measures by the MAPPOA and other potential Permittees, so that the MAPHCP is viable and will minimize and mitigate the impacts to the maximum extent practicable associated with take of Covered Species by MAPPOA, third parties under its direct control, and landowner members of MAPPOA (Urban Development Permittees) within the MAPHCP Permit Area, even if the Regional Plan is not fully implemented for other lands in the Natomas Basin.

2. DEFINITIONS.

Terms used in this Agreement shall have the same meaning as those same terms have under the ESA, except as set forth below. Capitalized terms used but not defined herein, but which are defined in the MAPHCP, shall have the meanings specified in the MAPHCP.

2.1 Acquired and Acquisition. The terms "acquired" and "acquisition" mean and refer to any of the following:

- (1) ownership of the fee interest in real property;
- (2) ownership of a Conservation Easement or a similar interest in real property in a form acceptable to the USFWS, CDFG and the NBC; or
- (3) recordation of an irrevocable offer to dedicate a fee interest, or a Conservation Easement or similar estate in real property in a form acceptable to USFWS, CDFG and the NBC.

2.2 Administrative Fee. The term "Administrative Fee" means that component of the Mitigation Fees collected by the Conservancy for the purpose of recoupment of the Conservancy's costs of administration and collection of the other fees which may be paid by an Urban Development Permittee pursuant to this Agreement and the MAPHCP. This component is identified in the NBHCP as "Fee Collection Administration" in Table IV-1 of the NBHCP.

2.3 Agricultural Production. The term "agricultural production" means the normal and customary practice of cultivating crops, including row crops and dry land farming, and ordinary crop rotation activities provided the underlying lands may not be left fallow for a period of more than three consecutive years, and provided further that "Agricultural Production" does not include vineyards, orchards, or the fallowing of lands following the grading of such lands.

2.4 Assignment. The term "Assignment" means the formal assignment of rights and delegation of duties by any party to the MAPHCP or this Agreement. MAPPOA's authority to make an assignment is discussed, in part, in Sections 7.1.2, 8.3 and 8.4 of this Agreement.

2.5 Base Mitigation Fee. The term "Base Mitigation Fee" means the Mitigation Fees expressed in 2001 dollar value prior to adjustment pursuant to Sections 4.5.7 and 4.5.8 of this Agreement.

2.6 Baseline Map. The term "Baseline Map" means that map, included in Exhibit A of this Agreement, as prepared by the MAPPOA, which shows parcels located in the Permit Area designated as developed prior to issuance of the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit, and parcels which are undeveloped, both types of which are subject to the Habitat Mitigation Requirement.

2.7 Best Management Practices. "Best Management Practices" (BMPs) means management procedures or work practices that are implemented during a particular activity in order to minimize or eliminate the adverse environmental impacts or consequences of the activity.

2.8 CC&Rs. The term "CC&Rs" shall mean the Covenants, Conditions and Restrictions attached hereto as a part of Exhibit G to this Agreement.

2.9 Certificate. The term "Certificate" means that document which is issued by MAPPOA or COUNTY to an Urban Development Permittee or other landowner pursuant to Section 3.1.7 of this Agreement.

2.10 Conservancy. The terms "Conservancy", "Natomas Basin Conservancy", or "NBC" mean The Natomas Basin Conservancy, a California Non-profit Public Benefit Corporation established in 1994 to carry out certain of the management responsibilities under the NBHCP, or its successor as determined in Section 3.4.8 of this Agreement. The NBC is also designated to carry out certain management responsibilities on behalf of MAPPOA under the MAPHCP and this Agreement.

2.11 Conservancy Lands. The term "Conservancy Lands" means those lands owned in fee or controlled through a Conservation Easement by the Natomas Basin Conservancy.

2.12 Conservation Easement. The term "Conservation Easement" means land encumbered by an easement in a form approved by USFWS, CDFG and NBC.

2.13 Cooperative Agreements. The term "Cooperative Agreements" means the use of a variety of different tools, including easements or other mechanisms, to assure the acquisition, management, enhancement or improvement of potential Conservancy Lands.

2.14 County. The term "County" means the County of Sacramento, a political subdivision of the State of California.

2.15 Covered Activities. The term "Covered Activities" means certain activities carried out by MAPPOA, a member landowner of MAPPOA, another third party under MAPPOA's direct control within the Permit Area, or NBC that may result in incidental take of a Covered Species. Covered Activities means the following activities: Rice Farming, conversion from vacant land or agricultural uses to residential, commercial, and industrial uses, including related infrastructure development and improvements and management activities on Habitat Mitigation Requirement (HMR) lands by NBC.

2.16 Covered Lands. The term "Covered Lands" means those lands upon which the Permit authorizes incidental take of the Covered Species and the lands to which the NBC's acquisition and management activities apply. These lands are depicted on Exhibits C, E, F and I.

2.17 Covered Species. The term "Covered Species" means the Federally Protected Species, State Protected Species, and the Other Species identified on Exhibit B hereto that are subject to the terms of the MAPHCP and for which authorization to Take is or will be provided by the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit.

2.18 Effective Date. The term "Effective Date" is the date following execution of this Agreement by the Parties on which the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit are issued.

2.19 Endowment Fee. The term "Endowment Fee" means that component of the Mitigation Fees consisting of a one time fee per gross acre of land converted to Urban Development computed and collected pursuant to the provisions of this Agreement in order to fund establishment an endowment which will provide funding for the operation, management and administration of the Conservancy Lands in perpetuity. This component is identified in the NBHCP

as "O & M Endowment Fund" in Table IV-1 of the NBHCP. A separate endowment fee is included as a component of the Swainson's Hawk Nest Tree Mitigation Fee and will fund the operation, management and administration of the 200-acre Swainson's Hawk reserve in perpetuity.

2.20 ESA and CESA. The term "ESA" means the Federal Endangered Species Act of 1973, as amended. The term "CESA" means the California Endangered Species Act of 1984, as amended.

2.21 Federally Listed Species. The term "Federally Listed Species" means those plants and animals that are listed by the USFWS under the provisions of the ESA and are shown as Covered Species on Exhibit B hereto that are found, or may be found, in the Permit Area, as well as those other Covered Species that may be listed by the USFWS in the future.

2.22 Grubbing. The term "grubbing" means clearing vegetation from the ground, but does not include grading of property for site balancing in conjunction with Tier One infrastructure improvements so long as the property is subsequently returned to Rice Farming or Agricultural Production. Grubbing constitutes removal of land from Agricultural Production as described in Section 4.3.4.

2.23 Habitat Acquisition Fee or HAF. The terms "Habitat Acquisition Fee" or "HAF" mean that component of the Mitigation Fees consisting of a one time fee per gross acre of land converted to Urban Development computed and collected pursuant to the provisions of this Agreement in order to provide funding for acquisition of Conservancy Lands. This component is identified in the NBHCP as "Land Acquisition" in Table IV-1 of the NBHCP.

2.24 Habitat Management Fee or HMF. The terms "Habitat Management Fee" or "HMF" mean that component of the Mitigation Fees consisting of a one time fee per gross acre of land converted to Urban Development computed and collected pursuant to the provisions of this Agreement in order to provide a source of funds for the Conservancy to enhance, manage and monitor habitat values and for operation and maintenance of the acquired Conservancy Lands in perpetuity. This component is identified in the NBHCP as a combination of "Restoration/Enhancement/Monitoring" and "Administration O & M" in Table IV-1 of the NBHCP.

2.25 Habitat Mitigation Requirement. The term "Habitat Mitigation Requirement" means the requirement imposed upon an Urban Development Permittee to provide mitigation in accordance with this Agreement for the direct, indirect and/or cumulative impacts to Covered Species and their habitat resulting from the conversion of land in the Permit Area to Urban Development.

2.26 Habitat Mitigation Requirement Land or HMR Land. The terms "Habitat Mitigation Requirement Land" or "HMR Land" mean those mitigation lands which the MAPPOA or an individual Urban Development Permittee, may grant to the Conservancy in fee simple title or encumber with a Conservation Easement in favor of the Conservancy pursuant to 3.1.14 in order to preserve the Habitat Values found thereon and mitigate for the conversion of other lands to Urban Development pursuant to the provisions of this Agreement. HMR land does not include the 200-acre Swainson's Hawk Mitigation Reserve.

2.27 Incidental Take. The term "Incidental Take" means Take or Taking of a Covered Species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

2.28 Managed Marsh. The term "Managed Marsh" means seasonal or perennial wetland managed as habitat for the Giant Garter Snake, a State and Federally Listed Species, and other Covered Species. Such land must meet minimum requirements as described in the NBHCP which include, but are not limited to, an assured water supply that will serve the marsh from April through September of each year. The marsh will be a combination of open water, land with wetland vegetation, and other upland areas and may include a buffer area at the periphery. The Conservancy shall develop detailed management plans pursuant to Chapter IV, Sections C.1 and D of the NBHCP for those Conservancy lands designated as managed marsh, in coordination with and subject to the approval of USFWS and CDFG.

2.29 MAPPOA. The term "MAPPOA" means the Metro Air Park Property Owners Association, a California non-profit mutual benefit corporation, and refers to the association of landowners owning land in the Metro Air Park Special Planning Area who have signed the MAPPOA Covenants, Conditions, and Restrictions or CC&R's, attached as Exhibit G hereto. Pursuant to COUNTY zoning requirements, all landowners who need Urban Development Permits from COUNTY to develop within MAPSPA must become members of MAPPOA.

2.30 MAPPOA Landowners. The term "MAPPOA Landowners" means the individual landowners themselves owning land in the Metro Air Park Special Planning Area and who are, or become during the permit term, parties to the CC&Rs.

2.31 Metro Air Park Special Planning Area. The term "Metro Air Park Special Planning Area" or "MAPSPA" means that area of land comprised of approximately 1,892.2±acres in the County of Sacramento as shown on Exhibit A.

2.32 Mitigation Fees. The term "Mitigation Fees" means, collectively, the Administrative Fee, the Endowment Fee, the Habitat Acquisition Fee and the Habitat Management Fee.

2.33 Natomas Basin. The term "Natomas Basin" or "Basin" means that area depicted in Figures 1 & 2 of the NBHCP that is bounded on the west by the Sacramento River, on the North by the Natomas Cross Canal, on the east by the Natomas East Main Drain Canal, and on the south by the Garden Highway, and which lies interior to the Sacramento River levees.

2.34 Natomas Basin Habitat Conservation Plan or NBHCP. The terms "Natomas Basin Habitat Conservation Plan" or "NBHCP" mean that certain habitat conservation plan and addendum approved by the CDFG and USFWS on December 31, 1997, for a Section 2081 Management Authorization and Section 10(a)(1)(B) Permit issued to the City of Sacramento, attached as Exhibit E hereto and incorporated herein by reference, as that plan may be modified or amended from time to time in the future. The NBHCP describes a cooperative program for the preservation and enhancement of Habitat Values beneficial to the Covered Species, including Federally Protected Species and State Protected Species found in the Natomas Basin and the Permit Area covered by the NBHCP.

2.35 Permit Area. The term "Permit Area" means the Metro Air Park Special Planning Area (MAPSPA) within the County of Sacramento as shown on Exhibit A, and which is or becomes subject to the CC&Rs, those lands outside of the MAPSPA on which the specific drainage, sewer and roadway improvements identified in Exhibit I are constructed, provided that such improvements are constructed under the direct control of MAPPOA, and those other areas on which the NBC conducts land acquisition and management activities on behalf of the MAPPOA pursuant to the MAPHCP.

2.36 Permittee. The term "Permittee" means the MAPPOA for the benefit of itself, third parties under its direct control, and MAPPOA Landowners engaged in urban development and Rice Farming activities, and for the benefit of NBC.

2.37 Project. The term "Project" means the whole of an Urban Development action, which has a potential for resulting in a physical change in the environment, directly or ultimately as follows:

(1) the issuance to a MAPPOA Landowner of a lease, permit, grading approval, license, certificate, or other entitlement by one or more public agencies; and

(2) infrastructure improvements within MAPSPA and outside of MAPSPA as shown in Exhibit I, which are constructed by MAPPOA or by third parties under its direct control pursuant to a written agreement with MAPPOA for the purposes of ensuring compliance with the State and Federal Permits.

2.38 Rice Farming. The term "Rice Farming" means the normal and customary practice of cultivating rice crops, including but not limited to, ordinary crop rotation activities and fallowing of land conducted pursuant to Certificates of Inclusion in accordance with the terms of the MAP HCP and/or this Agreement.

2.39 Rice Land. The term "Rice Land" means land actively used to cultivate rice.

2.40 Section 10(a)(1)(B) Permit. The term "Section 10(a)(1)(B) Permit" or "Permits" means a permit issued by the USFWS under Section 10(a)(1)(A) or (B) of the ESA which authorizes the Incidental Take of a Covered Species which may occur as a result of a) Urban Development, Rice Farming within the Permit Area and b) acquisition and management activities conducted by NBC on behalf of MAP POA on HMR lands. "Permit" may also be used in this Agreement to collectively refer to the Section 10(a)(1)(A) or (B) Permit, and the Section 2081(b) Permit.

2.41 Section 2081(b) Permit. The term "Section 2081(b) Permit" means a permit issued by CDFG under Section 2081(b) of CESA which authorizes the Incidental Take of candidate, threatened and endangered species, protected under the CESA which may occur as a result of a) Urban Development, Rice Farming within the Permit Area and b) acquisition and management activities conducted by NBC on behalf of MAP POA on Conservancy lands. "Permits" may also be used in this Agreement to collectively refer to the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit.

2.42 State Protected Species. The term "State Protected Species" means those plants and animals protected by State law under the provisions of CESA which are shown as Covered Species on Exhibit B hereto and are found, or may be found, in the Permit Area, as well as those other Covered Species that may be listed by the CDFG under CESA in the future including State candidate species.

2.43. Swainson's Hawk Mitigation Requirement. The term "Swainson's Hawk Mitigation Requirement" means the obligation of MAPPOA to establish, through the Swainson's Hawk Nest Tree Mitigation Fee, the 200-acre Swainson's Hawk Reserve.

2.44 Swainson's Hawk Nest Tree Mitigation Fee. The term "Swainson's Hawk Nest Tree Mitigation Fee" means the fee assessed all MAPPOA landowners by MAPPOA as described at Section III.B.3. and III.B.6. of the MAPHCP to fund the acquisition, monitoring, operation and maintenance, and management of the Swainson's Hawk Reserve in perpetuity. The Swainson's Hawk Nest Tree Mitigation Fee includes an endowment fee component to fund the operation, management and administration of the Swainson's Hawk Reserve in perpetuity.

2.45 Swainson's Hawk Reserve. The "Swainson's Hawk Reserve" is the 200-acre reserve for Swainson's hawks described at Section III.C.1.(b) of the MAPHCP which is required to be established prior to undertaking any Tier One or Tier Two Urban Development within the Permit Area.

2.46 Take or Taking. With regard to any activities subject to the ESA, the terms "Take" or "Taking" shall have the same meaning as provided in the ESA. With regard to any activities subject to CESA, the terms "Take" or "Taking" shall have the same meaning as provided in state law. For the purposes of the ESA "Take" under this Agreement is limited to "Incidental Take" pursuant to Section 10(a)(1)(B) of the ESA, and includes modification of habitat that results in harm or harassment of a listed species and any other activity prohibited or otherwise limited in a manner comparable to current Take provisions of ESA in then-applicable provisions of law, and to take "for scientific purposes or for the enhancement of propagation or survival" of federally listed species pursuant to Section 10(a)(1)(A) of the ESA, if FWS also issues a Section 10(a)(1)(A) permit.

2.47 Tier One Development. "Tier One Development" means approximately 191 acres of initial infrastructure Urban Development consisting of approximately 150 acres of initial on-site infrastructure development and approximately 41 acres of off-site sewer improvements as described in the MAPHCP and conducted by MAPPOA or by third parties under MAPPOA's direct control.

2.48 Tier Two Development. "Tier Two Development" means the approximately 82 acres of subsequent off-site infrastructure Urban Development conducted by MAPPOA or third parties under MAPPOA's direct control and the approximate 1741 acres of individual on-site Urban Development projects constructed within MAPSPA by MAPPOA landowners.

2.49 Unlisted Covered Species. The term "Unlisted Covered Species" shall mean all plant and animal species designated in Exhibit B of this Agreement that are not currently listed as candidate species, a threatened species, or an endangered species under CESA at the time of issuance by the CDFG of the Section 2081(b) Permit, or that are not currently listed as a threatened species or an endangered species under ESA at the time of issuance by USFWS of the Section 10(a)(1)(B) Permit.

2.50 Urban Development. The term "Urban Development" means a physical change in use from vacant, Agricultural Production or Rice Farming uses to any other use for which an Urban Development Permit is required. The term "Urban Development" does not include:

(1) a change to an agricultural use or grading to facilitate Rice Farming or continued Agricultural Production;

(2) a change in the type of agricultural use, such as a change in the type of crops being cultivated or the construction of a replacement barn or ancillary buildings, the construction of an addition to existing buildings, or the construction or remodeling of a residence

for use by members of the farm operator's family or employees in connection with the existing agricultural use;

(3) maintenance activities carried out for drainage, flood control or water conveyance purposes;

(4) the issuance of a building permit for the remodeling of an existing structure or the construction of an addition to an existing structure;

(5) any disturbance to the surface of the earth within the area designated as "Existing Urban Development" on the Baseline Map shown in Exhibit A of this Agreement.

2.51 Urban Development Permit. The term "Urban Development Permit" means issuance by COUNTY of a grading permit or similar approval to MAPPOA, third parties under its direct control or MAPPOA Landowners which allows the construction of residential, commercial or industrial projects and associated infrastructure within MAPSPA and, with respect to those infrastructure projects identified in Exhibit I and described in Section I.C.2 of the MAPHCP, the issuance of a grading permit or other like approval to MAPPOA, third parties under its direct control or MAPPOA Landowners which allows the construction of such infrastructure projects outside of MAPSPA.

2.52 Urban Development Permittee. The term "Urban Development Permittee" means MAPPOA, or a third party under its direct control, or MAPPOA Landowners that have received an Urban Development Permit.

3. OBLIGATIONS OF THE PARTIES.

3.1 MAPPOA.

3.1.1 Baseline Map. The MAPPOA has prepared, and USFWS and CDFG have approved, the Baseline Map (Exhibit A) which depicts: (1) those land areas within the Permit Area which are designated as pre-existing development and therefore not subject to the MAPHCP, the Permit, or this Agreement; and (2) those undeveloped land areas within the Permit Area which will be subject to the Habitat Mitigation Requirement and Swainson's Hawk Nest Tree Mitigation Fee set forth in this Agreement and the MAPHCP.

3.1.2 Responsibility for Compliance. MAPPOA shall comply with the MAPHCP, this Agreement and the Permit and shall ensure that all MAPPOA Landowners comply with the MAPHCP, this Agreement and the Permit. In particular, MAPPOA shall ensure that each Project proponent has complied with one of subparagraphs (1), (2) or (3) in Section 3.1.14 and with the Swainson's Hawk Nest Tree Mitigation Fee requirement and shall further ensure that each Project Proponent complies with the take minimization measures required under Section III.C.2 of the MAPHCP. MAPPOA has entered into an agreement with COUNTY shown in Exhibit "H" to facilitate the compliance of MAPPOA Landowners with the Habitat Mitigation Requirement. However, neither COUNTY's participation in the implementation of the MAPHCP, nor the participation of any MAPPOA agent, consultant or contractor, shall release MAPPOA of its responsibility to ensure such compliance. MAPPOA shall collect all Mitigation Fees and transmit them promptly to COUNTY and shall be responsible for notifying COUNTY that the HMR applicable to each parcel of Covered Lands has been satisfied prior to COUNTY's issuance of an Urban Development Permit for the parcel. MAPPOA shall determine that all HMRs (i.e., primarily fee payments) have been

satisfied for "Tier One" Urban Development pursuant to Table I in Exhibit C, and thereafter separately for each landowner in the MAPSPA as individual landowners obtain "Tier Two" grading permits for specific properties within the MAPHCP area pursuant to Table II in Exhibit C. MAPPOA shall collect Mitigation fees, or otherwise ensure that HMRS have been satisfied, for any lands temporarily disturbed by Tier One Urban Development which are not returned to Agricultural Production within Twelve (12) consecutive months following completion of the particular Tier One Urban Development Project, and for all Tier Two lands which are not retained in Agricultural Production.

MAPPOA shall educate and inform its Landowner members of the terms and conditions and each Landowner's obligations under the MAPHCP and this Implementation Agreement. Such measures will include all of the following: 1) periodic landowner meetings/educational forums; 2) distribution of written brochures/literature; 3) telephone "hot line" service; and 4) instructional videos.

Construction personnel shall participate in a USFWS-approved worker environmental awareness program. Under this program, workers shall be informed about the presence of covered species and habitat associated with those species and that unlawful take of the animal or destruction of its habitat may be a violation of the ESA. Prior to construction activities, a qualified biologist approved by USFWS and CDFG shall instruct all construction personnel about: (1) the life history of the covered species; (2) the importance of irrigation canals, marshes/wetlands, and seasonally flooded areas, such as rice fields, to the covered species; and (3) the terms and conditions of the biological opinion. Proof of this instruction shall be submitted to the Sacramento Fish and Wildlife Office, and the Sacramento Office of CDFG, Region 2.

3.1.3 Urban Development Permit Conditions. MAPPOA has entered into an agreement with the COUNTY shown in Exhibit H to facilitate enforcement of all on-site Take minimization measures specified at Section III. C of the MAPHCP and Section C.1.f, C.2.c, and C.3 of the NBHCP in order to ensure that all Urban Development complies with the on-site Take minimization measures specified by USFWS under ESA to reduce or eliminate to the extent practicable, the direct and indirect impacts of development on the Covered Species, and as specified by CDFG under CESA to minimize and fully mitigate all impacts of the Take authorized pursuant to State law. Because the agreement was executed prior to completion of the MAPHCP and this Agreement, it does not fully track the provisions of the final versions of these documents. Within one hundred twenty (120) days of the date the Permits are issued, MAPPOA shall enter into a new agreement with COUNTY, acceptable to USFWS and CDFG, which fully conforms to the provisions of the MAPHCP and this Agreement.

3.1.4 Enforcement. MAPPOA has entered into an agreement with COUNTY to ensure that upon notice, and pursuant to its applicable land use permit enforcement procedures and practices, COUNTY shall take all necessary and appropriate actions as described in the Sacramento County/MAPPOA Agreement (Exhibit H hereto) to ensure compliance with the terms of the Section 10(a)(1)(B) Permit, the Section 2081(b) Permit, the MAPHCP, and this Agreement as to all persons subject to COUNTY's jurisdiction or control that are subject to the requirements established by this Agreement, specifically including the urban permitting and approval requirements set forth in this Section 3.

3.1.5 Permitted Incidental Take.

3.1.5.1 Incidental Take Permitted by USFWS. Subject to all terms and conditions of the NBHCP, MAPHCP, this Agreement, the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit, all Covered Species designated in Exhibit B of this Agreement may be taken and their habitat may be modified within the Permit Area by MAPPOA, third parties under its direct control, and MAPPOA Landowners incidental to Rice Farming and the construction, operation and maintenance of Urban Development projects and by NBC on Conservancy Lands incidental to management activities.

3.1.5.2 Incidental Take Permitted by CDFG. Subject to all terms and conditions of the NBHCP, MAPHCP, this Agreement, the Section 10(a)(1) Permit and the Section 2081(b) Permit, all Covered Species designated in Exhibit B of this Agreement that are currently listed as a candidate species, threatened species, or an endangered species pursuant to CESA may be taken and their habitat may be modified within the Permit Area by MAPPOA, third parties under its direct control, and MAPPOA landowners incidental to Rice Farming and the construction, operation and maintenance of Urban Development projects and by NBC on Conservancy Lands incidental to management activities. For Unlisted Covered Species, the 2081(b) Permit shall become effective upon each Unlisted Covered Species' acceptance as a candidate species pursuant to California Fish and Game Code Section 2074.2, except as otherwise provided by this section. Subject to the terms and conditions of the NBHCP, MAPHCP, this Agreement, the Section 10(a)(1)(B) and Section 2081(b) Permit, no additional CESA permit or authorization shall be required by CDFG under State law to allow incidental Take of Unlisted Covered Species by MAPPOA, third parties under its direct control, and MAPPOA landowners incidental to Rice Farming and the construction, operation and maintenance of Urban Development projects, and by NBC on Conservancy Lands incidental to management activities, unless it is determined in a court of law or by a binding administrative decision that CDFG is not authorized to cause the Section 2081(b) Permit to become effective automatically as to Unlisted Covered Species. In the event the incidental take authorization for Unlisted Covered Species in the Section 2081(b) Permit is nullified, CDFG shall accept and give due consideration to the avoidance and minimization mitigation measures set forth in this Agreement, the NBHCP, MAPHCP, Section 10(a)(1)(B) Permit and the Section 2081(b) Permit in support of an application for a Permit amendment or for a separate Permit to authorize Take of such Covered Species for the remaining term of this Agreement and the related Permits.

3.1.6 Take Authorization for Urban Development Permits. MAPPOA shall notify COUNTY once an Urban Development Permittee has satisfied all Habitat Mitigation Requirements for a particular Urban Development Project and MAPPOA shall issue a Certificate under this Section to the Urban Development Permittee for such Urban Development Project to be presented to COUNTY by the Urban Development Permittee. Such Certificates shall state which one of subparagraphs (1), (2) or (3) in Section 3.1.14 is the basis for issuance of the Urban Development Permit. MAPPOA may agree with COUNTY by way of separate agreements for COUNTY to issue Certificates to any MAPPOA Landowner within the MAPSPA that has complied with the MAPHCP and this Agreement. The Certificate shall state that the MAPPOA Landowner will be allowed to construct, maintain and operate a Project within the Permit Area which may result in the Incidental Take of the Covered Species consistent with the conditions in the Section 10(a)(1)(B) Permit and Section 2081(b) Permit and the Urban Development Permit to be issued by COUNTY, on the parcels to which the Urban Development Permit applies.

3.1.7 Form of Certificates of Inclusion. Certificates will be issued by MAPPOA in order to allow Urban Development authorized by COUNTY and Rice Farming activities by MAPPOA Landowners within the Permit Area to be covered under the permits. All certificates provided under section 3.1.6 shall be in writing and shall either be incorporated into the form or language of the Urban Development Permit issued by COUNTY, or shall take the form of a document from MAPPOA which is accepted by COUNTY for COUNTY'S issuance of a Urban Development Permit. Certificates shall contain the substance of the following text:

"In reliance on the Section 10(a)(1)(B) Permit issued by the United States Fish and Wildlife Service and the Section 2081(b) Permit issued by the California Department of Fish and Game to the Metro Air Park Property Owners Association, the County of Sacramento has issued an Urban Development Permit to [name of MAPPOA Landowner], its successors, agents and assigns pursuant to the "Implementation Agreement For The Metro Air Park Habitat Conservation Plan" which will allow [name of the MAPPOA Landowner], its successors, agents and assigns to construct, operate and maintain the Project commonly known as [name specific Project and cite to document containing project description as approved by local jurisdiction] and located on [list parcel numbers or attach map] which may result in a legally permitted incidental take of the Covered Species in accordance with and subject to the terms and conditions of the Urban Development Permit. This Certificate applies only to Metro Air Park Property Owners Association Landowners who have signed the Covenants, Conditions & Restrictions and only to Urban Development on the subject parcel(s) which are carried out in full compliance with the Urban Development Permit and Section 10(a)(1)(B) Permit and Section 2081(b) Permit conditions."

The Certificate of Inclusion for Rice Farming shall be in substantially the following form:

"As the owner of the parcel [xxx include parcel #] described in Exhibit F, attached hereto and incorporated herein by this reference, and during any period of time that you are actually engaged in Rice Farming within MAPSPA during the permit term, as that term is defined in the Metro Air Park Habitat Conservation Plan (MAP) Implementation Agreement, you, and any lessees who have agreed in a binding legal document approved by the USFWS and CDFG to be bound by all terms of the MAPHCP Implementation Agreement, and Section 10(a)(1)(B) Permit and Section 2081(b) Permit and the Covenants, Conditions & Restrictions contained in Exhibit G to the Agreement (including, but not limited to the Best Management Practices included as Appendix C to the MAPHCP), are entitled to the protection of the Section 10(a)(1)(B) Permit issued to the MAPPOA as Permittee by the United States Fish and Wildlife Service, and the Section 2081(b) Permit issued by the California Department of Fish and Game ("Permits"), with respect to any incidental take of the Covered Species as identified in the MAPHCP on the parcel shown on Exhibit A and which results from Rice Farming. In the event of a change from Rice Farming to another form of farming which in the determination of MAPPOA, USFWS and CDFG lessens the habitat value of the land described in Exhibit A for the Covered Species, or any change in your land use which would result in Urban Development, you will no longer entitled to the protection of the Permits, unless you otherwise comply with the minimization and mitigation requirements specified in the MAPHCP and the Implementation Agreement executed by the MAPPOA."

Issuance of a Certificate of Inclusion for Rice Farming shall be at the request of each MAPPOA landowner engaged in Rice Farming.

To protect habitat on existing agricultural lands, the following provision applies: any existing agricultural land in the MAP area will be subject to the payment of development mitigation fees if the landowner voluntarily elects to take land out of Agricultural Production prior to the receipt of development permits on the land to which they apply or with respect to lands temporarily disturbed by Tier One Urban Development, if such lands are not returned to Agricultural Production within Twelve (12) consecutive months following completion of the particular Tier One Urban Development Project.

3.1.8 Assistance. MAPPOA may provide staff members to serve on a technical advisory committee to the Board of Directors of the Conservancy with the approval of the Board of Directors of the Conservancy. Any staff member proposed by MAPPOA shall not have an economic interest in the lands comprising the MAPSPA.

3.1.9 Annual Report of Urban Development From May 1 to September 30, MAPPOA will provide the Conservancy with monthly accounts of the numbers of acres under development and the amount of mitigation fees paid to the County, as described in Section III. D.4 of the MAP HCP. MAPPOA will also provide the Conservancy, County, CDFG, and USFWS with an annual accounting of the number of acres under Urban Development, mitigation fees paid, and the number of Rice Farming acres under Certificates of Inclusion. MAPPOA shall maintain, and provide to NBC, USFWS and CDFG an annual report, calculated from the Effective Date, including any portion of a year during which the Permit is in effect, detailing the cumulative amount and location of lands within the Permit Area as to which Urban Development Permits have been issued. The report shall also specify the mitigation that was applied to such lands. NBC shall incorporate this annual report into the annual report it must submit under Section 3.4.4 of this Agreement and Chapter IV, Section G.4 of the NBHCP. USFWS and CDFG shall use this annual report, together with the annual report provided by the NBC, for the purpose of monitoring whether the appropriate level of HMR land is being conserved based upon the number of acres of land which has been converted to Urban Development by Urban Development Permittees. MAPPOA's annual report shall be submitted to NBC, USFWS, and CDFG in accordance with this section within sixty (60) calendar days from the last day of each calendar year during which the Permit is in effect.

3.1.10 Adaptive Management Provisions/800-Acre Program Review/Incorporation of Conservation Strategy of Future Revised NBHCP. MAPPOA and NBC agree to abide by and implement all Adaptive Management provisions as referred to throughout the NBHCP, as specifically described in Chapter IV, Section E of the NBHCP; and to abide by and implement a comprehensive MAPHCP program review, which shall address those issues identified at IV. I of the NBHCP, as applied to the MAPHCP, and Section III. E. (2) of the MAPHCP. MAPPOA and NBC acknowledge that the NBHCP may be modified in the future and agree that any modifications to the Adaptive Management or relevant program review provisions of the NBHCP or to the NBHCP's conservation strategy for the Natomas Basin shall be deemed automatically incorporated into the MAPHCP and further agree to abide by and implement, all such provisions as those provisions may be modified from time to time. The MAPHCP Program Review shall be initiated when Urban Development in MAPSPA has reached 800 acres and shall be completed before Urban Development in MAPSPA exceeds 1000 acres.

3.1.11 MAPPOA Compliance Monitor. Upon issuance of the Permits and prior to any surface disturbance on the Covered Lands, MAPPOA shall retain and fund a compliance monitor, approved by USFWS and CDFG, who shall act as a liaison to USFWS, CDFG and the NBC for communications concerning this Agreement and the MAPHCP. The MAPPOA compliance monitor shall be responsible for monitoring implementation of and compliance with this Agreement,

the Permits, and relevant terms of the MAPHCP, including all take minimization measures identified at Section III.C.2, by MAPPOA, third parties under MAPPOA's direct control, and MAPPOA Landowners, and shall have the authority and the responsibility to suspend any action by MAPPOA, third parties under MAPPOA's direct control, and MAPPOA Landowners, that violates the terms of this Agreement, the MAPHCP, or the Permits. In addition the compliance monitor shall have the authority and the responsibility to provide notification to COUNTY of any violation of, or noncompliance with, the MAPHCP, this Agreement or the Permits on the part of MAPPOA, third parties under MAPPOA's direct control or MAPPOA Landowners, so that COUNTY may take steps to suspend any issued Urban Development Permit or approval or refrain from issuing any pending Urban Development Permit or approval to MAPPOA, third parties under MAPPOA's direct control, or MAPPOA Landowners, in accordance with Exhibit H attached, or any successor Agreement between MAPPOA and COUNTY. The compliance monitor shall have the authority and the responsibility to provide written notice to USFWS and CDFG of any violation of, or noncompliance with, the MAPHCP, this Agreement or the Permits by MAPPOA, third parties under the direct control of MAPPOA, or MAPPOA Landowners within ten (10) business days of such violation or noncompliance. The MAPPOA shall notify the USFWS, CDFG and the NBC of the name, address and telephone number of the MAPPOA compliance monitor within thirty (30) days of the Effective Date and shall subsequently notify USFWS, CDFG and the NBC in writing if the name, address or telephone number of the MAPPOA compliance monitor is changed.

3.1.12 Implementation of HCP Components. MAPPOA shall implement each of the components of the MAPHCP, including but not limited to the Habitat Mitigation Requirement, the Swainson's Hawk Mitigation Requirement, conservation strategies, take minimization measures, and Take reduction measures specified at Appendix B of the MAPHCP. MAPPOA shall retain a biological consultant, approved by USFWS and CDFG, to implement certain components of the MAPHCP, including but not limited to the conducting and reporting of preconstruction surveys, and compliance with conservation strategies and take minimization and reduction measures specified in the MAPHCP or, alternatively, MAPPOA may enter into an agreement with COUNTY to perform such tasks. In the event that COUNTY enters into a binding agreement with MAPPOA, COUNTY's obligations shall be subject to the following limitations: (i) implementation of such measures must be within COUNTY's land use or other legal authority; and (ii) implementation of such measures may not result in any COUNTY general fund or other fund liability, except for available funds held by COUNTY for those purposes collected from MAPPOA Landowners. MAPPOA shall immediately notify USFWS and CDFG if it enters into a binding agreement with a biological consultant or COUNTY regarding implementation of any components of the MAPHCP. The election by MAPPOA to enter into an agreement with a biological consultant or COUNTY shall not affect or release MAPPOA from its obligations under the MAPHCP, this agreement or the permits or its responsibility to ensure that the MAPHCP, this agreement and the permits are fully implemented.

3.1.13 Termination and Phase Out of MAPHCP. At such time as COUNTY adopts, and the USFWS and CDFG approve, an HCP for unincorporated lands within the Natomas Basin which include the MAPSPA, MAPPOA by a vote of a simple majority of its landowner members who are signatories to the CC&R's may elect to terminate the MAPHCP and participate in the COUNTY HCP subject to Section 8.2.1 of this Agreement and consistent with the terms of the COUNTY HCP.

3.1.14 Bases for Issuance of Certificates of Inclusion. Neither MAPPOA, nor COUNTY on MAPPOA's behalf, shall issue any Certificate described in Sections 3.1.6 and 3.1.7 for any Project on a parcel of land in the Permit Area unless the Project proponent is a MAPPOA Landowner and 1) the Certificate is for Rice Farming or 2) the Certificate is for Urban Development

and the Project proponent has satisfied the Swainson's Hawk Mitigation Requirement through payment of the Swainson's Hawk Nest Tree Mitigation Fee and the Habitat Mitigation Requirement specified in the MAPHCP and this Agreement by one of the following alternative methods, the choice of which is exclusively within the discretion of the Project proponent (see Section 1.9 of this Agreement):

- (1) payment of the Mitigation Fees; or
- (2) transfer of HMR Land to the Conservancy, together with payment of the Administrative, Endowment, and Habitat Management components of the Mitigation Fees with the prior written approval of USFWS and CDFG; or
- (3) such other mitigation plan, consistent with the goals of the MAPHCP and equivalent in biological value to (1) and (2) above, as is approved by the MAPPOA in prior consultation with NBC, USFWS and CDFG. Under (3), no alternative mitigation strategy will be implemented without the prior written approval of the NBC, USFWS and CDFG.

3.1.15 Documentation. If requested, MAPPOA shall provide to the USFWS, CDFG, NBC, or COUNTY, the documentation required to determine an individual Project proponent's compliance with one of subparagraphs (1), (2) or (3) in Section 3.1.14 of this Agreement, as applicable.

3.2 USFWS

3.2.1 Oversight. After issuance of the Section 10(a)(1)(B) Permit, the USFWS shall monitor the implementation of such Permit, this Agreement, and the Permittee's and NBC's activities thereunder including, but not limited to, the modification, enhancement, operation and maintenance of the Conservancy Lands in order to ensure compliance with this Agreement.

3.2.2 Assistance. Subject to Section 8.15, the USFWS shall provide staff to serve on a technical advisory committee to the Board of Directors of the Conservancy, and shall ensure the availability of USFWS staff for informal consultations and meetings with the staffs, boards or councils of the other Parties to this Agreement to insure that the implementation of this Agreement is consistent with, and will not render invalid, any finding upon which the Section 10(a)(1)(B) Permit is based. Consistent with its legal authorities, the USFWS shall cooperate with the Conservancy in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and existing and future bond issues, for the acquisition, development, enhancement, operation and maintenance of the Conservancy Lands. Such funding shall be used to augment the mitigation strategies herein and in the MAP HCP and shall be made up of funds in addition to, and not in substitution for, the MAP funding otherwise described in this document.

3.2.3 New Species. The USFWS shall use reasonable efforts to promptly notify the other Parties to this Agreement in writing of any new sightings or occurrences of any species which is federally listed as threatened or endangered, federally proposed for listing as threatened or endangered, or is otherwise likely to be federally listed, and which is determined to be dependant upon habitat in the Permit Area, if such species is not otherwise described in Exhibit B hereof. The inclusion of such new species as a Covered Species shall depend on (1) a written finding by USFWS that the MAPHCP and this Agreement, as approved or as appropriately amended, meet the standards for issuance of an Incidental Take Permit under Section 10(a)(1)(B) of the ESA for such species; and (2) in the case of a new wildlife species listed as threatened or endangered

under the ESA, upon approval of an amendment of the Section 10(a)(1)(B) Permit submitted by MAPPOA, following compliance with all applicable statutory and regulatory requirements and permit review procedures, to include the new species. Until the Section 10(a)(1)(B) Permit is amended to cover the newly listed species, MAPPOA shall adhere to the Changed Circumstances response applicable to the listing of a new species described at Section III. F. 2 of the MAPHCP.

3.3 CDFG.

3.3.1 Oversight. After issuance of the Section 2081(b) Permit the CDFG shall monitor the implementation of the Section 2081(b) Permit, this Agreement and the Permittee's activities thereunder, and the Conservancy's activities thereunder, including but not limited to, the modification, enhancement, operation and maintenance of the Conservancy Lands in order to ensure compliance with this Agreement and consistency with the CDFG's trustee agency duties pursuant to CESA, and recommend any amendments to the MAPHCP the CDFG deems desirable, in the reasonable exercise of its discretion.

3.3.2 Assistance. Subject to Section 8.16, the CDFG shall provide staff to serve on a technical advisory committee to the Board of Directors of the Conservancy, and shall ensure the availability of its staff for informal consultations and meetings with the staffs, boards or councils of the other Parties to this Agreement to ensure the appropriate monitoring of permitted activities which may lead to the Incidental Take of State Protected Species. The CDFG will assist the Conservancy (to the extent authorized by the California Legislature) in obtaining additional funding from sources including, but not limited to, existing and future state and federal grant programs and bond issues, for the acquisition, development, enhancement, operation and maintenance of the Conservancy Lands.

3.3.3 New Species. The CDFG shall promptly notify the other Parties to this Agreement in writing of any new sightings or occurrences of any species in the Permit Area which is state listed as threatened or endangered, is a candidate for listing as threatened or endangered, or is otherwise likely to be state listed, and which is determined to be dependent upon habitat in the Permit Area, if such species is not otherwise described in Exhibit B hereof.

3.3.4 Conservancy Land Management. CDFG shall manage in perpetuity, in a manner consistent with the MAPHCP, for the conservation of the Covered Species any Conservancy Lands and Conservation Easements that it accepts from the Conservancy pursuant to the terms and provisions of this Agreement and the MAP HCP.

3.4 Natomas Basin Conservancy.

3.4.1 Establish Mitigation. The Natomas Basin Conservancy agrees that it will establish the HMR lands and Swainson's Hawk Reserve as described in Section 4.

3.4.2 Receipt of Fees. The Natomas Basin Conservancy agrees that it will receive Swainson's Hawk Nest Tree Mitigation Fees or Land and Mitigation Fees or alternative mitigation as described in Section 3.1.14 to satisfy the Swainson's Hawk Mitigation Requirement and the Habitat Mitigation Requirement specified in this Agreement and the MAP HCP.

3.4.3 Conservancy Land Management. The Natomas Basin Conservancy agrees that it shall be responsible for the selection, acquisition, enhancement, monitoring and management of Conservancy Lands in conformity with this Agreement and the policies and goals

of the MAPHCP. The Natomas Basin Conservancy is responsible for the preparation and timely submission of management plans for Conservancy Lands, including the Swainson's Hawk Reserve, and other habitat mitigation lands as described in Chapter IV, Sections C and D of the NBHCP, and such other notice and information requirements specified in Section 5 below.

3.4.4 Annual Report. The Conservancy agrees to provide the Parties with an annual report as specified in Section 5.2 of this Agreement and Chapter IV, Section G.4 of the NBHCP. The report is intended to convey sufficient information to allow the USFWS and CDFG to monitor whether the appropriate configuration and level of HMR Land is being conserved based upon the number of acres of land being converted to Urban Development by the Permittees or Urban Development Permittees.

3.4.5 Permitted Incidental Take on Conservancy Lands. The Permit issued to the MAPPOA shall authorize NBC to Take the Covered Species, including Take resulting from modification of their habitat, incidental to Rice Farming or the establishment, operation, maintenance, and monitoring of Conservancy Lands acquired under the MAPHCP and this Agreement, provided such Take is in conformity with the MAPHCP and the Specific Habitat Management Plans described in Section 5.6 of this Agreement.

3.4.6 Successor. With the prior written approval of MAPPOA, USFWS and CDFG, the assets and obligations of the Conservancy may be transferred to any other non-profit corporation provided that the successor corporation assumes the obligations of the Natomas Basin Conservancy as set forth under the MAPHCP and this Agreement and provides evidence, satisfactory to USFWS and CDFG of its capacity to carry out such obligations.

3.4.7 Transfer to CDFG. In the event the Natomas Basin Conservancy is unable to meet its financial obligations and is dissolved, becomes insolvent, or goes bankrupt, and no other suitable successor is found, then the ownership of the Conservancy Lands, accumulated Habitat Acquisition Fees, Mitigation Fees, and other sums designated for enhancement and maintenance of these lands, shall, at CDFG's option, be transferred to the CDFG or a nonprofit association or corporation organized for conservation purposes that is approved by USFWS, CDFG and the MAPPOA, or its successor Permittee, which shall hold the Conservancy Lands in perpetuity and use the Fees for the acquisition and permanent management, maintenance, monitoring and conservation of the such lands.

3.4.8 Operation in Perpetuity. The Conservancy Lands established to meet the Habitat Mitigation Requirement and Swainson's Hawk Mitigation Requirement set forth under the MAPHCP and this Agreement shall function in perpetuity to provide habitat for the Covered Species. The Permittees shall establish a sufficient endowment, which, along with other sources of funds, will be capable of permanently sustaining the management of the Conservancy Lands following expiration or termination of the Section 10(a)(1)(B) Permit and Section 2081(b) Permit.

3.4.9 Conflicts of Interest. Until or unless the Conservancy is replaced in accordance with sections 3.4.6 and/or 3.4.7, during the term of this Agreement the Conservancy shall establish and maintain by-laws which include, at a minimum, restrictions on interests in contracts by Board members and employees which are at least as stringent as those applied to government officers and employees by California Government Code §1090 and following, as well as restrictions on participation in decisions and requirements of financial disclosure which are at least as stringent as those applied to government officers and employees by the Political Reform Act of 1974 and any regulations promulgated pursuant thereto.

3.5 Rice Farming. The MAPHCP and this Agreement acknowledge the role Rice Farming in the Natomas Basin now plays in providing habitat for the Giant Garter Snake, Swainson's Hawk, and other Covered Species. Rice Farming as practiced in accordance with the MAPHCP and this Agreement and Take of the Covered Species incidental to such Rice Farming is authorized for those MAPPOA Landowners that conduct such Rice Farming under the Section 10(a)(1)(B) Permit and Section 2081(b) Permit. None of the Mitigation Fees described in the Plan will apply to Rice Farming.

3.6 Conservancy Proceedings Open to Public. Conservancy actions and proceedings shall be conducted pursuant to the Ralph M. Brown Act, California Government Code Sections 54950, et seq. except that the provisions of said Act regarding disclosure of information with respect to real property transactions shall not apply. Public records of the Conservancy shall be open to inspection in accordance with the California Public Records Act, California Government Code Sections 6250, et seq., with the exception of documents relating to real property transactions, which shall be exempt from disclosure.

3.7 Inventory of Protected Species The NBC shall maintain an inventory of known locations of Covered Species on the HMR lands. The NBC shall be responsible for performing any population surveys or counts as currently required by Chapter IV, Section F of the NBHCP, and as such survey requirements may be modified from time to time in the future under a new or revised NBHCP approved by the USFWS and CDFG.

4. MITIGATION.

4.1 Mitigation Lands. For HMR lands established under the MAPHCP, this Agreement shall achieve the following criteria: For every one (1) acre developed after issuance of the Permits, one-half (½) acre of biological reserve land shall be set aside. This mitigation ratio may be modified in accordance with Section 4.3.2. The reserve land will be interconnected by a canal system that provides an adequate, legally assured water supply to allow the reserves to be managed in Rice Farming or as Managed Marsh.

4.2 Permit Area. All lands within the Permit Area other than 1) Rice Farming lands subject to the Permits, and 2) those lands within the MAPSPA depicted on the Baseline Map, are required to provide mitigation for the direct, indirect and cumulative impacts of development upon Covered Species and their habitat. Mitigation may be provided in any one of the three methods specified in Sections 3.1.14 and 4.3.5. of this Agreement.

4.3 Urban Development Mitigation. The MAPPOA or COUNTY shall require an Urban Development Permittee to provide mitigation as specified in Sections 3.1.14 and 4.3.5 of this Agreement, for the conversion of land to Urban Development in the Permit Area, in conformity with the following:

4.3.1 Existing Development Exempt. Parcels of land within the MAPSPA which have already been converted to Urban Development prior to the Effective Date and which are shown as developed on the Baseline Map shown at Exhibit A of this Agreement are not covered by the MAPHCP and this Agreement, the Section 10(a)(1)(B) Permit, or the Section 2081(b) Permit. Provided, however, that nothing in this Agreement is intended or shall be construed to exempt such existing Urban Development from the requirements of the ESA or CESA that may otherwise apply to said Urban Development. Provided further, that in the event COUNTY shall previous to the issuance of the Permit have conditioned land which is shown as developed on the

Baseline Map in such a manner as to have created an obligation to pay Mitigation Fees at such time that the MAPHCP has been approved, such land shall not be exempt pursuant to this Section 4.3.1, but shall provide mitigation in one of the three ways permitted by Sections 3.1.14 and 4.3.5 of this Agreement.

4.3.2 Mitigation Ratio. Consistent with the NBHCP, mitigation for the conversion of land in the MAPHCP Permit Area to Urban Development will be required at the ratio of one-half ($\frac{1}{2}$) acre of land protected or conserved for every one (1) acre of land converted to Urban Development. Such ratio shall be adjusted by this Agreement automatically, without any further action by the Parties, to remain consistent with the ratio contained in the NBHCP and Implementation Agreement for the NBHCP ("NBIA") entered into by USFWS, CDFG, the NBC and the City of Sacramento dated December 31, 1997, as they may be amended from time to time. However, in no event shall the mitigation ratio be reduced to less than one-half ($\frac{1}{2}$) acre of land protected or conserved for every one (1) acre of land converted.

4.3.3 Calculation of Habitat Mitigation Requirement. The Habitat Mitigation Requirement (or "HMR") for a specific Project is determined by applying the Mitigation Ratio to the land area converted to Urban Development.

4.3.4 Conversion of Land to Urban Development. The land area converted to Urban Development is determined as follows:

(1) Except as provided in (2) and (3) below, the gross area covered by the project is considered the "land area converted to Urban Development" whether the entire project area is graded or not. Land will be considered to be converted to Urban Development requiring mitigation as described in Section 3.1.14 in at least two tiers within the MAPSPA. Tier One Urban Development shall be for the foundational infrastructure described as "Initial Infrastructure" in Table I in Exhibit C to this Agreement. Grading associated with site balancing will also occur at this time, but areas not specified in Exhibit C as Initial Infrastructure shall not be required to provide mitigation until Tier Two when the land is converted to Urban Development through "Individual Site Development" as described in Table II in Exhibit C unless such areas are not returned to Agricultural Production within twelve months of the date of completion of the particular Tier One Urban Development project. Individual site development is anticipated to occur gradually over a period of at least fifty (50) years. However, failure to retain Tier Two lands in Agricultural Production will be considered to be a conversion to Urban Development at the end of that time and trigger an immediate requirement to pay Mitigation Fees. MAPPOA shall keep records of all lands converted to Urban Development and shall submit written documentation to NBC annually on or before March 1st, showing (a) all lands graded but not converted to Tier One Urban Development as Initial Infrastructure pursuant to this Section, (b) any of such Tier One lands not returned to Agricultural Production for a period of twelve consecutive months following completion of the particular Tier One Urban Development project, and (c) any other lands not retained in Agricultural Production.

(2) Excluded is any portion of the parcel for which ownership will be transferred to the NBC or which will be encumbered by a Conservation Easement in favor of the NBC, USFWS or CDFG for purposes of satisfaction of the HMR for the particular development Project.

(3) Excluded is any portion of the gross area which is still subject to Rice Farming or is Rice Land as described in Section 3.5.

4.3.5 Satisfaction of Mitigation Requirement. Pursuant to Sections 3.1.14, an Urban Development Permittee or MAPPOA may satisfy the HMR by: (1) payment of Mitigation Fees; (2) transfer of HMR Land to the Conservancy, together with payment of the Administrative, Endowment, and Habitat Management components of the Mitigation Fees; or (3) such other mitigation plan, consistent with the goals of the MAPHCP and of equivalent biological value to (1) and (2) above, as is approved by NBC, USFWS and CDFG. It is anticipated that all or nearly all HMR obligations within the Permit Area will be satisfied as specified in (1) above. Any transfer of fee title to lands or a Conservation Easement therein in order to satisfy the HMR shall be accomplished by a deed or grant of Conservation Easement to the Conservancy acceptable to USFWS and CDFG, in recordable form on or before issuance of a building permit, grading permit, or other permit which allows Urban Development to occur. All land proposed to be transferred to the Conservancy in satisfaction of the HMR must meet the criteria specified in Chapter IV, Section C.1.b. or C.2.b. of the NBHCP, as applicable, as determined by NBC, USFWS and CDFG.

4.3.6 Jurisdictional Wetlands. Nothing in this Agreement shall relieve any Urban Development Permittee desiring to discharge any fill or other material into jurisdictional wetlands, of any requirement to obtain a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers (Corps) and comply with all the terms and conditions thereof, and further, nothing in this Agreement is intended to satisfy any mitigation requirements imposed under such permit unless otherwise agreed to by at the time by the Corps, USFWS and CDFG.

4.3.7 Rivers, Streams or Lakes. Nothing in this Agreement shall relieve any Urban Development Permittee desiring to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the CDFG, or use any material from the streambeds, of any requirement under Fish and Game Code, Division 2, Chapter 6, commencing with Section 1600 (concerning Streambed Alteration Agreements). Nothing in the MAPHCP, this Agreement or the NBHCP is intended to satisfy any site-specific mitigation requirements for any specific Project which may be imposed under Chapter 6, with the exception of mitigation specifically directed at those species included on the list of Covered Species.

4.3.8 Fully Protected Species. The Parties recognize that under Fish and Game Code Sections 3511, 4700, 5050 and 5515, the CDFG is prohibited from authorizing the take of fully protected species. The fully protected species are listed in Exhibit B. In this regard, CDFG has determined that no fully protected species are likely to be taken as a result of Urban Development in the Permit Area. In the event a fully protected species is found in or near an area proposed for development and take of the species cannot reasonably be avoided by the Project proponent, the Project proponent, in consultation with CDFG and/or the USFWS, will take such measures as necessary to avoid harm to or illegal take of such species.

4.4 Conservancy Lands.

4.4.1 Location of Habitat Mitigation Requirement Lands. The Conservancy shall establish HMR Lands in accordance with the NBHCP and the NBIA as modified by Section III of the MAPHCP. In accordance with Section III. D. 3 of the MAP HCP, no HMR lands may be acquired in Area C as defined in the NBHCP and, pursuant to Section III. D. 2, a minimum of twenty-five percent (25%) (approximately 250 acres) of the HMR lands must be acquired within Sacramento County. Acquisition of the Sacramento County HMR lands shall commence upon either the fifth anniversary of the completion date of Tier One Urban Development or once Urban Development Permits covering thirty-three percent (33%) (665 acres) of the lands identified for

development under the MAPHCP have been issued, whichever occurs first. Acquisition of the minimum twenty-five percent (25%) Sacramento County land component of the HMR lands must be achieved on or before issuance of Urban Development Permits covering seventy-five percent (75%) (1510 acres) of the lands identified for development under the MAPHCP. MAPPOA shall not issue any additional Certificates of Inclusion covering Urban Development beyond the 75% level until the Sacramento County HMR land acquisition requirement has been achieved. The Conservancy shall establish the Swainson's Hawk Mitigation Reserve in accordance with Section III.C.1 of the MAPHCP. It is acknowledged and agreed by the Parties that upon approval of a future revised NBHCP by USFWS and CDFG, the conservation strategy contained in the new NBHCP shall automatically be deemed incorporated into the MAPHCP to the extent possible, and in particular, that the percentage of land to be acquired by MAPPOA within different areas of the Natomas Basin may change in accordance with the revised NBHCP.

4.5 Mitigation Fees. Where an Urban Development Permittee selects payment of the Mitigation Fees as its method of providing mitigation, the provisions of this Section 4.5 shall govern the calculation and collection of such fees, and such permittee shall pay the Mitigation Fees as so calculated.

4.5.1 Calculation of Mitigation Fees. The Mitigation Fees are payable on the gross acreage of the parcel(s) which will be converted to Urban Development computed as set forth in Section 4.3. The fees payable shall be calculated by multiplying the Mitigation Fees (in dollars per acre) times the gross acreage converted to Urban Development, determined pursuant to Section 4.3, prorated for fractional acres.

4.5.2 Base Mitigation Fee. The NBHCP, as amended, establishes a Base Mitigation Fee of \$5,993 per acre which includes components for acquisition, management, endowment, and administration as explained in Sections 4.5.3 - 4.5.6 of this Agreement. This Base Mitigation Fee, which shall be adjusted in accordance with Sections 4.5.7 and 4.5.8, shall provide, along with estimated revenues from Conservancy Lands and the Additional Monetary Obligations, to be imposed, as necessary, pursuant to Section 4.5.7(3), adequate funds to the Conservancy to carry out its obligations under this Agreement. The basis for the Base Mitigation Fee and estimated revenues are analyzed in Appendix D of the MAPHCP and are incorporated into the MAPHCP.

4.5.3 Habitat Acquisition Fee Component. The Habitat Acquisition Fee ("HAF") component of the Mitigation Fees shall be \$3,000 per acre, as adjusted pursuant to Sections 4.5.7 and 4.5.8 of this Agreement.

4.5.4 Habitat Management Fee Component. The Habitat Management Fee ("HMF") component of the Mitigation Fees shall be \$1,923 per acre, as adjusted pursuant to Sections 4.5.7 and 4.5.8 of this Agreement (this is a combination of the "Restoration/Enhancement/Monitoring" and "Administration O & M" portions of the Mitigation Fees as shown in Table IV-1 of the NBHCP).

4.5.5 Endowment Fee Component. The Endowment Fee component of the Mitigation Fees shall be \$950 per acre, as adjusted pursuant to Sections 4.5.7 and 4.5.8 of this Agreement. The Conservancy shall reserve all Endowment Fees collected in a separate dedicated account, which shall be maintained in perpetuity so that interest earned thereon will be available to meet long term miscellaneous management and maintenance needs relating to Conservancy

Lands. The Principal of the Endowment fund shall be invested by the Conservancy only in those investments as are permitted to be made by institutional trustees acting as fiduciaries in California.

4.5.6 Administrative Fee Component. The Administrative Fee ("Administrative Fee") component of the Mitigation Fees shall be \$120 per acre, as adjusted pursuant to Sections 4.5.7 and 4.5.8 of this Agreement.

4.5.7 Adjustments of the Base Mitigation Fee.

(1) Adjustments to the Base Mitigation Fee other than for purposes of the Recovery Plan and/or Adaptive Management Provisions of NBHCP. Notwithstanding any other provisions of this Agreement, on its own or at the request of USFWS or CDFG, and as necessary, the Conservancy or its assignee shall review and adjust the Base Mitigation Fee to take into account increased costs of land acquisition and Conservancy operations and to maintain or meet the mitigation ratio described in Section 4.3.2 of this Agreement, and to meet any increased Conservancy management, monitoring and other operational costs, provided that the Base Mitigation Fee shall automatically be adjusted in this Agreement as necessary to insure that such fee is at least equal in amount to the Base Mitigation Fee contained in the NBHCP as it may be adjusted from time to time. The decision to adjust the fee may include but is not limited to consideration of the following factors: (1) the market price of land being acquired for Conservancy Lands as well as consideration of other sources of revenue available to the Conservancy such as the sale of hunting rights on Conservancy Lands; (2) the costs of acquiring HMR lands in Sacramento County as required by Section 4.4.1 of this Agreement; (3) any additional basin wide survey or monitoring requirements imposed under the NBHCP as it may be revised from time to time; (4) the cultivation of rice on Conservancy Lands; (5) any agricultural leasing of Conservancy Lands; and (6) the availability of other funds from grants or other sources. Adjustment of the Base Mitigation Fee pursuant to this subsection 4.5.7 is independent of adjustments made on account of inflation/deflation pursuant to Section 4.5.8 of this Agreement.

(2) Adjustments to the Base Mitigation Fee relating to the Recovery Plan and/or Adaptive Management Provisions of NBHCP. In addition to adjustments under 4.5.7(1), the NBC shall adjust the Base Mitigation Fee in response to the recommendations of the Giant Garter Snake or Swainson's Hawk Recovery Plans and the Adaptive Management provisions described in the fourth paragraph of Chapter IV, Section G.5.b. of the NBHCP (see Section 3.1.10 of this Agreement) provided that the Base Mitigation Fee shall automatically be adjusted in this Agreement as necessary to insure that such fee is at least equal in amount to the Base Mitigation Fee contained in the NBHCP as it may be amended from time to time.

(3) Additional Monetary Obligations. In the event adjustments to the base mitigation fee made pursuant to section 4.5.7(1) and (2) are insufficient to fully implement the land acquisition, on going or permanent management, monitoring, adaptive management, recovery plan and Changed Circumstances requirements of the NBHCP and the MAPHCP, then MAPPOA, pursuant to Section 8.1.2(c) of the Covenants, Conditions and Restrictions attached as Exhibit G and incorporated herein by this reference, shall impose Additional Monetary Obligations on its members as necessary to fully implement all components of the NBHCP and MAPHCP as identified by the NBC, USFWS or CDFG. Upon notice from NBC, USFWS or CDFG, that additional fees are necessary to fully implement the MAPHCP, MAPPOA shall assess and collect from its members such additional fees and transmit the fees to the NBC.

(4) Failure to Adjust Base Mitigation and Meet Additional Monetary Obligations. The parties acknowledge that failure to adopt Base Mitigation Fee increases pursuant to Section 4.5.7(1) and 4.5.7(2) and to impose Additional Monetary Obligations pursuant to Section 4.5.7(3) as necessary to maintain the 0.5:1 mitigation ratio and fully implement the NBHCP and MAPHCP, may result in suspension or revocation of the Permit.

4.5.8 Fee Adjustments for General Inflation. On or before January 1 of each year, the NBC or its assignee shall review and adjust the dollar amount of the Mitigation Fees (as adjusted from time to time pursuant to Section 4.5.7), to take into account the effects of inflation/deflation generally. Such adjustments shall be made as follows: the current Fee shall be multiplied by the index for October of the year prior to January 1, divided by the index for October of the preceding year [e.g., 1998 Fee = 1997 Fee x (October, 1997 CPI Index/October, 1996 CPI Index)]. For purposes of making this adjustment, the index utilized shall be the Pacific Cities and U.S. City Average, All Items, San Francisco-Oakland-San Jose, 1967=100 Index, as published by the U.S. Department of Labor, or its successor. Technical adjustments made pursuant to this Section 4.5.8 shall be independent of, in addition to and not a part of adjustments to, the Mitigation Fee adjustments made pursuant to Section 4.5.7 of this Agreement.

4.5.9 Swainson's Hawk Nest Tree Mitigation Fee. In addition to the HMR lands to be established under the MAP HCP as described in this Section, prior to commencing any infrastructure or other development within the Permit Area, MAPPOA shall transfer to NBC lands determined by NBC, USFWS and CDFG to provide suitable Swainson's Hawk nest tree and foraging habitat or funds in an amount determined by NBC to be adequate to purchase 200 acres of Swainson's hawk nest tree mitigation lands. In addition, MAPPOA shall transfer funds to NBC adequate, as determined by NBC, to fund the Habitat Management, Endowment and Administrative Fee Components of the Mitigation Fee for such lands. Table 5 of the MAPHCP contains a current estimate of the Mitigation Fee Components of the Swainson's Hawk Nest Tree Mitigation requirement. If MAPPOA elects to transfer Habitat Acquisition Fees to NBC in lieu of land, NBC shall acquire the 200-acre Swainson's Hawk Reserve within twelve (12) months of the transfer of such fees.

4.5.10 Compliance Monitor/Other MAPHCP Measures. MAPPOA shall fund the costs of the MAPHCP compliance monitor described in Section 3.1.11, and the costs of implementing the take minimization and other MAP HCP measures described in Section 3.1.12, whether implemented by MAPPOA, the biological consultant, or by COUNTY through the construction management cost provisions of the Mello-Roos Bonds identified at Section III. B. 1. of the MAPHCP. MAPPOA shall secure any additional funding required for these purposes through periodic assessments on MAPPOA Landowners pursuant to Section 8.1.2(c) of the Covenants, Conditions and Restrictions attached as Exhibit G.

5. HABITAT MANAGEMENT AND PROTECTION.

5.1 Implementation. The Natomas Basin Conservancy will be responsible for the administration, oversight, and management of the Conservancy Lands, as provided under the MAPHCP and NBHCP. The Conservancy shall maintain complete, accurate and up-to-date records of the amount, location, and use of the Conservancy Lands under its ownership or control. In the course of its administration of the Conservancy Lands, the Conservancy shall have full authority and discretion to contract with such persons and entities, as the Conservancy deems necessary and prudent, for assistance in carrying out any activities authorized or necessary under the MAPHCP and this Agreement. Title to Conservancy Lands shall be held and remain in the

name of the Natomas Basin Conservancy, and Conservancy Lands may not be transferred to another entity without the prior written approval of the MAPPOA, USFWS and CDFG.

5.2 Annual Reporting. From May 1 to September 30, MAPPOA will provide the Conservancy with monthly accounts of the numbers of acres under development and the amount of mitigation fees paid to COUNTY. MAPPOA will also provide the Conservancy, COUNTY, CDFG, and USFWS with an annual accounting of the number of acres under urban development, mitigation fees paid, and the number of rice farming acres under Certificates of Inclusion. The Conservancy shall make an annual report on the status of implementation of the MAPHCP within sixty (60) days after the end of each calendar year, or portion of a calendar year, to USFWS and CDFG. A copy of the Conservancy's annual report shall also be furnished free of charge to the MAPPOA and shall be made available to the public at a reasonable charge. The annual report will be prepared in accordance with the requirements in the MAPHCP, NBHCP and in particular, Section 5.2 of the NBIA.

5.3 Budgeting and Planning. Prior to the end of each calendar year, the Conservancy shall prepare a budget and a plan for its proposed activities for the forthcoming year and provide copies to the MAPPOA, CDFG and USFWS for review and comment.

5.4 Annual Meeting. On or before July 1 of each calendar year, the MAPPOA, the Conservancy, USFWS and CDFG shall meet to discuss the Annual Report submitted by the Conservancy, and any concerns, comments or recommendations any of the Parties may have regarding implementation of the MAPHCP.

5.5 Coordinating Conservancy Land Acquisition With Agency Acquisitions. The Conservancy shall acquire lands in accordance with Section 4.1 sufficient to satisfy the Habitat Mitigation Requirement and Mitigation Ratio resulting from Urban Development. Prior to the acquisition of any parcel of Conservancy Lands, the Conservancy shall provide written notice to the USFWS and CDFG of its intent to acquire such lands. MAPPOA, USFWS and CDFG agree that they will not knowingly interfere or compete with the Conservancy for the acquisition or control of such lands and that they will consult with the Conservancy in formulating any acquisition plans. As to those lands identified by USFWS or CDFG for acquisition, the Conservancy, likewise, shall not knowingly interfere with or compete with the affected agency for acquisition or control until the Conservancy is notified by that agency that it is no longer pursuing acquisition or control of the lands.

5.5.1 Timing for Ongoing Acquisition. Subject to Section 5.5.2, within one (1) calendar year after the calendar year in which Habitat Acquisition Fees are received, the Conservancy shall acquire the amount of HMR lands represented by such HAFs. Acquisitions of HMR lands shall be in accordance with the NBHCP and NBIA provided that the 400 acre minimum block and 2,500 acre minimum block requirements shall be applied in the aggregate to all approved HCPs in the Natomas Basin that are based on the NBHCP, so that the plans as a whole must achieve the identified habitat block acquisition requirements. Notwithstanding the above, in the event that the NBHCP is not in effect, MAPPOA retains the independent obligation to acquire a minimum of two 400 acre habitat blocks as defined in the NBHCP but is not required independently to meet the 2,500 acre minimum habitat block requirement. That one (1) year time period may be extended by the mutual agreement of the USFWS, CDFG and Conservancy as needed to optimize land acquisition opportunities. Prior to approval of a future revised NBHCP, NBC shall account separately for all HMR lands acquisitions made on behalf of MAPPOA. On approval of a revised

NBHCP, accounting for all HMR lands acquired on behalf of MAPPOA shall be in accordance with the accounting procedure set forth in the revised NBHCP.

5.5.2 Timing for Acquisition of Last Ten Percent of Mitigation Lands.

Notwithstanding Section 5.5.1, once grading permits have been issued for ninety percent (90%) of the MAPPOA lands within the MAPSPA and prior to the issuance of grading permits for the last ten percent (10%) of MAPPOA lands within MAPSPA by COUNTY or another jurisdiction with land use permitting authority over MAPSPA lands; MAPPOA, through the NBC, shall provide written evidence to USFWS and CDFG that HMR lands representing mitigation for the last 10 percent of MAPPOA lands have been acquired by NBC.

5.6 Specific Habitat Management Plans. It is the intent of the Parties that the Conservancy's habitat management activities will focus on multi-species Habitat Value concepts. The Conservancy shall prepare Specific Habitat Management Plans ("SHMPs") for Conservancy Lands acquired under the MAPHCP and this Agreement in accordance with the NBHCP and the NBIA. With the exception of the SHMP for the Swainson's Hawk Reserve, which shall be completed by NBC within twelve months of the date of acquisition of the reserve, the Conservancy shall prepare SHMPs within eighteen (18) months of each acquisition of a minimum of 400 acres, or, as necessary, each additional fraction of four hundred (400) acres, and submit such plan(s) to USFWS and CDFG for review and approval, unless such review and approval is waived as described in Chapter IV, Section D of the NBHCP. Each SHMP shall address the following:

- (1) What habitat values are currently provided by the parcel of Conservancy Land and which Covered Species the land does or could potentially support.
- (2) Which other plants, animals, or ecological communities are currently or could potentially be supported.
- (3) The nature and extent, if any, of public use within the parcel(s).
- (4) Activities to be permitted and activities to be strictly controlled or prohibited on the parcel(s), including restriction of the agricultural and public or private recreational uses of the land necessary to assure its permanent use for the protection and conservation of Habitat Values.
- (5) Requirements for fencing and placing signs on the parcel's boundaries.
- (6) Requirements for patrolling the parcel, if appropriate.
- (7) Creation of adequate buffers on Conservancy Lands where necessary to isolate Conservancy Lands from adjoining incompatible land uses based upon criteria specified in Chapter IV, Section C.1.b. of the NBHCP.
- (8) The value and suitability of each parcel to serve as a recipient for any relocated Federally Protected Species or State Protected Species currently found in the Permit Area, and the estimated cost of such relocation.
- (9) Actions to be implemented for the enhancement of the habitat values on land covered by the SHMP, including discussion of the following potential actions: Control of

exotic and invasive plant species; control of the presence of domestic animals on the parcel; creation of artificial topography where appropriate to enhance the habitat values of the land; controlled burning or grazing for vegetation management; and modification of agricultural practices in order to enhance Habitat Values commensurate with good practices for Rice Farming.

(10) Management to minimize wildlife hazards to the Sacramento International Airport.

(11) All other information as described in Chapter IV, Sections C and D of the NBHCP.

If the USFWS and CDFG have not made a determination regarding the SHMP within ninety (90) working days, then the plan may be considered approved and the Conservancy may proceed. If either USFWS or CDFG disapprove the SHMP, the Conservancy and the agencies shall meet to resolve the areas of concern and the Conservancy shall within sixty (60) days thereafter, modify the SHMP in accordance with USFWS and CDFG guidance and resubmit the revised SHMP to the agencies for approval in accordance with this Section 5.6.

5.7 Accounting for Conservancy Lands.

5.7.1 Managed Marsh. Conservancy Lands acquired in fee or under a Conservation Easement and converted to and managed as seasonal or perennial marsh, and existing marsh lands acquired by the Conservancy and managed as seasonal or perennial marsh, will count fully toward the 0.5:1 habitat mitigation ratio described in Sections 4.1 and 4.3.2 of this Agreement.

5.7.2 Rice Land. Conservancy Lands in current rice production as Rice Lands will count fully toward the 0.5:1 habitat mitigation ratio described in Sections 4.1 and 4.3.2 of this Agreement.

5.7.3 Proportion of Conservancy Lands as Marsh. Establishment of managed marsh in the Basin is an essential component of the NBHCP and MAPHCP. By the end of year 5 of the Permit, a minimum of 25% of the Conservancy mitigation lands must be comprised of Managed Marsh. This percentage shall be modified in accordance with the NBHCP, MAPHCP and this Agreement as necessary to meet the objectives of the USFWS Giant Garter Snake Recovery Plan in accordance with and subject to the limitations in Section 6.5 of this Agreement.

5.7.4 Enhancement of Land Adjacent to Canals. Subject to the prior written approval of USFWS and CDFG, habitat area created by Urban Development Permittees through enhancements to land adjacent to the canal systems, including lateral irrigation and drainage ditches which do not now serve as habitat because of short duration water presence, may be counted as land which will satisfy the Habitat Mitigation Requirement when such enhancements result in the creation of habitat of benefit to the Giant Garter Snake. This area shall not exceed fifty (50) acres for an individual development site unless otherwise approved by CDFG and USFWS.

5.7.5 Preconstruction Notice/Relocation of Covered Species. The MAPPOA shall require, as a condition of approval of any Certificate necessary for issuance of an Urban Development Permit within the Permit Area (but outside those areas designated as Existing Urban Development on the Baseline Map, which are not covered by the NBHCP), that between May 1 and September 30, and no later than fifteen (15) days prior to commencing any construction activities

which involve a disturbance of the surface of the earth, an Urban Development Permittee shall give written notice of the commencement of Urban Development activities to the USFWS and CDFG (or to the NBC, which will notify USFWS and CDFG pursuant to Section 3.1.15) so as to allow the USFWS and CDFG an opportunity to transplant and relocate any Covered Species at the expense of USFWS or CDFG prior to the initiation of construction activities. In addition, the MAPPOA shall require the same pre-construction notice to USFWS and CDFG in connection with construction of any Tier One or Tier Two infrastructure projects, as well as for subsequent individual property development, to enable USFWS and CDFG to carry out such transplantation or relocation efforts. These notification requirements may be satisfied by giving such notice to USFWS and CDFG representatives on the technical advisory committee described in Sections 3.1.8, 3.2.2, and 3.3.2 of this Agreement.

5.7.6 Dewatering Prior to Construction. Between May 1 and September 30, in the event that a ditch, canal, rice field, or other aquatic habitat potentially occupied by giant garter snakes is being filled or otherwise disturbed by Urban Development construction activities, the ditch or canal shall be dewatered and allowed to remain dry for a period of fifteen (15) days prior to the date construction activities or filling of the ditch or canal are initiated.

5.7.7 Salvage, Relocation, and Transplanting of Species. Consistent with Section 5.7.5, the Conservancy, in its sole discretion, may elect to conduct transplanting and relocation activities involving Covered Species in order to reduce on-site Incidental Take in its management activities with respect to HMR Lands to the extent practicable or for other mitigation and enhancement activities in accordance with the provisions of the NBHCP.

6. MUTUAL ASSURANCES.

6.1 USFWS.

6.1.1 Satisfaction of Legal Requirements. The primary purpose of this Agreement is to provide for the long-term reconciliation of new Urban Development and Rice Farming within the Permit Area with the conservation and protection of habitats for the Covered Species. Based on, and in consideration of this Agreement, the USFWS makes the following assurances to MAPPOA:

(1) ESA Compliance. Compliance with the terms of the MAPHCP and this Agreement and the Section 10(a)(1)(B) Permit and governing federal law and regulations including 50 C.F.R. Parts 13 and 17, constitute compliance with the incidental take provisions of the ESA with respect to the Covered Species.

(2) Migratory Bird Treaty Act (MBTA). The Section 10(a)(1)(B) Permit issued pursuant to this Agreement also constitutes a Special Purpose Permit under 50 C.F.R. Section 21.27 for the "Take" (for purposes of this Section, as that term is understood under the MBTA) of those Covered Species which are listed as threatened or endangered under the ESA and which are also protected by the MBTA. The take of such species in conjunction with any Urban Development Project in accordance with the terms of the MAPHCP, this Agreement, and the Permit, will not be in violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three (3) years from the Effective Date of this Agreement provided that the Section 10(a)(1)(B) Permit remains in effect for that period. Such Special Purpose Permit shall be renewed provided that MAPPOA and MAPPOA Landowners continue to fulfill its obligations under this Agreement.

Each such renewal shall be valid for the maximum period of time allowed by 50 C.F.R. Section 21.27 or its successor at the time of renewal.

6.1.2 Beneficial Effects With Respect to Future Listings. To the extent permitted by the ESA, the USFWS shall consider the MAPHCP and this Agreement in any future determination by the USFWS with regard to the listing of one or more of the currently unlisted Covered Species as an endangered species or threatened species pursuant to the ESA.

6.1.3 Critical Habitat. The USFWS further agrees that it will consider the MAPHCP in its preparation of any proposed designation of critical habitat or recovery plan concerning any Covered Species and agrees that, consistent with 50 C.F.R. 424.12, the MAPHCP incorporates those special management considerations necessary to manage the Covered Species and their habitats in a manner that will provide "for the conservation of the species involved" within the Natomas Basin. Consistent with the Assurances Rule set forth in Section 6.1.5, in the event that a critical habitat designation is made for any Covered Species and upon a determination that the MAPHCP is in full compliance with permit requirements, no additional mitigation in the form of land, land restrictions or financial compensation, beyond that required by the MAPHCP, shall be required of any Permittee or Urban Development Permittee in connection with Urban Development in the MAPSPA as a result of such critical habitat designation without the consent of Permittee.

6.1.4 ESA Listing of Currently Unlisted Covered Species. In the event that one or more of the Covered Species that are not currently listed as an endangered species or threatened species are so listed pursuant to the ESA, the Section 10(a)(1)(B) Permit shall become effective to permit the Incidental Take of such species in connection with Urban Development within the MAPSPA as of the date the species is listed. The Parties expressly acknowledge that it is the intent of this Agreement that the Conservancy Lands will be administered so as to conserve and enhance the Habitat Values for all listed and unlisted Covered Species reasonably expected to be found in the Permit Area.

6.1.5 Unforeseen Circumstances. As provided in 50 C.F.R. 17.3, the term "Unforeseen Circumstances" shall mean changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and USFWS at the time of the conservation plan's negotiation and development, and that results in a substantial and adverse change in the status of the Covered Species.

(1) "No Surprises" Assurances. Pursuant to the No Surprises Rule at 50 C.F.R. Sections 17.3, 17.22(b)(5) and 17.32(b)(5), provided that MAPPOA, NBC, and the MAPPOA Landowners are properly implementing the MAP HCP, USFWS shall not require these entities to provide additional land, water or other natural resources beyond the level provided for under the MAP HCP, this Agreement and the Permit, with respect to Covered Activities under the Permit without the consent of MAP POA. However, nothing in this Section or in the Assurances Rule shall be interpreted: (1) to restrict the authority of USFWS to take appropriate action under the ESA or applicable regulations to insure that the MAPHCP is properly implemented in accordance with this Agreement; (2) to apply to future Adaptive Management modifications for Conservancy Lands that are deemed necessary or appropriate by the USFWS or CDFG, in consultation with the MAPPOA and the NBC, to respond to monitoring data or new information relevant to the MAPHCP or NBHCP, (3) to apply to future modifications to the MAPHCP as a result of future Giant Garter Snake or Swainson's Hawk recovery plans, (4) to apply to MAPHCP responses to Changed Circumstances or (4) to apply to changes anticipated to occur as a result

of the Urban Development activities anticipated by the Section 10(a)(1)(B) Permit, Section 2081(b) Permit, or as otherwise approved by the USFWS. If USFWS makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, all parties whose activities are covered by the MAP permit will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

(2) Unforeseen Circumstances Finding. In the event that USFWS believes that Unforeseen Circumstances may exist in accordance with Section 6.1.5 and the "No Surprises" rule, it shall notify CDFG, MAPPOA, Urban Development Permittees, Rice Farmers and the Conservancy in writing of the applicable specific facts described in Sections 6.1.5 above. In the notification, USFWS shall clearly document the basis for the proposed finding regarding the existence of Unforeseen Circumstances. Within sixty (60) days of receiving such notice MAPPOA and the Conservancy, USFWS and CDFG shall meet to consider the facts cited in the notice and potential changes to management and operation of the Conserved Lands. USFWS shall make an Unforeseen Circumstances finding only based on the best scientific evidence available and after considering any responses submitted by any other Parties pursuant to this section. In making such determination, USFWS shall have the burden of demonstrating the existence of Unforeseen Circumstances.

(3) Effect of Unforeseen Circumstances Finding. Pursuant to 50 C.F.R. 17.22(b)(5) and 17.32(b)(5), in the event that USFWS makes a finding of Unforeseen Circumstances and such Unforeseen Circumstances warrant the requirement of additional mitigation from Urban Development Permittees, such mitigation shall limit changes to the original terms of the MAPHCP or NBHCP to the maximum extent possible and shall be limited to modifications within the Conservancy Lands or NBHCP's operating conservation program for the Covered Species.

6.1.6 Changed Circumstances.

(1) Changed Circumstances Defined. As provided in 50 C.F.R. 17.3, the term "Changed Circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the MAPHCP that can reasonably be anticipated by the Permittee and that can reasonably be planned for in the MAPHCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events.) Changed circumstances and planned responses to those circumstances are described in Section III.F.2 of the MAPHCP.

(2) Permittee-Initiated Response to Changed Circumstances. MAPPOA, third parties under the direct control of MAPPOA, MAPPOA Landowners, covered Rice Farmers, NBC or Urban Development Permittees, as appropriate, will immediately notify USFWS and all other Permitted Covered Parties upon learning that any of the changed circumstances listed in Section III. F. 2 has occurred, and shall provide written notice within seven (7) days. MAPPOA, third parties under the direct control of MAPPOA, MAPPOA Landowners, covered Rice Farmers, NBC, or Urban Development Permittees, as appropriate, shall modify their activities in the manner described in Section III.F.2 of the MAPHCP, to the extent necessary to minimize and mitigate the effects of the changed circumstances, and will report to USFWS on its actions. Such modifications will be initiated without awaiting notice from USFWS. Such changes are provided for in the MAPHCP, and hence do not constitute unforeseen circumstances or require amendment of Permits or the MAPHCP.

(3) USFWS-Initiated Response to Changed Circumstances. If USFWS determines that changed circumstances have occurred and that MAPPOA, covered Rice Farmers, NBC or Urban Development Permittees have not responded in accordance with Section III.F.2 of the MAPHCP, the USFWS in coordination with CDFG will so notify MAPPOA, covered Rice Farmers, NBC and Urban Development Permittees and will direct them to make the required changes. Within thirty (30) days after receiving such notice, MAPPOA, covered Rice Farmers, NBC, and Urban Development Permittees will make the required changes and report to USFWS on their action. Such changes are provided for in the MAPHCP, and hence do not constitute unforeseen circumstances or require amendment of Permits or of the MAPHCP.

(4) Listing of Species That Are Not Covered Species. In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, or critical habitat is designated for such species within the Permit Area, MAPPOA, including third parties under its direct control, MAPPOA Landowners, all Urban Development Permittees, covered Rice Farmers and NBC will implement the "no-take/no-jeopardy" measures identified by USFWS until the Permit is amended to include such species, or until USFWS notifies MAPPOA and NBC that such measures are no longer needed to avoid jeopardy to, or take of, or adverse modification of the critical habitat of, the non-covered species.

6.2 CDFG.

6.2.1 Satisfaction of Legal Requirements. The primary purpose of this Agreement is to provide for the long-term reconciliation of new Urban Development within the Permit Area with the conservation and protection of habitats for the Covered Species. Based on, and in consideration of this Agreement, CDFG makes the following assurances to MAPPOA:

(1) Except as otherwise provided in this Agreement, CDFG shall consider adherence to the terms of this Agreement to be compliance with the CESA and the California Native Plant Protection Act for the impacts of Urban Development on State Protected Species in the Permit Area.

(2) CDFG shall consider adherence to the terms of the MAPHCP and this Agreement to mitigate the significant, adverse environmental effects of Urban Development on State Protected Species in the Permit Area to below a level of significance pursuant to the California Environmental Quality Act.

6.2.2 Issuance of Section 2081(b) Permit. Concurrent with the execution of this Agreement, the CDFG shall issue a Section 2081(b) Permit to MAPPOA authorizing the Incidental Take of each Covered Species designated in Exhibit B of this Agreement that is currently listed as a candidate species, threatened species, or an endangered species pursuant to CESA, and that is not a fully protected species, incidental to Urban Development within the MAPHCP Permit Area, subject to and in accordance with the MAPHCP and this Agreement. As to each Unlisted Covered Species, the Incidental Take authorization under the Section 2081(b) Permit shall become effective with respect to such species upon its acceptance as a candidate species pursuant to Fish and Game Code section 2074.2, except as otherwise provided by this Agreement.

6.2.3 Covered Species; Savings Provision. If it is determined in a court of law or by a binding administrative opinion (such as a formal opinion of the California Attorney General) that CDFG is not authorized to cause the Section 2081(b) Permit to become effective automatically

as to Covered Species that are not listed, CDFG shall accept and give due consideration to the minimization and mitigation measures in the MAPHCP and this Agreement in support of an application for a permit amendment or for a separate Section 2081(b) Permit authorizing Incidental Take of any Covered Species that is accepted as a candidate species pursuant to Fish and Game Code Section 2074.2 for the remaining term of the Section 2081(b) Permit. CDFG shall review and process the application expeditiously so as to ensure, to the extent consistent with CESA, that the Incidental Take authorization is effective at the time the Covered Species is accepted as a candidate species.

6.2.4 Changed Biological Conditions.

(1) For so long as MAPPOA implements and adheres to this Agreement, the MAPHCP and the Section 2081(b) Permit, the CDFG shall not amend, revise, suspend or revoke the Section 2081(b) Permit, nor otherwise impose or seek to impose on MAPPOA any additional mitigation or compensation for Urban Development within the MAPHCP Permit Area, including but not limited to commitments of additional land or financial compensation, unless the CDFG determines that continuation of activities authorized by the Section 2081(b) Permit would jeopardize the continued existence of a Covered Species. If the Department makes such a determination, it shall only amend, revise, suspend or revoke the Section 2081(b) Permit, or require such additional mitigation or compensation, if, and to the extent necessary, to avoid jeopardy.

(2) If CDFG determines that additional conservation measures are necessary to respond to changes in circumstances, and the additional measures are not provided for in Chapter III.F.2 of the MAPHCP (regarding "Changed Circumstances"), CDFG shall not require additional measures without the consent of the MAPPOA and the applicable MAPPOA Landowner, unless the measures are necessary to ensure that the continuation of an Urban Development project will not jeopardize the continued existence of a Covered Species.

6.2.5 Beneficial Effects by CDFG. To the extent permitted by the CESA, the CDFG shall consider the MAPHCP and this Agreement in any future determination by the CDFG with regard to the listing of one or more of the currently Unlisted Covered Species as an endangered species or threatened species pursuant to CESA.

6.3 No Further Mitigation as a Result of Other Approvals. The Parties to this Agreement acknowledge that Urban Development Permittees may also be subject to the permit requirements of other governmental agencies which are not Parties to this Agreement. The Parties agree that except as otherwise allowed in Section 4.3.6, Section 4.3.7, Section 6.1 and Section 6.2, they will not seek to impose additional mitigation requirements directed specifically at the take of Covered Species by MAPPOA and its member landowners with respect to Covered Activities within the Permit Area beyond the mitigation requirements which are provided for in the MAPHCP and this Agreement through any other governmental agency's approval process, whether or not such agency is a Party to this Agreement.

6.4 No Further Measures for Rice Farming. The extensive area of the Natomas Basin in Rice Farming provides substantial wetland value and habitat for the Giant Garter Snake, a Covered Species. Other, non-wetland Rice Farming provides hibernacula for the Giant Garter Snake and foraging habitat for the Swainson's Hawk and other upland species. The USFWS and CDFG expressly recognize the value of Rice Farming and want to encourage its persistence independent from any action undertaken by the Conservancy. Based on, and in consideration of the MAPHCP and this Agreement, the USFWS and CDFG hereby agree and assure the other

Parties hereto that subject to and in accordance with Sections 4.3.6, 4.3.7, 6.1, and 6.2 of this Agreement and Section III.C.3 of the MAPHCP, no further actions beyond that provided for in the MAPHCP and this Agreement for the Incidental Take of the Covered Species will be required by the USFWS or CDFG pursuant to the ESA or the CESA with respect to Rice Farming within the Permit Area.

6.5 USFWS Adoption of a Giant Garter Snake Recovery Plan, CDFG Adoption of a Swainson's Hawk Recovery Plan, and Adaptive Management Modifications to the NBHCP. The Parties acknowledge that the USFWS and CDFG may adopt recovery plans for the Giant Garter Snake and Swainson's Hawk, respectively, which plans may reflect new scientific information and which will establish long term management goals for the species which may differ from those management goals established by the MAPHCP. The Parties further acknowledge that modifications to the MAPHCP may occur in accordance with the Adaptive Management provisions of the MAPHCP and Section 3.1.10 of this Agreement. When the USFWS or CDFG adopt such recovery plans or Adaptive Management modifications are made to the MAPHCP, the Parties agree that notwithstanding the limitations on additional mitigation contained in Sections 6.1 and 6.2 which the Parties acknowledge are not applicable to modifications to the MAPHCP implemented under this Section, the MAPHCP will be modified to assist in meeting the newly established recovery goals and adaptive management prescriptions. Such modifications of the MAPHCP shall be mandatory under the Permit, subject to the following non-modifiable limitations:

(1) The modifications shall not require more than seventy-five percent (75%) of Conservancy Land in the Basin to be maintained as Managed Marsh;

(2) The modifications shall not require less than fifty percent (50%) of all Conservancy Land to be located in the Basin or such other percentage as may be provided in the NBHCP as it may be amended from time to time.

(3) Subject to Section 4.3.2, the modifications shall not require the mitigation ratio to be greater than 0.5 acre mitigation to 1.0 acre development.

Any modifications to the MAPHCP or NBHCP necessitated by the Giant Garter Snake or Swainson's Hawk Recovery Plan or the Adaptive Management provisions as described in the second paragraph of Chapter IV, Sections C, E and H of the NBHCP will be governed by Section 3.1.10 of this Agreement and Chapter IV, Section E of the NBHCP, as the NBHCP may be modified from time to time, provided that the fifty percent (50%) cap on certain Adaptive Management or Recovery Plan changes contained in the 1997 NBHCP shall not apply to Adaptive Management or Recovery Plan changes made under the MAPHCP.

6.6 Reservation of Rights Re: Subsequent Listing of Species. This Agreement shall not be construed as a waiver of any rights or objections that any of the Parties hereto or Urban Development Permittees may have with respect to the proposed listing of any Candidate Species under the ESA or CESA or of any of the other Covered Species described in this Agreement. The Permittee and the Urban Development Permittees reserve their right to oppose any formal listing of any Candidate Species or other Covered Species pursuant to the ESA or CESA. Likewise, nothing in this Agreement is intended, nor shall be construed to limit the authority of USFWS or CDFG to enforce or otherwise carry out their respective responsibilities under the federal or state Endangered Species Acts and other applicable federal and state laws.

6.7 Land Use Authority. Nothing in the MAPHCP or in this Agreement shall be interpreted or operate in a manner that expressly or impliedly diminishes or restricts the local land use authority of COUNTY.

6.8 No Liability by MAPPOA for Natomas Basin Conservancy. All Parties hereto agree that under no circumstances shall MAPPOA have any liability whatsoever for any debts, liabilities or financial obligations incurred by the Natomas Basin Conservancy; provided, however, that MAPPOA acknowledges that notwithstanding any failure of NBC to carry out its duties, ultimate responsibility for implementation of the Plan rests with MAPPOA or its assignee, as Permittee. In the event of such failure of NBC, a substitute entity may carry out NBC's duties as specified in Section 3.4.7 of this Agreement.

6.9 No Liability by NBC for Permittee. All Parties hereto agree that under no circumstances shall the NBC have any liability whatsoever for any debts, liabilities or financial obligation incurred by MAPPOA or any MAPPOA Landowner.

7. MODIFICATIONS, AMENDMENTS AND REMEDIES.

7.1 Minor Modifications and Amendments.

7.1.1 Amendments. Amendments to the Permit and this Agreement and modifications to the MAPHCP may be proposed by any Party to this Agreement. The Party proposing the amendment or modification shall provide to the Conservancy, MAPPOA, USFWS and CDFG a written statement of the reasons for the amendment or modification and an analysis of the effect of the amendment or modification on the environment, Covered Species and the implementation of the MAPHCP. The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, the USFWS's permit regulations, CESA and CDFG's permit regulations, and the California Environmental Quality Act. It is contemplated that minor modifications to the MAPHCP and minor amendments to this Agreement may be agreed to pursuant to subsection 7.1.2 without requiring amendment of the Section 10(a) Permit or the Section 2081(b) Permit. It is further acknowledged that the MAPHCP and this Agreement provide for the automatic incorporation of certain future modifications to the NBHCP into this Agreement and the MAPHCP and specify that certain modifications can be made to the MAPHCP without the consent of all parties. Those specific provisions shall govern with respect to the particular matters within their purview notwithstanding the general provisions of this Section 7.

7.1.2 Minor Modifications. Any Party may propose a minor modification to the MAPHCP or amendment to this Agreement. Except where another process is specifically identified under the terms of the MAPHCP or IA with respect to particular types of modifications or as provided in Section 7.1.3 below, the Party proposing a minor modifications to the MAPHCP or a minor amendments to this Agreement shall provide notice to all other Parties. Such notice shall include a statement of the reasons for the proposed modification or amendment and an analysis of its environmental effects, its effects on the implementation of the MAPHCP and on Covered Species. The parties will use their reasonable efforts to respond to proposed modification or amendment within sixty (60) days of receipt of such notice. Except as otherwise provided under the terms of the MAPHCP or this Agreement, a proposed modification or amendment will become effective upon all other parties' written approval. If, for any reason, a receiving party reasonably objects to a proposed modification to the MAPHCP or amendment to this Agreement, other than to those not subject to that Party's approval under the MAPHCP or this Agreement, it must be

processed as an amendment of the Permit in accordance with subsection 7.1.1 of this section. Neither the USFWS, nor CDFG will propose or approve minor modifications to the MAPHCP or minor amendments to this Agreement if either agency determines that such modifications or amendments would result in operations under the MAPHCP that are significantly different from those analyzed in connection with the original MAPHCP, result in adverse effects on the environment that are new or significantly different from those analyzed in connection with the original MAPHCP, or allow additional take not analyzed in connection with the original MAPHCP. Minor modifications to the MAPHCP and minor amendments to this Agreement processed pursuant to this subsection may include, but are not limited to, the following:

(1) correction of typographic, grammatical, and similar editing errors that do not change the intended meaning;

(2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or HCP;

(3) minor changes to survey, monitoring or reporting protocols; and

(4) any other type of modification to the MAPHCP or amendment to this Agreement that is consistent with the MAPHCP's goals, that the USFWS and CDFG have analyzed and agreed to, including, but not limited to, the approval or execution of any agreements with COUNTY, other agencies, companies or individuals to facilitate the implementation of the Permits, the MAPHCP or this Agreement, including, but not limited to, agreements referenced in the Permits, the MAPHCP or this Agreement to take any actions; delegate any duties; create, extinguish, phase out, transfer or assume obligations of any type; make adjustments to ensure consistency with the NBHCP; implement adaptive management modifications to the MAPHCP consistent with the NBHCP; or take any other actions desired by the parties consistent with the MAPHCP;

(5) subject to the exceptions noted above and in Section 7.1.3 below, any other modifications to the MAPHCP or amendments to this Agreement and any amendments to the permit will be processed as amendments to the Permits in accordance with subsection 7.1.1 of this section.

7.1.3 Automatic Amendments and Modifications. Each of the Parties acknowledges the mutual desire to have this Agreement and the MAPHCP maintain consistency with the NBIA and NBHCP with respect to the NBC's responsibilities as Plan Operator under the NBHCP, NBIA and this Agreement, and with respect to the amount of mitigation fees, the HML mitigation ratio, monitoring, adaptive management measures, the conservation strategy for the basin, and changes in response to a recovery plan. As a result, notwithstanding Sections 7.1.1 and 7.1.2 above, each of the Parties hereby agrees that any future modification to the NBHCP or amendment to the NBIA that affects the NBC's obligations as Plan Operator or results in changes to the amount of mitigation fees, the HML mitigation ratio, monitoring, adaptive management measures, the conservation strategy for the basin, and/or changes in response to a recovery plan shall automatically apply to this Agreement and be incorporated into the MAPHCP unless MAPPOA, NBC, USFWS and CDFG collectively determine that the modification or amendment should not apply to the MAPHCP and this Agreement. In addition, notwithstanding 7.1.1 and 7.1.2 above, any future modification to the NBHCP or amendment to the NBIA regarding plan modification or amendment procedures, which are currently found at IV.K of the NBHCP and 7.0 of the NBIA shall automatically apply to this Agreement and be incorporated into the MAPHCP.

7.1.4 Land Use Changes. The Parties to this Agreement agree that the adoption and amendment of General Plans, Specific Plans, Community Plans, zoning ordinances and similar ordinances, and the granting of implementing land use entitlements by COUNTY, pertaining to land in the Permit Area, shall be matters within the sole discretion of COUNTY, and shall not require amendments to this Agreement or the approval of the other Parties to this Agreement. However, should COUNTY adopt or amend a General Plan, Specific Plan, Community Plan, zoning ordinance or similar ordinance or grant or an implementing land use entitlement within the Permit Area that materially and adversely affects the ability of the Permittee to carry out its obligations under the MAPHCP, such COUNTY action may result in suspension or revocation of the permit pursuant to Section 7.3 of this Agreement.

7.1.5 Changes in Response to a Recovery Plan. The Parties to this Agreement intend that changes to the MAPHCP or NBHCP with respect to the location of Conservancy Lands, the proportion in Managed Marsh, adaptive management changes and other changes necessary to adapt the MAPHCP or NBHCP to meet the purposes of a Recovery Plan for the Giant Garter Snake or Swainson's Hawk, as specified in Section 6.5, shall not require an amendment of the Section 10(a)(1)(B) Permit or Section 2081(b) Permit.

7.2 Remedies in General. The Parties acknowledge that each of the Covered Species is unique and that the loss of any of the Covered Species would be irreparable and that therefore injunctive and/or temporary relief may be appropriate in certain circumstances involving a breach of this Agreement. Notwithstanding any other provision of this Agreement, the Parties shall not be liable in monetary damages to any Party or any person for any breach of this Agreement, in the performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement provided, however, that nothing in this section is intended or shall be construed to affect or in any way limit the authority of the USFWS and CDFG, to fulfill their responsibilities under the ESA or CESA, respectively, or other applicable laws, including but not limited to seeking civil and/or criminal penalties against MAPPOA. Subject to the foregoing, the Parties shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a)(1)(B) Permit and Section 2081(b) Permit and to seek remedies for any breach thereof, consistent with and subject to the terms of this Agreement. It is expressly understood by the Parties that monetary damages will not provide an adequate remedy for material breach of this Agreement. Notwithstanding the foregoing, all Parties shall retain whatever liability they would possess for their present and future acts or failure to act without regard to the existence of this Agreement, and all Parties shall retain whatever liability they possess as holders of interests in land.

7.2.1 Dispute Resolution. The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the MAPHCP, and the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in state or federal court as provided in this section, the parties may use the following informal dispute resolution process to attempt to resolve disputes:

(1) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(2) The party alleged to be in violation will have thirty (30) days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(3) Within thirty (30) days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(4) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

7.2.2 Third Party Enforcement. This Agreement shall not create in the public, any member of the public, or any other person or entity, including any MAPPOA landowner or any Urban Development Permittee other than MAPPOA, any rights under this Agreement, nor shall it authorize anyone not a signatory to this Agreement to maintain a suit (1) in equity or law to enforce the terms of the MAPHCP, this Agreement and/or the NBHCP, Section 10(a)(1)(B) Permit or Section 2081(b) Permit, or (2) for compensation or damages under the provisions of the MAPHCP and this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

7.3 Suspension or Revocation.

7.3.1 Suspension or Revocation by USFWS. The Parties acknowledge that the USFWS shall have the authority to suspend or revoke the Section 10(a)(1)(B) Permit, in whole or in part, in the event of a material breach or violation of the Section 10(a)(1)(B) Permit and pursuant to any applicable federal laws or regulations, including 50 C.F.R. Sections 17.22(b)(8) and 17.32(b)(8) governing the permitted activity. The regulations found at 50 CFR §§13.27 - 13.29 and 17.22(b)(8) and 17.32(b)(8), or any successor regulations, shall govern the suspension or revocation of the Section 10(a)(1)(B) Permit issued under this Agreement by the USFWS.

7.3.2 Suspension or Revocation by CDFG. The Parties acknowledge that CDFG shall have the authority to suspend or revoke the Section 2081(b) Permit in the event of a material breach or violation of the Section 2081(b) Permit or any applicable California laws or regulations governing the permitted activity. California Code of Regulations, title 14, section 783.7, or any successor regulation, shall govern the suspension or revocation of the Section 2081(b) Permit issued under this Agreement by CDFG.

7.3.3 Status of Urban Development Permittees after Termination. Notwithstanding the suspension or revocation of the Section 10(a)(1)(B) Permit or the Section 2081(b) Permit, each MAPPOA Landowner who is an Urban Development Permittee shall remain liable under this Agreement to carry out all of its responsibilities under the Permit and this Agreement arising from any Urban Development approved, authorized, or carried out by the Urban Development Permittee, within the MAPHCP Permit Area between the Effective Date of the Agreement and the date the

Permit is suspended or revoked. As to any Urban Development project approved or authorized prior to the Permit suspension or revocation and in compliance with the Permit, but as to which construction activity has not commenced as of the suspension or revocation, so long as MAPPOA continues to enforce the terms of the MAPHCP, this Agreement and the Permit with respect to the Urban Development Permittee and the Urban Development Permittee continues to fulfill its obligations under the Permit, the Permit shall continue in effect for that Urban Development Project until that Project is completed, and for management activities carried out by NBC under the MAPHCP and this Agreement.

7.3.4 No Further Approvals by Permittees. If a Section 10(a)(1)(B) Permit or Section 2081(b) Permit is suspended or revoked, MAPPOA and MAPPOA Landowners who are Urban Development Permittees shall not have the authority to rely upon the Permit to approve or carry out any actions which would violate the ESA or CESA in the absence of such Permit. Notwithstanding the suspension or revocation, MAPPOA and Urban Development Permittees shall remain fully liable under the Permit and this Agreement to carry out all of their responsibilities, including mitigation requirements, under the Permit and this Agreement arising from Urban Development approved, authorized or carried out by MAPPOA or an Urban Development Permittee within the Permit Area between the Effective Date and the date the Permit and/or Incidental Take Permit is suspended or revoked.

7.3.5 Severability. The violation of any provision of the Section 10(a)(1)(B) Permit or the Section 2081(b) Permit by an Urban Development Permittee or Rice Farmer with respect to any one or more Urban Development Projects or other activities, such as Rice Farming, being conducted pursuant to this Agreement or the Section 10(a)(1)(B) Permit or Section 2081(b) Permit shall not adversely affect or be attributed to, nor shall it result in the loss or diminution of any right, privilege or benefit under any Urban Development Permit held by any non-responsible Permittee or signatory to this Agreement. Non-responsible MAPPOA Landowners shall not be deemed to have violated the Section 10(a)(1)(B) Permit or Section 2081(b) Permit solely as a consequence of the actions of the COUNTY, the Conservancy, any other MAPPOA Landowner, a Rice Farmer, or any Urban Development Permittee. The NBC shall not be deemed to have violated a Section 10(a)(1)(B) Permit or Section 2081(b) Permit solely as a consequence of the actions of the COUNTY, MAPPOA, a MAPPOA Landowner, Rice Farmer, or any Urban Development Permittee. Notwithstanding the above, to the extent that action or inaction by the COUNTY, the Conservancy, or another MAPPOA Landowner prevents proper implementation of the MAP HCP or compliance with the Permit by MAPPOA, the Permit may be suspended or revoked as it applies to responsible Parties in accordance with applicable USFWS and CDFG regulations.

8. MISCELLANEOUS.

8.1 Term of Agreement. This Agreement shall remain in effect for a period of fifty (50) years from the Effective Date. The Agreement may be extended in accordance with then existing regulatory authorities for periods of ten (10) years each if necessary to accommodate Urban Development in the Permit Area and only so long as the Covenants, Conditions & Restrictions contained in Exhibit G to this Agreement are extended for the same amount of time provided that any renewal of the Federal and State Permits shall be subject to the laws and regulations then in effect.

8.2 Termination.

8.2.1 Termination by Mutual Consent. The Parties, by mutual agreement, may terminate this Agreement. In the event that such mutually agreed-upon termination occurs, the Parties shall execute a written termination agreement to ensure that the mitigation required under the MAPHCP and this Agreement for all Urban Development approved, authorized or carried out prior to termination is carried out. Upon execution of such agreement, the Section 10(a)(1)(B) Permit and Section 2081(b) Permit issued to MAPPOA shall thereafter be null and void except as to any Urban Development Permittees or Projects for which the required mitigation has been performed or otherwise assured as evidenced by a Certificate, and for ongoing management activities conducted by the Conservancy on Conservancy Lands. Notwithstanding this Section and Sections 12.3 and 12.7 of the Covenants, Conditions & Restrictions in Exhibit G, the parties acknowledge and agree that there are continuing obligations in the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit which survive termination.

8.2.2 Termination by USFWS or CDFG. The USFWS or CDFG may terminate this Agreement upon revocation of the Section 10(a)(1)(B) Permit or the Section 2081(b) Permit.

8.2.3 Termination by the Conservancy. The Conservancy may terminate its participation under this Agreement only in accordance with Sections 3.4.6 and 3.4.7 of this Agreement; provided, however, the Conservancy may terminate its participation under this Agreement without the prior written approval of MAPPOA, USFWS or CDFG and without the transfer of assets and obligations described in those Sections if MAPPOA breaches its Agreement with the Conservancy, a copy of which is attached as part of Exhibit H.

8.2.4 Effect of Termination. In the event this Agreement is terminated by the USFWS, the Section 10(a)(1)(B) Permit shall be deemed canceled consistent with and subject to 50 C.F.R. Sections 17.22(b)(7) and 17.32(b)(7) and Section 8.2.1 above. If this Agreement is terminated by CDFG, the Section 2081(b) Permit shall be null and void in whole and in part. Subject to Section 8.2.1 above, all Urban Development activities within a portion or all of the Permit Area shall be subject to the applicable requirements of the ESA and CESA.

8.2.5 Status of Conservancy Lands under Termination. The Conservancy Lands are to be established in perpetuity. Management of Conservancy Lands shall continue after termination, suspension or revocation of the Section 10(a)(1)(B) Permit or Section 2081(b) Permit for any reason. MAPPOA's obligation to fund and implement the NBHCP and MAP HCP with respect to mitigation lands acquired to mitigate for past take under the MAP, including funding and implementation of recovery plan and adaptive management obligations, shall continue for a period of 50 years from the date of original permit issuance. None of the assets of the Natomas Basin Conservancy, including lands or interests in land may be transferred, conveyed, or assigned to any person or entity, except as specified in Section 3.4.6 and Section 3.4.7 of this Agreement.

8.3 Assignment. MAPPOA may terminate its obligations as established within the MAPHCP and this Agreement by assigning its interest pursuant to Section 7.1.2, provided that any assignee agrees to assume all obligations to be performed by MAPPOA under this Agreement and such assignment shall not be effective until approved in writing by USFWS and CDFG. NBC may do the same pursuant to Sections 3.4.6, 3.4.7 or 8.2.3. Assignment of responsibilities shall be conducted in accordance with all applicable provisions of this Agreement. Assignment of the Permits shall be in accordance with all applicable regulations, including but not limited to, 50 C.F.R. Section 13.25.

8.4 Minor Modifications and Amendments/Binding Effect. Except as provided in Section 7.1.3, any minor modification or amendment to this Agreement must be in writing and signed by the Parties hereto. The terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. The Parties acknowledge that the Section 10(a)(1)(B) Permit may be transferred or assigned in conformance with current federal regulations.

8.5 Notices. Any notice required or permitted to be given hereunder shall be in writing, shall be deemed made upon receipt, and shall be given by personal delivery or by certified mail/return receipt requested, addressed to the Parties as follows:

Metro Air Park Property Owners Association
Attn: Gerry Kamilos
11211 Gold Country Boulevard, Suite 108
Gold River, CA 95670

with a copy to:

Hefner, Stark & Marois, LLP
Attn: Timothy D. Taron/George T. Kammerer
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833-3883

Office of the Regional Director
U. S. Fish and Wildlife Service
911 N.E. 11th Avenue
Portland, OR 97232-4181

with copies to:

Manger, California/Nevada Operations Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2606
Sacramento, CA 95825

Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Office of the Director
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

with copies to:

General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, CA 95814

Regional Manager
California Department of Fish and Game
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670

The Natomas Basin Conservancy
Attn: Executive Director
1819 "K" Street, Suite 200
Sacramento, CA 95814

with a copy to:

McDonough, Holland & Allen
Attn: Edward J. Quinn, Jr.
555 Capitol Mall, 9th Floor
Sacramento, CA 95814

Any Party may give notice to the others specifying a different address for notice purposes.

8.6 Captions. The headings of the various sections hereof are for convenience only, and shall not affect the meaning of any provisions of this Agreement.

8.7 Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute but one and the same instrument. A complete original of this Agreement shall be maintained in the official records of each of the parties hereto.

8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the ESA, the CESA, and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of USFWS to fulfill its responsibilities under the ESA or CDFG under CESA or other applicable law, including but not limited to seeking penalties against MAPPOA. Moreover nothing in this agreement is intended to limit the legal responsibilities of USFWS as an agency of the federal government or CDFG as an agency of the State of California.

8.9 Complete Agreement. This Agreement, its Exhibits attached hereto, and the Permits, together with the MAPHCP and those portions of the NBHCP referenced in this Agreement, constitutes the full and complete agreement among the Parties. It supercedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party, that is not embodied herein. supersedes any prior or contemporaneous agreements or understandings, whether oral or written, all of which shall be deemed to have been merged herein, it being the intention of the Parties that this be a completely integrated agreement.

8.10 Federal Section 7 Consultations. Nothing in this agreement is intended to eliminate or modify the obligation of a federal agency to consult with the USFWS pursuant to Section 7(a) of the ESA (16 U.S.C. Section 1536(a)). To the maximum extent appropriate, in any consultation under said provision involving a prospective or other Urban Development Permittee with regard to Covered Species, the USFWS shall ensure that the biological opinion issued in connection with the proposed Project which is the subject of the consultation is consistent with the biological opinions

issued in connection with the MAPHCP and NBHCP, provided that the proposed Project is consistent with the MAPHCP. Any biological measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the mitigation required under the MAPHCP as implemented by this Agreement.

8.11 State Consultations. Nothing in this Agreement is intended to eliminate or modify the obligation of a state lead agency to consult with CDFG pursuant to CESA or Public Resources Code Section 21104.2. To the maximum extent appropriate, any requirements or decisions by CDFG pursuant to such consultations with regard to Urban Development activities and Projects shall comply with and be in harmony with the terms and intent of this Agreement, including but not limited to Sections 6.1 and 6.2 hereof. In the event that such consultation results in significant new requirements imposed upon NBC or any Urban Development Permittee, such requirements shall not apply or become Permit conditions unless such new requirements are made a part of the MAPHCP as major revisions in accordance with Chapter IV, Section E of the NBHCP or through amendment of the Section 10(a)(1)(B) Permit and the Section 2081(b) Permit.

8.12 Force Majeure. In the event that a Party to this Agreement is wholly or partly prevented from performing its obligations under this Agreement because of unforeseeable causes beyond the reasonable control of such Party ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal, state or municipal agencies, such Party shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected. Notwithstanding the foregoing, nothing in this Section shall be deemed to authorize any Party to violate the ESA and CESA, and provided further that:

(1) within two (2) weeks after the occurrence of the force majeure, the Party prevented from performing gives the other Parties written notice describing the particulars of the occurrence;

(2) the suspension of performance is of no greater scope and duration than is required by the force majeure;

(3) the Party prevented from performance uses its best efforts in light of the circumstances to remedy its inability to perform, except that this subsection shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which, in the sole judgment of the Party prevented from performing, are contrary to its interest; and

(4) when the Party prevented from performing is able to resume performance of its obligations hereunder, such Party shall give the other Parties notice to that effect.

8.13 Conflict with MAPHCP or NBHCP. The MAPHCP, each of its terms, and portions of the NBHCP referenced in this Agreement and/or in the MAPHCP, are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the MAPHCP, and applicable portions of the NBHCP. In the event of any direct contradiction, conflict or inconsistency between the terms of this Agreement and the MAPHCP or applicable portions of the NBHCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement, the MAPHCP, and applicable portions of the NBHCP shall be interpreted to be supplementary to each other.

8.14 Other Permittees. The failure of other potential Permittees identified in the MAPHCP or NBHCP to obtain Permits shall not preclude this Agreement from going into effect within the

geographical boundaries of the MAPSPA, or on lands controlled by the Conservancy, nor preclude the issuance of the Permits to such other potential Permittees or to subsequent signatories of this Agreement.

8.15 Federal Appropriations. Implementation of this Agreement and the MAPHCP and the assurances provided herein, is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

8.16 State Appropriations. Implementation of this Agreement and the MAPHCP and the assurances provided herein, is subject to the availability of appropriated funds. Nothing in this agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

8.17 References to Regulations. Any reference in this Agreement, the MAPHCP, or the Permit to any regulation or rule of USFWS or CDFG shall be deemed to be a reference to such regulation or rule in existence at the time the action is taken.

8.18 Applicable Laws. All activities undertaken pursuant to this Agreement, the MAPHCP or the Permit must be in compliance with all applicable state and federal laws and regulations.

8.19 No Partnership. Neither this Agreement nor the MAPHCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

8.20 Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first set forth above.

U.S. FISH AND WILDLIFE SERVICE,
an agency of the Department of the
Interior of the United States of America

By: [Signature]
Name: D. KENNETH McDERMOTT
Title: DEPUTY MANAGER CNO

THE NATOMAS BASIN CONSERVANCY,
A California Non-profit Public Benefit
Corporation

By: [Signature]
Name: ANNE RUBIN
Title: President

CALIFORNIA DEPARTMENT OF FISH & GAME, a
subdivision of the Resources
Agency of the State of California

By: [Signature]
Name: LARRY L. FENG
Title: ASSISTANT REGIONAL MANAGER

METRO AIR PARK PROPERTY
OWNERS ASSOCIATION,
a non-profit mutual benefit corporation

By: [Signature]
Name: MARVIN L. DATES
Title: _____

LIST OF EXHIBITS

- Exhibit A: MAPPOA's Baseline Map
- Exhibit B: List of Covered Species in Permit Area
- Exhibit C: Tiers of Urban Development
- Exhibit D: MAPHCP and EIS
- Exhibit E: Natomas Basin HCP, IA, EA and Incidental Take Permit PRT-823773
- Exhibit F: Final Subdivision Map for MAPPOA Permit Area
- Exhibit G: MAPPOA Articles of Incorporation, Bylaws, Covenants, Conditions & Restrictions, and Resolution of Adoption by MAPPOA Board of Directors
- Exhibit H: Sacramento County, NBC and Thomas Reid & Associates Implementation Agreements
- Exhibit I: Location and Description of Off-Site Improvements