

Appendix F
Conservation Easement Toolkit

Example Conservation Easement Template

PLEASE NOTE:

**The following Conservation Easement Deed is provided by the multi-agency Project Delivery Team as a standardized template document for Mitigation and Conservation Banks in California. Any modifications to this template shall be identified using tracked changes or other electronic comparison and explained in a memorandum.
(Template Version Date: July 2009)**

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

[Fill in Grantee Name/Address]

Grantee Name

Grantee Address

City, State ZIP

Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

[Insert Bank Name]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [*insert full legal name(s) of Grantor:* _____] ("Grantor"), in favor of [*insert Grantee's full legal name:* _____] [*if CDFG is Grantee insert: the State of California*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [*insert City name*], County of [*insert County name*], State of California, and designated Assessor's Parcel Number(s) [*insert Assessor's Parcel Number(s)*] (the "Bank Property"). The Bank Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Bank Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Bank Property will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Bank Property.

C. The California Department of Fish and Game ("CDFG") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFG is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. **[Remove/modify this recital as appropriate when USEPA or USACE is not a signatory to the BEI or CBEI].** The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. **[Use this version of Recital F when qualified nonprofit organization is Grantee].** Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. **[Modify this recital as appropriate when CDFG, USFWS, USEPA or USACE is not a signatory to the BEI or CBEI.]** This Conservation Easement is granted pursuant to the **[insert the appropriate term: Mitigation Bank Enabling Instrument (the "BEI") or Conservation Bank Enabling Instrument (the "CBEI")]**, by and between **[insert Bank Sponsor name(s)]**, **[insert Bank Property Owner name(s)]**, and **[insert Region name]** CDFG, CDFG Tracking No. **[insert number]**, the **[insert Field Office name]** of the USFWS, USFWS File No. **[insert number]**, the **[insert District name]** District of USACE, USACE File No. **[insert number]**, and Region IX of the USEPA, entered into concurrently with this Conservation Easement, and the Bank Development Plan (the "Development Plan"), and the Interim Management Plan and Long-Term Management Plan (as applicable, the "Management Plan") created under the **[insert: BEI or CBEI]**. **[Remove reference to any agency that is not a party to the BEI or CBEI]** CDFG, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the [*insert: BEI or CBEI*], the Development Plan and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the [*insert: BEI or CBEI*], the Development Plan or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The [*insert: BEI or CBEI*], the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Bank Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Bank Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan, and to prevent any use of the Bank Property that will impair or interfere with the Conservation Values of the Bank Property. Grantor intends that this Conservation Easement will confine the use of the Bank Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Bank Property.

(b) To enter the Bank Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the [*insert: BEI or CBEI*], the Development Plan and the Management Plan and to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Bank Property.

(c) To prevent any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Bank Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Bank Property shall remain a part of and be put to beneficial use upon the Bank Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Bank Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Bank Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Bank Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify:* Development Plan *or* Management Plan].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify:* Development Plan *or* Management Plan].

(c) Agricultural activity of any kind [*include the following language only if the Development Plan or Management Plan, including any adaptive management measures, specifies such an exception:*] except grazing for vegetation management as specifically provided in the [*specify:* Development Plan *or* Management Plan].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Bank Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind [*include the following language only if the Development Plan or Management Plan specifies such an exception:*],

except for [*insert specific exception(s)*] as specifically provided in the [*specify*: Development Plan *or* Management Plan].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Bank Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Bank Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Bank Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease [*include the following language only if the Development Plan or Management Plan specifies such an exception:*]; and except for [*insert specific exception(s)*] as specifically provided in the [*specify*: Development Plan *or* Management Plan].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Bank Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters [*include the following language only if the Development Plan or Management Plan specifies such an exception:*], except for [*insert specific exception(s)*] as specifically provided in the [*specify*: Development Plan *or* Management Plan].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Bank Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Bank Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Bank Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Bank Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Bank Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Bank Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Bank Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the [*insert: BEI or CBEI*], the Development Plan and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Bank Property, including the right to engage in or permit or invite others to engage in all uses of the Bank Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Bank Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Bank Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Bank Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Bank Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or

without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Bank Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Bank Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFG and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the [*insert: BEI or CBEI*], the Development Plan or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Bank Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) *[Add if nonprofit organization is Grantee]* Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the [*insert: BEI or CBEI*], the Development Plan or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Bank Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Bank Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Bank Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [*insert if CDFG or another government entity is Grantee: , including permits and approvals required from Grantee acting in its regulatory capacity*], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Bank Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or

incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Bank Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Bank Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [*insert if CDFG is grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Bank Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of

Conservation Values, [*include this phrase only if there are jurisdictional wetlands:* including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[*Use the appropriate paragraph:*]

[*If CDFG or other state agency is Grantee:*] Condemnation. This

Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3.

[*All other Grantees:*] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Bank Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Bank Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Bank Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Bank Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the [*insert: BEI or CBEI*], the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Bank Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Bank Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
 [Grantee address]
 Attn: _____

To Grantee: ***[insert the appropriate Grantee information:]***

[Department of Fish and Game]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate when CDFG or the USFWS are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To CDFG: [Department of Fish and Game]
 [Region name] Region
 [REGION ADDRESS]
 [Attn: Regional Manager]

With a copy to: Department of Fish and Game
 Office of General Counsel
 1416 Ninth Street, 12th Floor
 Sacramento, CA 95814-2090
 Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
 [Field Office name] Field Office
 [FIELD OFFICE ADDRESS]

Attn: Field Supervisor

[Remove/modify these blocks as appropriate when USEPA or USACE are not signatories to the BEI or CBEI or third-party beneficiaries to the CE.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Bank Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this

Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the [*insert: BEI or CBEI*], the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Bank Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Bank Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Bank Property, or transported to or from or affecting the Bank Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without

limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*add if CDFG is Grantee*: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Bank Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election or and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Bank Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Bank Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Bank Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Bank Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Bank Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [*insert: BEI or CBEI*], [*choose applicable statement*]: there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement *or* the holder of any outstanding mortgage, lien, encumbrance or other interest in the Bank Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Bank Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Bank Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Bank Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Bank Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Bank Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [*include the agencies that will be third-party beneficiaries*: CDFG, USFWS, USACE, and USEPA] (the “Third-Party Beneficiaries”) are third party beneficiaries of this Conservation Easement with the right of access to the Bank Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor’s obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Bank Property is specified in and governed by the [*insert: BEI or CBEI*] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:

Approved as to form:

[Remove or modify the approval block as appropriate, i.e., Grantee’s legal counsel if CDFG is not Grantee.]

BY: _____

General Counsel
State of California
Department of Fish and Game

NAME: _____

TITLE: _____

BY: _____
Ann S. Malcolm
General Counsel

DATE: _____

[Delete this page if CDFG will not be Grantee. If the Grantee will be a government agency, that agency must include its own Certificate of Acceptance.]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Game, a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the Fish and Game Code.

GRANTEE:

[Remove or modify the approval block as appropriate if CDFG is not Grantee.]

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND GAME

By: _____

Title: _____
Authorized Representative

Date: _____

Management Plan Guide & Annotated Outline

State of California
The Resources Agency
DEPARTMENT OF FISH AND GAME

**A GUIDE AND ANNOTATED OUTLINE
FOR WRITING
LAND MANAGEMENT PLANS**

December 2007
(Supercedes all previous documents)

Lands Program
Wildlife Branch
Resources Management and Policy Division
1812 Ninth Street
Sacramento, CA 95814

USING THIS OUTLINE

This outline has been prepared to help you write a management plan that is useful and easily read by those who want information about Department-administered lands. It provides instructions and examples for writing each chapter. It also serves as an example for the required format. **Each chapter heading (identified by a Roman numeral) should be addressed within the plan.** The amount of information provided within each chapter will be determined by the intensity of management necessary to maintain the property as viable wildlife habitat. **In some cases, it may not be necessary to use certain subheadings; these are listed as optional in the outline.**

Periodically, this outline will be revised to reflect additional information, style improvements, and streamlining efforts. Any questions and comments regarding this outline or the writing of management plans may be directed to the Lands and Facilities Branch, Teresa Le Blanc, (916) 445-3499 or tleblanc@dfg.ca.gov.

SOME TIPS AND NECESSARY FORMAT INFORMATION:

A Table of Contents containing page numbers for chapters and sections must be provided.

Page numbers should appear on every page of your plan, including all maps, tables, and figures. Chapter I, Introduction, is page one and is always unnumbered. All pages preceding page one should be numbered with lower case Roman numerals, starting with -i- on the Table of Contents page.

Tables and figures should be placed immediately following the page where they are first mentioned in the text (for example, if Figure 1 is mentioned on page 3 for the first time, it appears as page 4).

All figures should be prepared on 8-1/2 x 11-inch paper so that reproduction remains a simple task. To prepare professional-looking figures, maintain a minimum 1/2-inch border. Each figure and table should be numbered and titled. The title should reflect what the figure depicts, such as a location map or habitat types on the property. The numbers and titles of figures and tables may be listed under a separate List of Figures (or Tables); see Table of Contents for example. Compass direction and mileage scale should be included on all figures which illustrate geographical features.

TITLE AND SIGNATURE PAGES

The following two pages are examples of the Title Page and Signature Page which are required for each plan.

EXAMPLE (Title Page)

State of California
The Resources Agency
DEPARTMENT OF FISH AND GAME

DRAFT LAND MANAGEMENT PLAN

for

(NAME OF AREA)

Month, Year

EXAMPLE (Signature Page)

(NAME OF AREA) FINAL DRAFT MANAGEMENT PLAN

TABLE OF CONTENTS

The Table of Contents of each land management plan should follow the same format as shown on page i of this document. All pages, starting with Chapter I, Introduction, are numbered consecutively, including figures, tables, and maps. Appendices have their own separate page numbers such as A-1, A-2,., B-1, B-2,....

TABLE OF CONTENTS

		Page No.
	TABLE OF CONTENTS	x
	ACKNOWLEDGEMENTS (Optional)	x
	LIST OF FIGURES (Optional)	x
	LIST OF TABLES (Optional)	x
I.	INTRODUCTION	x
	A. Purpose of Acquisition	x
	B. Acquisition History	x
	C. Purpose of This Management Plan	x
II.	PROPERTY DESCRIPTION	x
	A. Geographical Setting	x
	B. Property Boundaries and Adjacent Lands	x
	C. Geology, Soils, Climate, Hydrology	x
	D. Cultural Features	x
	1. Archaeology	x
	2. Historic Land Use	x
	3. Existing Structures	x
III.	HABITAT AND SPECIES DESCRIPTION	x
	A. Vegetation Communities, Habitats and Plant Species	x
	B. Animal Species	x
	C. Threatened, Rare or Endangered Species	x
IV.	MANAGEMENT GOALS AND ENVIRONMENTAL IMPACTS	x
	A. Definition of Terms Used in This Plan	x
	B. Biological Elements: Goals & Environmental Impacts	x
	1. Operations and Maintenance Tasks (Optional)	x
	C. Public Use Elements: Goals & Environmental Impacts	x
	1. Operations and Maintenance Tasks (Optional)	x
	D. Facility Maintenance Elements: Goals & Environmental Impacts	x
	1. Operations and Maintenance Tasks (Optional)	x

- E. Biological Monitoring Element
 - 1. Species and Habitat Monitoring
 - 2. Consistency with any regional planning effort

V. OPERATIONS AND MAINTENANCE SUMMARY

- A. Operations and Maintenance Tasks to Implement Plan
(if not provided under IV.B.1, C.1, or D.1 above) x
- B. Existing Staff and Additional Personnel Needs Summary x
- C. Operations and Maintenance Summary (Optional) x

VI. REFERENCES (For all citations within plan) x

- APPENDICES: As necessary to list:
- Legal description of property,
 - Animal and plant species,
 - Soil types/surveys,
 - Climatic information
 - Environmental Checklist and Discussion of potential impacts (CEQA)
 - Additional Consultation Documents
 - Public comments and our responses to them
 - MOU/MA
 - Site interpretive plan
 - Fire plan
 - Monitoring plan
 - Grazing plan

ACKNOWLEDGEMENTS (Optional)

The author(s) may wish to thank groups or individuals who helped prepare the plan or provided necessary information or guidance.

LIST OF FIGURES (Optional)

If appropriate, a list of figures (which includes all maps, drawings, or charts) may be provided here along with their page numbers.

LIST OF TABLES (Optional)

If appropriate, a list of any tables provided in the management plan may be provided here along with their page numbers.

A. Purpose of Acquisition

Describe the primary purpose for which this property was acquired by the Department, using the Land Acquisition Evaluation (LAE) or Conceptual Area Protection Plan (CAPP) and Wildlife Conservation Board minutes for consistency. Additional purposes should also be stated. Be brief, but provide summary information about the management objectives presented later within the plan. Describe the resources protected by this acquisition in very general terms.

B. Acquisition History (This section may be combined with Section A if the description is straightforward)

Describe the circumstances leading to acquisition which might include local or regional development pressure, environmental concerns, inholding consolidation, or other issues, and list any local or regional groups which had influence in promoting this acquisition. If this acquisition is part of a CAPP or an addition to an existing DFG property, it should be mentioned here. If it is an addition, then this plan would be an "addendum to the existing plan."

Give the acquisition transaction date(s) and the total number of acres acquired. This information is available from the Regional Lands Coordinator who should have a file for each property in the region. The Regional Lands Coordinator also maintains an updated lands inventory containing this information. If special or dedicated funds were used to acquire this property and, therefore, may possibly influence management objectives, name the source of funding here.

C. Purpose of This Management Plan

The following language is required to be stated in the plan to clearly delineate the department's purposes in preparing such plans:

- 1) The plan guides the adaptive management of habitats, species, and programs described herein to achieve the department's mission to protect and enhance wildlife values.
- 2) The plan serves as a guide for appropriate public uses of the property.
- 3) The plan serves as a descriptive inventory of fish, wildlife and native plant habitats which occur on or use this property.

- 4) The plan provides an overview of the property's operation and maintenance, and personnel requirements to implement management goals. It serves as a budget planning aid for annual regional budget preparation.
- 5) The plan provides a description of potential and actual environmental impacts and subsequent mitigation which may occur during management, and contains environmental documentation to comply with state and federal statutes and regulations.

II. PROPERTY DESCRIPTION

This chapter should provide the most current information available to describe the geographical, physical, and cultural site characteristics and features to promote good management of the area. Some of the following subsections may be combined if the subjects below are addressed and information is presented in a logical sequence.

A. Geographical Setting

Describe property location clearly, giving written instructions on how it can be reached by land transportation, and provide a regional map (Map 1) which identifies county and major state or federal highway access to the property. Local towns and crossroads should be shown, as well as compass direction (north), and mileage scale. This is an overview map which gives the unfamiliar reader a regional perspective for locating the property. The map may be a computer-generated schematic or high quality hand-prepared technical illustration; it can also be prepared using a highway map, as long as the reproduction is clear and understandable. The map size should be 8-1/2 x 11 inches.

B. Property Boundaries and Adjacent Land Use

Provide a property map (Map 2) with boundaries distinctly outlined to place it in perspective with adjacent lands. Boundaries should be understandable so that map-users can identify DFG lands. The map should contain sufficient detail to provide information on entrances to and any open roads within the site. Compass direction and mileage scale should be given on the map. Size should be 8-1/2 x 11 inches.

Give a brief description of adjacent land use and prior land use on the property, if known, and provide the names of the USGS topographic map quadrangles in which the property is located. Provide legal property descriptions (Township/Range/Section or metes and bounds) in an appendix (this information is contained in the quarterly lands inventory held by the Regional Lands Coordinator).

[It is strongly suggested that each region maintain a photo file of any existing indicators of boundaries of properties owned by DFG within that region. Old fences, rock walls, monuments, or other physical structures should be photographed as soon as escrow closes. These photographs should be kept on file with the other land inventory documents in each regional office.]

C. Geology, Soils, Climate and Hydrology

These subjects may be combined into one subheading or separated for individual discussion, depending upon how much information is provided. You should give the reader an overall assessment of geological, edaphic, climatic and hydrologic factors which will influence management objectives. You only need to provide information which is pertinent to management of the area.

Geological information which describes how the area evolved or how it relates to the surrounding geological formations can be useful in describing the overall area (eg., alluvial valleys, volcanic outcrops, floodplains).

Soil survey information, obtained from National Resource Conservation Service for most counties, may influence species distributions, water regimes and agricultural activities. Soil types which have significant impacts on management should be discussed here. A soils map may be helpful in making management decisions if soil types are important or complex. A detailed description is not necessary unless it relates to management.

A discussion of local climate should include useful information such as seasonal norms for high and low temperatures, seasonal average precipitation, growing season, and any other climatic factors which influence the area, or should be considered in managing the property.

On some properties, hydrological and water right information will be extremely important. Describe all known surface and subsurface water sources and their seasonal influences on management of the area. If there are wells on the area, the depth to groundwater and pumping rate should be provided, if known. Provide information regarding any surface water rights, (i.e. riparian, pre-1914, adjudicated, appropriative) and current points of diversion. For appropriative rights, include State Water Resources Control Board application permit and license numbers and identify whether use is for direct diversion, storage or both. Also, identify any contracts, MOU's or other agreements related to water use. Please contact the Water Coordinator at (916) 323-7215 if you have further questions about water appropriation, contracts or water rights issues for wildlife areas or ecological reserves.

D. Cultural Features

Describe any known archeological sites without providing their specific locations on the property, and include a summary of the results of any site surveys/inventories, including who conducted them. An assessment of the impacts of management should be given for such sites. Check within the CEQA Guidelines for appropriate action in dealing with suspected or existing archeological sites. All database searches and actual field survey data are confidential. Check with the Lands Program on appropriate archival storage. At the minimum, state that an archeological survey will be initiated where appropriate, prior to any management activity.

Describe all existing structures including roads, levees, fencing, and buildings, and their intended future use on the area. If such structures are likely to be considered "historical resources" of the state pursuant to Executive Order W-26-92 and historic resources preservation laws, all state agencies must preserve and maintain these resources to the extent prudent and feasible within existing budget and personnel resources. Information may also be obtained from the State Historical Preservation Office and the California Native American Heritage Commission.

[The region should maintain a photographic inventory of all structures present on the property at the time of close of escrow.]

III. HABITAT AND SPECIES DESCRIPTION

This chapter provides a descriptive inventory of habitats and species which are located on or use the property. General ecological information necessary for proper management of habitats should be presented in this section. Ensure that the distinction between “potential” and “known to occur” (with reference) is documented for all species. This information will be included in a database developed by the Lands Program to catalog the biological resources occurring on the Department’s lands. This database is known as the Biological Resources Inventory (BRI).

A. Vegetation Communities, Habitats and Plant Species

Describe each major native plant community or habitat which occurs on the property. If helpful, a vegetation or habitat map can be included here. Be sure to name any special natural communities which are listed in the Natural Diversity Database (NDDDB) which can be accessed through the "Rarefind 3" program, available from the Biogeographic Data Branch at (916) 324-3812 or at their website. General habitat descriptions should follow the “List of California Terrestrial Natural Communities” based on the classification described in A Manual of California Vegetation (Sawyer-Keeler Wolf 1995). You may also use the classification system employed by the Department’s Wildlife Area Habitat Committee for more intensively managed wetland units.

Provide an inventory (list), if available, of native plant species which are known or likely to occur on the property. Include non-native vegetation as well. Generally, the list can be placed in an appendix, but major species affected by or targeted for management should be mentioned within the text. An overview of their habitat and management requirements should be presented here. Use proper nomenclature for preparing the list of species which generally includes scientific name (the common name should also be included). The regional plant ecologist can provide assistance in how to prepare these lists. If an inventory has not yet been completed for the property, the Department’s Habitat Conservation Branch (HCB) has requested that the plan adopt their recommended language for plant surveys. For example, make a statement to the effect that at the earliest feasible opportunity, and before natural habitats are manipulated, inventories will be conducted to determine that no rare, threatened or endangered plant or special plant species or communities will be negatively impacted by management activities. This language can be acquired by contacting HCB at (916) 653-4875 or by visiting their website.

B. Animal Species

Provide an inventory (list), if available, of animals (including fish, reptiles, amphibians, birds, and mammals) which are known to inhabit or seasonally use this property. Lists can be placed in an appendix, but species affected by or designated for particular management objectives should be mentioned here. An overview of their habitat and management requirements should be presented here. If inventories have not yet been completed, provide a list of species which could potentially inhabit or use the area based on personal field experience and the Department's California Wildlife Habitat Relationships (CWHR) model. Further information may be found by contacting the CWHR Program at (916) 327-8822. Make a statement to the effect that at the earliest feasible opportunity, and before natural habitats are manipulated, inventories will be conducted to determine that no animal T&E species or special species will be negatively impacted by management activities.

C. Endangered, Threatened and Rare Species

List all T&E and rare plants and animals which use the property and briefly describe their ecological requirements. This includes all federal or state listed species as well as those of special concern to the department. Mammals, birds, plants, invertebrates, fish, reptiles, and amphibians require separate headings if combined into one list. State that internal coordination has been accomplished with Department experts to address any management concerns for state-listed species. Document the internal coordination in writing and referenced in an addendum. The documentation may be entitled "Information on the Effects of the Implementation of the Management Plan on Special Status Species." If a species is federally-listed, but not state-listed, at a minimum there should be consultation with the USFWS (pursuant to our Section 6(c) Cooperative Agreement, dated 8/26/91). This consultation will result in a decision on whether a Federal Biological Opinion is necessary. Consultation should also occur with other federal agencies where appropriate.

IV. MANAGEMENT GOALS AND ENVIRONMENTAL IMPACTS

Chapter IV defines the terms used and provides management direction and CEQA documentation for management actions on this property. The goals and tasks stated here should guide all management decisions until such time as the plan is revised and updated. This chapter provides documentation required by federal and state laws pertinent to environmental impacts and endangered species protection.

The following terms and definitions (in boldface) should be presented at the beginning of this chapter to familiarize the reader with terminology used in the plan. Include definitions for only those terms you use in the plan.

A. Definitions of Terms Used in This Plan

1. **Element: An element refers to any biological unit, public use activity, or facility maintenance program as defined below for which goals have been prepared and presented within this plan.**

Since the “elements” are the basis of the plan, be sure to discuss what types of elements are necessary with other regional staff that is familiar with the area and/or resources. We don't want to have so many elements, that goals become redundant, but we do want to discuss all elements to be affected by management on the property.

2. **Biological Element: These elements consist of species, habitats, or communities for which specific management goals have been developed within the plan.**

With the exception of state- or federally-listed species, biological elements should always be defined in terms of **habitat** management programs, since the Department's current management objectives are ecosystem or multi-species oriented. When appropriate, state- or federally-listed species management goals should also be contained within the context of a habitat management program. In some cases, this may not be possible and single species management programs should then be considered as separate biological elements.

Within each defined biological element using the NDDDB classification based on Sawyer-Keeler Wolf habitats, biological and public use management goals should be specified and described. Criteria used to identify biological elements have been determined by the Department and include but are not limited to the following:

a) Protection of the element is authorized or mandated by legislation or official policy (e.g., furthering the goals of the North American Waterfowl Plan, Wetlands Policy, or Proposition 70). An example: Coastal and Valley Freshwater Marsh (NDDDB type).

b) Any listed, candidate, or sensitive species, or species of special concern known or suspected to occur on or to use the property must be specified within another element or as a separate biological element.

c) Essential habitat for one or more listed species must be specified as a biological element. An example is vernal pool habitat upon which numerous state-listed plant species depend.

d) Manipulated habitats which are intensively managed for fish and wildlife values must be specified as biological elements. An example is Coastal and Valley Freshwater Marsh which is created and/or enhanced on certain DFG lands for migratory waterfowl and other associated wetland species.

e) Restoration efforts which may restore an extirpated species or habitat, or maintenance efforts which may avoid the threat of extirpation. An example is Great Valley Cottonwood Riparian (NDDDB type).

3. Public Use Elements: Public use elements are any recreational, scientific, or other use activity appropriate to and compatible with the purposes for which this property was acquired.

When drafting appropriate public use activities, think about potential impacts to the area's resources. The proposed public use should be related to wildlife or wild lands. In addition, a reasonable and defensible correlation between the proposed public use and how it relates to the primary mission of the Department's land management policies should be articulated. If reasonable public use is justified, it may also be tempered with limits on actual number of public involved, lottery scenarios and other methods to avoid resource impacts. Be sure to coordinate with any existing CCR Title 14, Sections 550-552 or Section 630 regulations.

Additionally, the USFWS may have future draft polices regarding other activities on federally-aided Department properties. Please contact the Federal Aid Coordinator, at (916) 445-3472 for further information.

Criteria used to characterize such public use elements include but are not limited to:

- a) Use is authorized or mandated by legislation or official policy (e.g., uses such as hunting, fishing, and interpretive programs).
- b) Use is compatible with fish and wildlife requirements in the area if properly conducted (e.g., hunting or scientific research programs).
- c) Historical uses which may be restricted seasonally or year-round under this plan due to incompatibility with biological element needs (e.g., fishing or interpretive programs).

4. Facility Maintenance Element: This is a general purpose element describing the maintenance and administrative program which helps maintain orderly and beneficial management of the area.

This might also include canned language regarding the Fish and Game Commission's "Interim Joint Policy on Pre, During and Post Fire Activities and Wildlife Habitat" with the California State Board of Forestry which may be applied to Department lands. In brief, the policy calls for coordination with local regional CDF units on wildfire suppression, staging fire fighting equipment, access points, identifying safety hazard areas to fire fighting personnel, post fire activities (eg. restoration) and preventive fuel or fire breaks, specifically in sensitive habitat areas. A statement may be needed to address local vegetation clearance ordinances and various appropriate clearing methods (eg. mowing, discing, blading, etc.). In some cases, a separate prescription burn plan may be appropriate, described briefly under a "Biological Element" and the plan attached as an addendum.

An example of a facility maintenance element is provided later in this chapter.

5. Biological Goal: A biological goal is the statement of intended long-range results of management based upon the feasibility of maintaining, enhancing or restoring species populations and/or habitat.

Biological goals may be, for example, restoration of riparian habitat to its pre-disturbed state or maintaining a particular habitat for optimal deer herd size.

6. Public Use Goal: A public use goal is the statement of the desired type and level of public use compatible with the biological element goals previously specified within the plan.

Public use goals could be to educate the public about rare species or special habitats on the property, or to promote hunting or fishing programs on the property.

Examples of goals are:

- 1) to provide nesting habitat for a certain species over a given period of time;
- 2) to revegetate a former riparian community;
- 3) to build ponds and/or levees to provide wintering waterfowl areas;
- 4) to maintain roads for public access.

7. Tasks: Tasks are the individual projects or work elements which implement the goal and are useful in planning operation and maintenance budgets.

Examples of tasks are:

- 1) grading and graveling roads;
- 2) specific maintenance on existing levees;
- 3) description of types of revegetation efforts;
- 4) specific maintenance tasks on buildings.

Chapter IV, Part B is the most important section, so read thoroughly:

B. Biological Elements: Goals & Environmental Impacts

Section B should have a subsection for every biological element described. Within each subsection, provide:

- 1) the name and general description of biological element;
- 2) general long-range goals;

- 3) operations and maintenance tasks required to complete each goal (this information is optional).

A description should accompany each goal which provides management information and direction on how to meet or exceed the goal. Tasks should be described sufficiently to provide information on how restoration, maintenance, or enhancement of this particular element will be accomplished. If O&M tasks are listed in a summary table, these should provide specific detail on how goals will be met by task performance.

After the goals are characterized, briefly describe any internal or external management constraints which may affect meeting those goals. Some examples are:

- 1) environmental factors such as the influence of local water availability (either surface or subsurface waters); the introduction or spread of non-native species; presence of T&E species; flood; drought; erosion; air pollution; hazardous waste materials;
- 2) legal, political or social factors such as federal, legislative, or Fish and Game Commission policies or regulations which influence or mandate certain types of management; special permitting requirements (eg., COE 404, T&E species, archeological sites); city and/or county ordinances (eg., nuisance abatement); MOUs or other special agreements with private or public entities; water, timber, or mineral rights for the area;
- 3) financial factors such as the source of funding to be used for operation and maintenance, personnel requirements, and overall management of the area (fund source may dictate management direction).

Discuss potential *environmental impacts* from management decisions and mitigation measures which will be employed, if necessary, to avoid or significantly reduce such impacts. If the plan doesn't describe proposed management actions and consider their impacts in **sufficient** detail, CEQA requirements will not be adequately fulfilled by this plan. Any new activities will have to be addressed in future, stand alone CEQA documents on a project-by-project basis. The Department's land management planning process is subject to CEQA based on the interpretation that the planning of certain management tasks with the intent of implementing those tasks falls under the definition of a "project". CEQA defines projects as any activities which may cause a direct physical change or a

reasonably foreseeable physical change in the environment. Depending on the specificity of goals and /or tasks described in the plan, the Region determines whether or not the plan will be considered a “project” under CEQA definition. However, an environmental checklist shall be prepared to show that appropriate consideration was given to potential environmental impacts with the accompanying Negative Declaration. In rare cases, there may be circumstances when a proposed management activity(ies) may result in significant adverse impacts. That determination may trigger an Environmental Impact Report (EIR). Regional personnel should consult with the Lands Program and Habitat Conservation Planning staff in the Region and at headquarters for further direction.

When describing goals for T&E species elements, follow federal and state guidelines which include *consultation with the U.S. Fish & Wildlife Service* (USFWS) or NOAA Fisheries Service for federally-listed species which use the property. It is the intent of the Department and Fish and Game Commission policy not to undertake projects that adversely impact a rare, threatened or endangered species or their habitats (paraphrased from DFG’s operations manual and Fish and Game Code, Section 2053). Internal discussion for state listed species shall be coordinated with the Department’s own experts either in the Region or at Headquarters. Although formal “Biological Opinions” are not prepared, document the coordination in writing that addresses any potential management actions that may impact state listed plants, animals or their habitats. The documentation may be an Addendum to the plan and may be entitled “Information on the Effects of Implementation of the Management Plan on Special Status Species”. If a species is federally-listed, but not state-listed, at a minimum there should be consultation with the USFWS (pursuant to our Section 6(c) Cooperative Agreement, dated 8/26/91) or NOAA depending upon which agency has jurisdiction for the species. This consultation will result in a decision on whether a Federal Biological Opinion is necessary.

Some examples of biological elements (using NDDB habitat types) are:

- 1) Rare, threatened or endangered plant or animal species
- 2) coastal brackish marsh
- 3) California annual grassland
- 4) coastal and valley freshwater marsh
- 5) Great Valley cottonwood riparian
- 6) Non-native, pasture, ag types (DFG internal descriptions)

The following is a biological element example with goals and tasks:

Biological Element: Coastal and Valley Freshwater Marsh

Maintain optimum winter habitat for migratory waterfowl by on-going marsh management techniques to optimize winter food availability for migratory species.

Goal: Continue with established flooding and drawdown timetable; maintain mode of dynamic experimental vernal/summer seasonal wetland management.

Goal: Continue mechanical manipulation of wetland vegetation during summer dry period (when T&E species will not be impacted) to maintain adequate open water during flooded period.

Task: Disc 100 acres of tules annually to maintain marsh in optimal successional stage.

Task: Repair leaking levees to prevent premature drawdowns.

Task: Build 4 additional nesting islands in specified units.

Task: Clean specified water supply ditches.

You may have several goals for each biological element. Listing individual tasks is optional, but increasing the amount of specific information within the plan will greatly increase the value of CEQA documentation. Also, if tasks are not itemized here, there must be a workplan/task summary in the final chapter, Operations and Maintenance Summary.

If you wish to discuss the goals for each element in a narrative format, in order to provide more detail or to clarify certain management issues, be as succinct as possible while providing sufficient information to meet CEQA requirements. Don't forget to discuss management constraints, environmental impacts, and mitigation measures (if applicable).

C. Public Use Elements: Goals & Environmental Impacts

This Section is prepared in the same manner as Section B. It includes a narrative describing the program for each public use element, its goals and tasks (optional), management constraints, and environmental impacts and potential mitigation measures. In describing public use, you are asked to *not use the terms, "consumptive" or "nonconsumptive," because of the inaccurate perception they*

promote. You may want to use terms like hunting, angling, birdwatching, nature observation, etc.

If hunting programs will be managed on the property, describe each program and the goals and potential impacts associated with them. If an interpretive services program is to be conducted on the property (such as providing hiking trails, or bird tours, describe in sufficient detail the type of program(s) to be implemented along with any associated goals and potential impacts associated with them.

As in previous sections, environmental impacts must be discussed for each public use program, and, if appropriate, mitigation measures to offset such impacts should be described in detail. *If T&E species may be impacted by any public use program*, those impacts should be discussed briefly within the public use element and reference made to the DFG documentation or federal consultation prepared for that species.

Ask regional interpretive and other staff for their input, depending upon what type of public use is being considered for the area. In 1989, the Department adopted guidelines for interpretive plans or prospectuses and if drafted could be referenced as an appendix item. Conservation Planning staff should be consulted on listed species and potential public use conflicts.

Some examples of public use elements are:

- 1) Pheasant hunting program
- 2) General public recreation (including bird watching, plant identification, other self-guided activities)
- 3) Watchable Wildlife program (on certain wildlife areas and ecological reserves)
- 4) Fishing program
- 5) Scientific research, surveys or monitoring (by outside groups)
- 6) Trails, blinds, boardwalks or viewing platforms
- 7) Interpretive centers, educational kiosks

D. Facility Maintenance Element: Goals & Environmental Impacts

This Section describes the physical facility and grounds maintenance program which includes the administration necessary to maintain orderly and beneficial management of the area. (Not all properties will require this section. If access and boundary identification features such as roads and fences are present, this section is required.)

The following examples of goals and tasks are paraphrased and excerpted from the Mendota plan; you may quote them if you like:

Properly administer overall management of the property by:

Goal: Maintain accurate business records on expenditures, staff, maintenance, and other administrative duties.

Goal: Maintain regular office hours in order to respond to public requests for information in a timely manner and otherwise conduct the state's business in a normal manner.

Goal: Maintain all equipment, vehicles, facilities, residences, office structures, shop and associated buildings, fuel tanks, and any related items in optimum working condition to maximize efficient use of operating expenses allocated to this area.

Task: Regular inspection and servicing of all heavy equipment and vehicles.

Task: Regular inspection and repair of all buildings, residences and structures. This may include items such as plumbing, electrical, painting, fixtures, and any other features necessary to protect health and safety of staff and visitors to the property.

Task: Regular inspection and maintenance of fuel tanks to comply with federal and state laws.

As with the other elements, you may list tasks here or in the next chapter. Don't forget to outline potential environmental impacts and mitigation, if appropriate, associated with facility maintenance goals and objectives. Briefly describe T&E species concerns, if appropriate, and refer reader to the specific internal CESA coordination document or federal consultation for further information.

F. Biological Monitoring Element

This Section is prepared in the same manner as Section B. It includes a narrative describing the program for each monitoring element, its goals and tasks (optional), the optimal monitoring season for special or targeted species/habitats and any known constraints, limitations or methodologies. In this section, you should include any standard

or required protocols and discuss the relevance and consistency of any regional planning efforts (NCCPs, HCPs, watershed plans) with this area management plan. Sections within the regional plans relating to monitoring should be reiterated here. Regional partnerships or any state obligations for monitoring of “preserve design” or plan compliance should also be discussed.

V. OPERATIONS AND MAINTENANCE SUMMARY

This chapter contains information in a summary format which will guide budget preparation and work plans for the property. Section A, Operations and Maintenance Tasks, is not necessary if the information has already been presented in Chapter IV. Section C is also optional.

A. Operations and Maintenance Tasks to Implement Plan

If you have not already listed them in the previous section, use this section to itemize O&M tasks required to fulfill goals for previously described biological, public use, and facilities maintenance elements. You should give brief descriptions of specific operations and maintenance tasks which are necessary to implement the goals of this plan. This will help provide information necessary for annual budget preparation for management of the property.

B. Existing Staff and Additional Personnel Needs Summary

Summarize the number of existing staff employed at or who spend a percentage of their work schedule performing tasks on the property, and any additional requirements for personnel, both full time and temporary. Briefly outline the justifications for personnel requested without going into specific task descriptions. Provide the position classifications required to fully implement the plan as written. This may be in narrative or table format.

C. Operations and Maintenance Summary (Optional)

This section is optional and is provided for those who desire to summarize all estimated operations and maintenance costs associated with management of the property. This summary would provide more specific information required for annual budget preparation.

Example:

Department of Fish and Game. 1999. List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database. Sacramento.

Meyers, K.E. and W.F. Laudenslayer, Jr., Eds. 1988. A Guide to Wildlife Habitats of California. California Department of Forestry and Fire Protection. Sacramento.

APPENDICES

All appendices should be preceded by a title page which uniquely identifies it (e.g., Appendix A - Legal Description of Property). All pages within this appendix should be numbered consecutively: A-1, A-2, A-3,

Use Appendices as necessary to list such items as:

- 1) Property descriptions
- 2) Animal and plant species inventories
- 3) Soil surveys
- 4) Climatic information
- 5) Other useful but secondary information.
- 6) Environmental checklist and discussion of potential impacts (CEQA)
- 7) CESA internal coordination
- 8) Additional consultation documents
- 9) Public Comments
- 10) Our response to public comments
- 11) MOU/MA
- 12) Site interpretive plan
- 13) fire plan

Section 7 Consultation Selected Review Criteria

Sacramento Fish and Wildlife Office
Selected Review Criteria for Section 7 Off-Site Compensation
Revised Oct. 2009

Property Assurances and Conservation Easement

- Title Report (preliminary at proposal, and Final Title Insurance at recordation), shall be no older than six months;
- Property Assessment and Warranty;
- Subordination Agreement [**if there is any outstanding debt on the property**];
- Legal Description and Parcel Map;
- Conservation Easement (should use the current multi-agency standardized CE template document); or
- Non-Template Conservation Easement;

Site Assessment and Development

- Phase I Environmental Site Assessment;
- Restoration or Development Plan;
- Construction Security [*if applicable*];
- Performance Security;

Site Management

- Interim Management Plan;
- Interim Management Security Analysis and Schedule;
- Long-Term Management Plan;
- Endowment Fund Analysis and Schedule;

**Guidelines to assist in understanding what is required are detailed on pages 2–7.

Guidelines

Property Assurances and Conservation Easement (CE)

Title Report

1. Who holds fee title to property? Should be the Project Applicant. If not, there may be liability and contracting issues.
2. Are there any liens or encumbrances (existing debts or easements) on the property?
 - a. Review necessary supporting instruments to evaluate liens and encumbrances. Property owner should submit a “*Property Assessment and Warranty*,” which discusses each and every exception listed on the Preliminary and Final Title Insurance Policies, evaluating any potential impacts to the conservation value that could result from the exceptions (see below).
 - b. The *Property Assessment and Warranty* template is available at http://www.fws.gov/sacramento/es/cons_bank.htm, and should include a summary and full explanation of all exceptions remaining on the title, with a statement that the owner/Grantor accepts responsibility for all lands being placed under the CE as available for the primary purposes of the easement, as stated in the easement, and assures that these lands have a free and clear title and are available to be placed under the CE.
3. Could any of these liens or encumbrances potentially interfere with either biological habitat values or ownership? If existing easements can potentially interfere with the conservation values/habitat of the property, those portions of the land should be deducted from the total compensation acreage (or number of credits) available on the site.
4. A *Subordination Agreement* is necessary if there is any outstanding debt on the property. Review *Subordination Agreement* for adequacy—the lending bank or other lien holder must agree to fully subordinate each lien or encumbrance.

Legal Description and Parcel Map

1. Ensure accuracy of map, and location and acreage protected under the CE.
2. Both the map and the legal description should explain the boundaries of the individual project compensation site. The site should *not* have ‘leftover’ areas for later use.

Conservation Easement from Template

1. The current CE template can be found at http://www.fws.gov/sacramento/es/cons_bank.htm.
2. Who will hold the easement?
 - a. Must have third-party oversight by a qualified non-profit or government agency. Qualifications include:
 - i. Organized under IRC 501(c)(3);

- ii. Qualified under CA Civil Code § 815;
- iii. Bylaws, Articles of Incorporation, and biographies of Board of Directors on file at, and approved, by USFWS.
 - 1. Must meet requirements of USFWS, including 51% disinterested parties on the Board of Directors;
- b. Must have satisfactorily completed the CDFG due diligence process for easement/endowment holders and/or be accredited by the Land Trust Accreditation Commission <http://www.landtrustaccreditation.org/home>.
- 3. If not using the multi-agency template, applicant should specify objections they have to the template as provided, and may substantially delay processing as they will require Solicitor review. Alternate CEs must be approved by the USFWS prior to recording.

Non-Template Conservation Easements

- 1. You must either 1) add USFWS as a third-party beneficiary, or 2) add language throughout the document, in all appropriate places, that will assure USFWS the right to enforce, inspect, and approve any and all uses and/or changes under the CE prior to occurrence (including land use, biological management or ownership).
- 2. Include, at a minimum, language to:
 - a. Reserve all mineral, air, and water rights under the CE as necessary to maintain and operate the site in perpetuity;
 - b. Ensure all future development rights are forfeited;
 - c. Ensure all prohibited uses contained in the multi-agency conservation agreement template are addressed; and
 - d. Link the CE, Management Plan, and the Endowment Trust Fund within the document (e.g., note that each exists to support the others, and where each of the documents can be located if a copy is required).
- 3. Insert necessary language, particularly, but not exclusively, per: (can compare to multi-agency CE template)
 - a. Rights of Grantee
 - b. Grantee's Duties
 - c. Reserved Rights
 - d. Enforcement
 - e. Remedies
 - f. Access
 - g. Costs and Liabilities
 - h. Assignment and Transfer
 - i. Merger
 - j. Notices

Site Assessment and Development

Phase I Environmental Site Assessment

1. The Assessment must show that the compensation site is not subject to any recognized environmental conditions as defined by the American Society for Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, available at <http://www.astm.org/Standards/E1527.htm>, (i.e., the presence or likely presence of any Hazardous Substances or petroleum products).
2. If the Phase I Environmental Site Assessment identifies any recognized environmental conditions, the Project Applicant must represent and warrant to the USFWS that all appropriate assessment, clean-up, remedial, or removal action has been completed.

Development Plan [not required if doing preservation only]

1. The overall plan governing construction and habitat establishment activities required to be conducted on the Property, including, without limitation, creation, restoration, and enhancement of habitat.
 - a. This plan should include the baseline conditions of the Property including biological resources, geographic location and features, topography, hydrology, vegetation, past, present, and adjacent land uses, verified *Waters of the U.S. Jurisdictional Determination*, if applicable, species and habitats occurring on the property, a description of the activities and methodologies for creating, restoring, or enhancing habitat types, a map of the approved modifications, overall habitat establishment goals, objectives and Performance Standards, monitoring methodologies required to evaluate and meet the Performance Standards, an approved schedule for reporting monitoring results, a discussion of possible remedial actions, and any other information deemed necessary by the USFWS.
2. Any permits and other authorizations needed to construct and maintain the site shall be included and in place prior to the start of construction of the habitat.
3. Full construction plans for any habitat construction must be *USFWS-approved prior* to the start of construction of the habitat.

Construction Security

- a. The Project Applicant shall furnish a Construction Security in the amount of 100% of a reasonable third party estimate or contract to create, restore, or enhance habitats on the property in accordance with the Development Plan.
- b. The Construction Security shall be in the form of an irrevocable standby letter of credit, or a cashier’s check.
 - i. The letter of credit, if chosen, shall be issued for a period of at least one year, and shall provide that the expiration date will be

automatically extended for at least one year on each successive expiration date unless, until extension is no longer necessary.

Performance Security

- c. The Project Applicant shall furnish a Performance Security in the amount of 20% of the Construction Security.
 - d. The Performance Security shall be in the form of an irrevocable standby letter of credit, or a cashier's check.
 - i. The letter of credit, if chosen, shall be issued for a period of at least one year, and shall provide that the expiration date will be automatically extended for at least one year on each successive expiration date unless, until extension is no longer necessary.
4. The Construction and Performance Securities must:
- a. Be held by a qualified, Service-approved, non-profit organization or government agency [see requirements under CE above], and
 - b. Be held according to minimum standards for assuring maximum success in earning potential, and will include assurances for no loss of principle, and
 - c. Disbursements or releases from each of the funds must be for documented expenditures, as they occur.

Site Management

Interim Management Plan

- 1. The Interim Management Plan should identify the short-term management, monitoring, and reporting activities to be conducted from the time construction ends until the Endowment Fund has been fully funded for one year and all the Performance Standards in the Development Plan have been met.

Interim Management Security Analysis and Schedule

- a. The Project Applicant shall furnish an Interim Management Security (in the form of a standby letter of credit) in the amount equal to the estimated cost to implement the Interim Management Plan during the first year of the Interim Management Period, as set for in the Interim Management Security Analysis and Schedule
- b. The Interim Management Security Analysis and Schedule shall consist of a table and/or spreadsheet that shows all of the tasks (management, monitoring, reporting), task descriptions, labor (hours), cost per unit, cost frequency, timing or scheduling of the tasks, the total annual funding necessary for each task, and any associated assumptions for each task required by the Interim Management Plan. The total annual expenses should include administration and contingency costs.
- c. The Interim Management Security must:

- i. Be held by a qualified, Service-approved, non-profit organization or government agency [see requirements under CE above], and
- ii. Be held according to minimum standards for assuring maximum success in earning potential, and will assurances for no loss of principle.
- iii. Disbursements or releases from the fund must be for documented expenditures, as they occur.

Long-Term Management Plan (LTMP)

- 1. The LTMP template can be found at http://www.fws.gov/sacramento/es/cons_bank.htm and identifies the long-term management, monitoring and reporting activities to be conducted after the interim Management Period.
- 2. The LTMP should include at minimum:
 - a. Purpose of the Project and purpose of the LTMP;
 - b. A baseline description of the setting, location, history, and types of land use activities, geology, soils, climate, hydrology, habitats present (once project meets Performance Standards), and species descriptions;
 - c. Overall management, maintenance and monitoring goals; specific tasks and timing of implementation; and discussion of any constraints, which may affect goals;
 - d. The Endowment Fund Analysis and Schedule (see below),
 - e. Discussion of Adaptive Management actions for reasonably foreseeable events and possible thresholds for evaluating and implementing Adaptive Management;
 - f. Rights of access to the Property and prohibited uses of the Property as provided in the CE; and
 - g. Procedures for Property transfer, land manager replacement, amendments, and notices.
- 3. A copy of the LTMP must be either recorded with the CE, or the CE must state in its body that the current management plan can be obtained upon request from the USFWS, if not using the CE template.

Endowment Fund Analysis and Schedule

- a. Can use a PAR or PAR-like analysis that must be based upon the final, approved LTMP.
- b. The analysis and schedule shall consist of a table and/or spreadsheet that shows all of the tasks (management, monitoring, reporting), task descriptions, labor (hours), cost per unit, cost frequency, timing or scheduling of the tasks, the total annual funding necessary for each task, and any associated assumptions for each task required by the Interim Management Plan. The total annual expenses should include administration and contingency costs.
- c. The Endowment Fund must:

- i. Be held by a qualified, Service-approved, non-profit organization or government agency [see requirements under CE above], and
- ii. Be held according to minimum standards for assuring maximum success in earning potential, and will include assurances for no loss of principle.
- iii. Disbursements or releases from the fund must be for documented expenditures, as they occur.