

Yolo County Natural Heritage Program Plan

Chapter 1: Introduction

1.1 Overview

The Yolo County Natural Heritage Program (NHP) Plan (NHP Plan or Plan) is a comprehensive, county-wide plan designed to provide for the long-term conservation and management of sensitive and at-risk species and the habitats upon which they depend, while accommodating other important uses of the land. Specifically, the NHP Plan is intended to protect regional biodiversity by focusing on the protection of important natural communities, including agricultural landscapes that support key species and ecological processes. The NHP Plan serves as a Habitat Conservation Plan (HCP), pursuant to the federal Endangered Species Act (ESA), and a Natural Community Conservation Plan (NCCP) under the California Natural Community Conservation Planning Act (NCCPA).

The NHP Plan will address the needs of a broad range of species and natural communities across the 653,820 acre planning area. To achieve this outcome, the Plan sets out a detailed conservation strategy that is designed to meet identified biological resource goals and objectives through the implementation of conservation measures, including measures to minimize and mitigate impacts, and a long-term adaptive management and monitoring program. The Plan will provide the basis for the issuance of long-term permits under the ESA and the NCCPA that will cover an array of public and private activities, including activities essential to the ongoing viability of the County's agricultural economy.

The NHP Plan has been developed by the Yolo County NCCP/HCP Joint Powers Agency (JPA), which consists of elected officials representing Yolo County and the cities of Davis, West Sacramento, Winters, and Woodland. On the basis of this Plan, these member agencies are expected to receive incidental take permits from both the U.S. Fish and Wildlife Service (USFWS) pursuant to section 10(a)(1)(B) of the ESA and from the California Department of Fish and Game (CDFG) under Section 2835 of the Fish and Game Code, thereby ensuring compliance with those laws for the activities covered by the Plan that may affect protected species, including those species that are currently listed as threatened or endangered under State and/or federal law or are likely to be so in the future.

The NHP Plan will help advance a number of regional environmental and economic objectives. The Plan provides an alternative to the existing piecemeal, project-by-project approach to endangered species permitting that currently exists, offering instead a comprehensive program that will afford far greater benefits to species and their habitats and establish a more efficient and less costly process by which public and private projects may satisfy the requirements of State and federal endangered species laws. By identifying priority areas for conservation and for ongoing and future activities, the NHP Plan will provide much needed certainty to the land use and development process, as well as to the agricultural economy, and help strike a sensible balance between natural resources preservation and economic growth in the region.

1.2 Purpose and Background

1 **1.2.1 Purpose**

2 The purpose of the NHP Plan is to provide a systematic and holistic approach to the protection
3 and enhancement of Yolo County’s unique and important biodiversity and establish an efficient
4 means by which various land uses occur in compliance with State and federal regulatory
5 requirements. To that end, the NHP Plan will provide for the long-term conservation and
6 management of sensitive species, and help resolve significant regulatory compliance issues for a
7 range of land uses that occur in the County. The Plan is also designed to accommodate
8 appropriate economic and development activity, support the County’s vibrant agricultural
9 economy, and enhance recreational opportunities. The NHP Plan will complement a number of
10 other local efforts aimed at advancing conservation objectives in the County.

11 The Plan is intended to meet the requirements of the ESA and the NCCPA, and is designed to
12 streamline and coordinate existing processes for review and permitting of public and private
13 activities that potentially affect protected species. To meet this goal, the NHP Plan sets out a
14 conservation strategy that includes measures to ensure that impacts to covered species and
15 habitats related to activities are appropriately avoided, minimized, and mitigated. These covered
16 activities reflect the range of existing and future activities that account for much of the regional
17 economy (see Chapter ____, Covered Activities). The Plan is further intended to reinforce the role
18 of local government in overseeing local land use planning and decision-making.

19
20 The JPA will apply to the USFWS and CDFG for permits that authorize the incidental take of the
21 species covered by this NHP, which includes federally and State listed species and unlisted
22 species that may become listed during the term of the NHP. The species for which the JPA is
23 requesting take authorization are collectively referred to as the “covered species.” It is
24 anticipated that the USFWS and CDFG will issue permits to the JPA pursuant to the ESA and
25 NCCPA. The local jurisdictions will extend these authorizations to activities that are covered by
26 the Plan. The USFWS and CDFG also will provide assurances to the JPA and other
27 beneficiaries of the permits that no commitments of funds, land, or water will be required to
28 address impacts on covered species beyond those that are set out in the NHP.

29 **1.2.2 Background**

30 **1.2.2.1 JPA**

31 The Joint Powers Agency was formed in 2002 by the County, the incorporated cities of Davis,
32 West Sacramento, Winters, and Woodland , and the Univeristy of California at Davis (UCD) for
33 the purpose of overseeing the development of a regional conservation plan for Yolo County. The
34 JPA Board of Directors, which consists of elected representatives appointed by the member
35 jurisdictions and an ex-officio non-voting representative from UCD, has two primary functions:
36 (1) to assist in the planning, preparation, and subsequent administration of the NHP; and (2) to
37 facilitate acquisition of conservation easements to preserve habitat to mitigate for certain impacts
38 to Swainson’s hawk foraging habitat. The JPA’s role in overseeing the Swainson’s hawk
39 mitigation program arose out of a 2002 Memorandum of Understanding between the JPA and
40 CDFG that established a process to allow for land development activities to proceed during the
41 development of the NHP.

1 In 2005, the JPA entered into a Planning Agreement with the CDFG and the USFWS, pursuant
2 to the NCCPA, that set out the initial scope of the program and defined the roles and
3 responsibilities of the parties in the development of the Plan. The Planning Agreement has
4 helped guide the NHP Plan planning process and to define the initial scope of the effort. Among
5 other things, the Planning Agreement identified 28 species to be considered for coverage under
6 the Plan.

7

8 **1.2.2.2 Steering Advisory Committee**

9 In 2004, the JPA appointed a Steering Advisory Committee (SAC) to provide input and advice
10 during the development of the NHP. The SAC consists of representatives (“stakeholders”) of the
11 primary groups with an interest in the NHP, including landowners; the agricultural community;
12 conservation organizations; land developers; scientists; flood control, water supply, and land use
13 agencies; the academic community; and members of the public-at-large. The group held open
14 meetings on a regular basis (generally monthly) to review relevant materials and documents,
15 evaluate and synthesize ideas, data, and information, and discuss and resolve complex issues.
16 The SAC sought to reach consensus when possible. Through this process, the SAC provided
17 recommendations to the JPA Board on a range of matters reflected in this Plan.

18 Steering Committee members are listed in Table **1.2.2.2**. Committee members were selected on the
19 basis of their expertise, interest in the program, and capacity to represent the interests of their
20 particular stakeholders.

21 ***[ADD APPENDIX OF ALL MEETING DATES AND ATTENDEES]***

22

23 During meetings conducted between August and October 2008, the SAC prepared, and
24 unanimously adopted, the following planning principles to help guide the preparation of the
25 NHP.

26

- 27 • The planning process will be a collaborative effort that is open, inclusive, and actively
28 participatory.
- 29
- 30 • Everyone participating in the process will be treated with respect, dignity, courtesy and
31 responsiveness, and the same will be expected from them.
- 32
- 33 • When shared values and goals are identified, they will be articulated and written into the
34 Plan.
- 35
- 36 • Partnerships that promote the Plan and its implementation will be cultivated.
- 37
- 38 • The planning process will be conducted in a cost effective and efficient manner without
39 compromising conservation values and goals.
- 40

- 1 • Administration of the program will provide predictability, permit streamlining, and efficiency
2 related to state and federal regulatory programs that protect covered species, including
3 endangered species.

- 4 • The process and the Plan will complement other efforts designed to protect, enhance, restore,
5 and manage biodiversity, as well as natural and intrinsic resource values, in Yolo County.
6 The process will seek to leverage local, state, and federal funding to help achieve the Plan's
7 goals and objectives.

- 8 • The Plan shall assemble a shared knowledge base that describes the key concepts of the NHP
9 planning process.

- 10
- 11 • The Plan is based on willing participants and sellers interested in preserving their land and
12 the predominantly rural and agricultural character of Yolo County for future generations.
- 13
- 14 • The Plan shall be based on a strong scientific foundation.
- 15
- 16 • The Plan shall encourage farm and range land management practices that are compatible with
17 species and habitat conservation objectives.
- 18
- 19 • The goal of the Plan is to restore, enhance, and conserve the natural heritage of Yolo County,
20 while encouraging smart, sensible, and sustainable economic activity, maintaining and
21 enhancing agricultural production, and including and expanding recreational opportunities.
- 22

23 The SAC formed three subcommittee working groups, which focused on specific issues
24 regarding the plan, specifically: biology, agricultural interface, and urban interface. The
25 subcommittees met on an ad hoc basis, often monthly or bimonthly, to consider how plan
26 components, including scientific data and analysis, approaches to conservation strategies,
27 adaptive management and monitoring, should be shaped in relation to the specific issues of the
28 subcommittee.

29
30 *[ADD A BRIEF DISCUSSION OF OUTREACH/WORKSHOPS ETC]*

31 32 **1.3 Regulatory Context**

33 The Yolo NHP operates within and assists in achieving the requirements of numerous applicable
34 federal and state laws and regulation. These relationships are described below.

35 36 **1.3.1 Regulatory Purpose**

37
38 The NHP has been designed to serve as a Habitat Conservation Plan pursuant to section
39 10(a)(2)(A) of the federal ESA and a Natural Community Conservation Plan under the California
40 NCCPA. The Plan is also consistent with, and is intended to support, compliance with other

1 federal and state wildlife and related laws and regulations, the County’s recently updated General
2 Plan, and other local conservation planning efforts, which are described in this chapter in greater
3 detail.

4

5 **1.3.2 Relationship with the Yolo County General Plan**

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7 Yolo County is currently in the process of revising its General Plan. A draft General Plan was
8 released for public comment on November 10, 2008

9 (<http://www.yolocounty.org/Index.aspx?page=1528>), and the County expects to adopt an
10 updated General Plan in September 2009. ******To be updated as GP process moved forward.******

11 The General Plan update is being developed in a manner that anticipates the approval and
12 implementation of the NHP Plan, and its incorporation into the Conservation and Open Space
13 Element of the General Plan.

14

15 The draft revisions to the General Plan reflect a number of goals, policies, and actions that form
16 the foundation of the NHP Plan. For example, draft General Plan Goal CO-2 seeks to “enhance
17 biodiversity through sustainable protection of species that are sensitive, rare, declining, unique,
18 or represent valuable local biological resources.” In addition, there are numerous draft General
19 Plan policies that serve to meet the goal of biodiversity protection, including Policy CO 2-1,
20 which specifically contemplates the implementation of a county-wide NCCP/HCP that will
21 “preserve and enhance existing wildlife resources and open space.” The draft General Plan also
22 includes a set of nine “Implementation Actions” that will help facilitate the implementation of
23 the NHP. For example, Action CO-A21 directs the County to “integrate the HCP/NCCP
24 (Natural Heritage Program) into the General Plan as appropriate.” ***[ANY OTHER IMPORTANT***
25 ***ONES TO MENTION?]***

26

27 ******County should advise if the policies cited above are accurate and identify other relevant***
28 ***goals.******

29

30 **1.3.3 Relationship with Other Regional HCP/NCCPs**

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32 Several of the counties adjacent to Yolo County have developed or are in the process of
33 developing regional habitat conservation plans (Figure 1-). Among the most significant of
34 these efforts are the: Solano Multi-Species HCP, South Sacramento HCP, Natomas Basin HCP,
35 and Yuba-Sutter NCCP/HCP. In addition, the California Department of Water Resources is
36 currently collaborating with other public water agencies and various stakeholders to develop an
37 NCCP/HCP for the Bay Delta. A number of habitats, vegetation communities, and covered
38 species that are being addressed by the NHP Plan occur within these other plan areas. The NHP
39 Plan recognizes that an effective conservation program for species and habitats must take into
40 account resources that occur outside Yolo County’s jurisdictional boundaries. As such, the
41 Plan’s conservation strategy was shaped in part by the resource values of the larger region and
42 includes measures to complement the strategies of other planning efforts.

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44 **1.3.4 Relationship to the Bay Delta Conservation Program**

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[Will add some appropriate text regarding the relationship to the BDCP]

1.3.5 Relationship between the NHP and Federal and State Regulations

The Yolo NHP Plan has been prepared to meet the requirements of numerous state and federal laws and regulations, as describe in this section.

1.3.5.1 Federal Endangered Species Act and the California Natural Community Conservation Planning Act

[INTRODUCTORY TEXT TO THE ESA/NCCPA WILL BE REVISED, AND CLARIFY THAT THE NCCP PROVIDES REGULATORY COVERAGE FOR SPECIES LISTED UNDER THE CESA]

Federal Endangered Species Act

The United States Congress passed the ESA in 1973 to protect various species of plants, invertebrates, fish, and other wildlife from extinction. Section 9 of the ESA prohibits the taking of a listed fish or wildlife species. “Take” has been defined broadly to mean harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. section 1532(18) (1988)). “Harm” has been interpreted to mean an act which actually kills or injures wildlife, including those activities that cause significant habitat modification or degradation resulting in the killing or injuring of wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The day to day implementation of the ESA is done by the United States Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration – Fisheries (NOAA Fisheries). (7 U.S.C. §136; 16 U.S.C. §460 et seq.). The ESA includes mechanisms that provide exceptions to the section 9 take prohibitions. These are addressed in section 10 for non-federal actions, such as those covered in the Yolo NHP, and in Section 7 that applies to federal actions, as described below.

The take prohibition for listed plants is more limited than for listed wildlife. Under ESA section 9(a)(2)(B), listed plants are protected from removal, reduction to possession, and malicious damage or destruction in areas that are under federal jurisdiction. Section 9(a)(2)(B) of the ESA also provides protection to plants from removal, cutting, digging up, damage, or destruction where the action takes place in violation of any state law or regulation or in violation of a state criminal trespass law. Thus, the ESA does not prohibit the incidental take of federally-listed plants on private or other non-federal lands unless the take or action resulting in take requires federal authorization or is in violation of state law. Thus, incidental take authorization is generally only necessary for take of wildlife and fish species. However, the ESA’s Section 7(a)(2) prohibition against jeopardy applies to plants, and the USFWS may not issue a Section 10(a)(1)(B) incidental take permit for wildlife species if the issuance of that permit would result in jeopardy to a listed plant species.

1 Under section 10(a)(1)(B) of the ESA, the USFWS may permit, under certain terms and
2 conditions, the incidental take of listed species that may occur pursuant to an otherwise lawful
3 activity. Section 10 and the USFWS' implementing regulations then define under what
4 circumstances the USFWS will issue an ITP.

5 Under the ESA, no permit may be issued by the USFWS unless the applicant submits a
6 conservation plan that specifies:

- 7 • The impact that will likely result from such taking;
- 8 • steps the applicant will take to minimize and mitigate such impacts, and the funding that
9 will be available to implement such steps;
- 10 • what alternative actions to such taking the applicant considered and the reasons why such
11 alternatives are not being utilized; and
- 12 • such other measures that the Services may require as being necessary or appropriate for
13 purposes of the plan.

14 (16 USC §1539 (2)(A)(i-iv))

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16 In 2000, the USFWS adopted a five-point policy designed to clarify certain elements of an HCP.
17 The five-point policy recommends that:

- 18 • an HCP include specific, measurable biological goals and objectives based on the best
19 available scientific information;
- 20 • an HCP include an adaptive management provision;
- 21 • an HCP include a monitoring program to gauge the effectiveness of the plan in meeting
22 the biological goals and objectives and the permittees compliance with the plan;
- 23 • the Service considers several factors to determine the appropriate duration of an ITP,
24 including the duration of the covered activities and the expected effects on the covered
25 species; and
- 26 • the Service provides expanded public participation by providing a 60-day comment
27 period for most HCPs.

28 Measurable biological goals and objectives for the Yolo NHP Plan are addressed in Chapter 5,
29 **Conservation Strategy**, and include goals for each natural community and species covered by the
30 Plan. The Yolo NHP adopts an adaptive management decision-making structure and
31 implementation mechanism, and identifies anticipated adaptive management-related research
32 studies and monitoring efforts (see Section _____, **Adaptive Management**). The Plan's
33 monitoring program is designed to ensure compliance with Plan provisions and monitoring its
34 effectiveness in achieving its goals and objectives (see Section ____, **Monitoring**). The
35 permittees are seeking Section 10 permit and State NCCPA section 2835 permits from the
36 USFWS and CDFG with terms of 50 years, and all assessments in the Plan are based on this 50-

1 year time period.¹ Several factors were considered to determine the appropriate duration of the
2 permits, including the likely future land uses and level of resources committed to the Plan. The
3 duration of this plan reflects the permittees' commitment to maintaining agriculture as the
4 primary land use within the County, and reflects the slow growth nature of the County. Fifty
5 years was considered a reasonable duration to provide a sufficient benefit in increased permitting
6 efficiency to offset the permittees' investments in preparing and implementing the Plan. Finally,
7 this period was also considered a minimum needed to provide a comprehensive assessment of
8 effectiveness of the NHP Plan.

9 The five point policy also "encourage[s] the use of scientific advisory committees during
10 development and implementation of HCPS" (65 FR 10635256, June 1, 2000). Independent
11 scientific input also is required by the NCCPA (Section 2081(b)(5)].

12 An Independent Scientific Advisory Panel was established in 2005 to advise the JPA. Science
13 Advisors met to discuss key planning issues and address questions posed by the JPA
14 representatives and stakeholders. All meetings were open to the public and public input was
15 solicited and received. The panel issued their report in 2006 (Independent Scientific Advisors
16 2006), which has been used as guidance in developing the NHP Plan. Other scientific input
17 incorporated into the planning process has included (1) scientific expertise of some members of
18 the SAC; (2) consultant use of scientific knowledge, literature, and other materials in preparing
19 the NHP Plan; (3) review of covered species accounts and habitat models by researchers and
20 managers with specialized expertise, and (4) a comprehensive evaluation of the distribution,
21 abundance, and habitat use by the Swainson's hawk in Yolo County (Estep Environmental
22 Consulting 2008).

23

24 The USFWS shall issue an ITP if the Services find, after opportunity for public comment, that:

- 25
- 26 • The taking will be incidental;
 - 27 • the applicant will, to the maximum extent practicable, minimize and mitigate the impacts
28 of such taking;
 - 29 • the applicant will ensure that adequate funding for the plan will be provided;
 - 30 • the taking will not appreciably reduce the likelihood of the survival and recovery of the
31 species in the wild;
 - 32 • the measures, if any, required under subparagraph (A)(iv) will be met; and
 - 33 • the Services have received such other assurances as may be required that the plan will be
implemented.

¹ Prior to permit expiration, the Permittees may apply to renew or amend the Plan and its associated permits and authorizations to extend their terms. The 50-year timeframe for the plan was chosen several reasons.

1 (16 USC §1539 (2)(B))

2 The ESA’s implementing regulations provide “no surprises” assurances. (50 CFR Part
3 17.22(b)(5), 17.32(b)(5); 50 CFR 222.307(g)) The no surprises rule assures private landowners
4 that if “unforeseen circumstances” arise, the USFWS will not require the commitment of
5 additional land, water or financial compensation or additional restrictions on the use of land,
6 water, or other natural resources beyond what is required by the ITP and associated HCP and
7 Implementing Agreement without the permittee’s consent. The government will honor these
8 assurances as long as a permittee is implementing the terms and conditions of the HCP, permit,
9 and other associated documents.

10

11 The Yolo NHP Plan has been prepared to satisfy these statutory and regulatory requirements, and
12 will ensure, among other things, that impacts to covered species are minimized and mitigated to
13 the maximum extent practicable. In addition, the NHP Plan specifically addresses the policies
14 articulated in the five-point policy.

15

16 [ESA Section 7] Prior to the approval of an HCP, the USFWS is required to undertake an *internal*
17 Section 7 consultation because issuance of an incidental take permit is a federal action. Elements
18 specific to the Section 7 process that are not required under the Section 10 process (e.g., analysis
19 of impacts on designated critical habitat, analysis of impacts on listed plant species, and analysis
20 of indirect and cumulative impacts on listed species) are included in this Plan to assist the
21 USFWS in meeting the requirements of Section 7.

22

23 **Natural Community Conservation Planning Act**

24

25 The California Endangered Species Act (CESA) (Fish & Game Code §§ 2050, et seq.) generally
26 parallels the main provisions of the federal ESA and is administered by the California
27 Department of Fish and Game (DFG). The CESA states that all native species of fishes,
28 amphibians, reptiles, birds, mammals, invertebrates, and plants, and their habitats, threatened
29 with extinction and those experiencing a significant decline which, if not halted, would lead to a
30 threatened or endangered designation, will be protected or preserved.

31 The CESA prohibits “take” of any species that the Fish and Game Commission determines to be
32 an endangered species or a threatened species. Take is defined in Section 86 of the Fish and
33 Game Code as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or
34 kill.” Like the federal ESA, the DFG may authorize the incidental take of State-listed species
35 under certain circumstances, and specifically may authorize take pursuant to the NCCPA as
36 discussed below.

37 The Natural Community Conservation Planning Act was added to the CESA in 1991. (Fish &
38 Game Code §§2800-2840). These provisions provide for voluntary cooperation among DFG,
39 landowners, and other interested parties to develop natural community conservation plans which
40 provide for early coordination of efforts to protect listed species or species that are not yet listed.

1 The primary purpose of the NCCPA is to preserve species and their habitats, while allowing
2 reasonable and appropriate development to occur on affected lands. The NCCPA establishes a
3 process to allow for comprehensive, regional multi-species planning. The NCCP program has
4 provided the framework for innovative efforts by the State of California, local governments, and
5 private interests to plan for the protection of regional biodiversity and the ecosystems upon
6 which it depends. NCCPs seek to ensure the long-term conservation of multiple species, while
7 allowing for compatible and appropriate economic activity to proceed. Launched as a pilot
8 program focusing on the coastal sage scrub habitat of southern California, NCCPs are now being
9 developed throughout the State.² [TO BE EDITED]

10
11 In 2002, the NCCP Act was amended to provide permit issuance standards.³ The following
12 criteria are some of the factors that must be evaluated prior to NCCP approval:

- 13 • The plan provides for the protection of habitat, natural communities, and species diversity
14 on a landscape level;
- 15 • the plan contains specific conservation measures that meet the biological needs of
16 covered species;
- 17 • the plan provides for adaptive management and monitoring; and,
- 18 • the plan ensures adequate funding.⁴

19
20 Once an NCCP has been approved, CDFG may authorize, by permit, the taking of any covered
21 species whose conservation and management is provided for in the plan.⁵

22
23 [ADD TEXT Re CRITERIA]

24 **1.3.5.2 Other Federal and State Wildlife Laws and Regulations**

25 **Migratory Bird Treaty Act**

26
27 The MBTA implements various treaties and conventions between the U.S. and Canada, Japan,
28 Mexico, and the former Soviet Union for the protection of migratory birds. Under the MBTA,
29 taking, killing, or possessing migratory birds is unlawful as is taking of any parts, nests, or eggs
30 of such birds (16 USC 703). Taking is defined more narrowly under the MBTA than under the
31 ESA and includes only the death or injury of individuals of a migratory bird species or their
32 eggs. Take under the MBTA does not include the concepts of harm and harassment as defined
33 by the ESA. The MBTA defines migratory birds broadly; all covered birds in this NHP Plan are
34 considered migratory birds under the MBTA.

² California Department of Fish & Game, Status of NCCP Planning Efforts, www.dfg.ca.gov/nccp/status.htm.

³ Fish & Game Code § 2800 *et. seq.*

⁴ Fish & Game Code § 2820.

⁵ Fish & Game Code § 2835.

1 The USFWS provides guidance regarding the incidental take of ESA-listed migratory birds
2 (Appendix 5 in the HCP Handbook). According to these guidelines, an incidental-take permit
3 can function as a Special Purpose Permit under the Migratory Bird Treaty Act (50 C.F.R. 21.27)
4 for the take of all ESA-listed covered species in the amount and/or number and subject to the
5 terms and conditions specified in an HCP. Any such take will not be in violation of the
6 Migratory Bird Treaty Act of 1918, as amended (16 USC 703-12).

7 None of the covered bird species are currently listed under the ESA. The acquisition of the
8 Preserve System and subsequent restoration and management will provide a significant “benefit
9 to the migratory bird resource” as required by the Special Purpose Permit.⁶ Therefore, if any of
10 the covered birds become listed under the ESA during the permit term, the ESA permit would
11 also constitute an MBTA Special Purpose Permit for that species for a 3-year term as specified
12 under 50 CFR Sec. 21.27 subject to renewal by the permittees. However, until a covered bird is
13 listed under ESA, it will be the responsibility of individual project applicants to fully comply
14 with the MBTA.

15 **Bald Eagle and Golden Eagle Protection Act**

16 The Bald Eagle and Golden Eagle Protection Act prohibits the taking or possession of and
17 commerce in bald and golden eagles, with limited exceptions. Under the Act, it is a violation to
18 “...take, possess, sell, purchase, barter, offer to sell, transport, export or import, at any time or
19 in any manner, any bald eagle commonly known as the American eagle, or golden eagle, alive
20 or dead, or any part, nest, or egg, thereof...” Take is defined to include pursue, shoot, shoot at,
21 poison, wound, kill, capture, trap, collect, molest, and disturb. Both species are covered species
22 in this NHP. The Plan complies with provisions of the Bald Eagle and Golden Eagle Protection
23 Act.

24 **California Fully Protected Species**

25 In the 1960s, before the CESA was enacted, the California Legislature identified species for
26 specific protection under the California Fish and Game Code. These fully protected species may
27 not be taken or possessed at any time, and no licenses or permits may be issued for their take
28 except for collecting these species for necessary scientific research and relocation of the bird
29 species for the protection of livestock. Fully protected species are described in Sections 3511
30 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish) of the California Fish
31 and Game Code. These protections state that “...no provision of this code or any other law shall
32 be construed to authorize the issuance of permits or licenses to take any fully protected [bird],
33 [mammal], [reptile or amphibian], [fish].” This Plan includes conservation measures to comply
34 with the state’s Fully Protected species laws.

35 **California Fish and Game Code 3503 (Bird Nests)**

⁶ Likewise, migratory birds that are not specifically covered by the NHP will benefit from seasonal restrictions on construction and other conservation measures described in this Plan.

1 Section 3503 of the Fish and Game Code makes it unlawful to take, possess or needlessly
2 destroy the nests or eggs of any bird, unless otherwise permitted by the Fish and Game Code.
3 The Plan contains conservation measures to minimize take for covered species, and will serve as
4 a basis for compliance with Section 3503.

5 **California Fish and Game Code 3503.5 (Birds of Prey)**

6 Section 3503.5 of the Fish and Game Code prohibits the take, possession or destruction of any
7 birds of prey or their nests or eggs, unless otherwise permitted by the Fish and Game Code.
8 The CDFG may issue permits authorizing take pursuant to the CESA or NCCPA. The Plan
9 contains conservation measures to minimize such take and will serve as a basis for compliance
10 with Section 3503.5.

11 **1.3.5.3 National Environmental Policy Act**

12 NEPA requires federal agencies to include in their decision-making process appropriate and
13 careful consideration of all environmental effects of a proposed action and of possible
14 alternatives. Documentation of the environmental impact analysis and efforts to avoid or
15 minimize the adverse effects of proposed actions must be made available for public notice and
16 review. This analysis is documented in either an environmental assessment (EA) or an
17 environmental impact statement (EIS). Project proponents must disclose in these documents
18 whether their proposed action will adversely affect the human or natural environment. NEPA's
19 requirements are more procedural than substantive in that NEPA requires disclosure of
20 environmental effects and mitigation possibilities but includes no mandate to actually require
21 the imposition of mitigation.

22 The issuance by the USFWS of an incidental take permit under Section 10 of the ESA constitutes
23 a federal action that is subject to NEPA. To satisfy NEPA requirements, the USFWS released a
24 draft EIS on [REDACTED] for a 90-day comment period that closed on [REDACTED]. The final
25 EIS accompanies this final NHP Plan.

26 **1.3.5.4 California Environmental Quality Act**

27 CEQA is similar to but more extensive than NEPA in that it requires that significant
28 environmental impacts of proposed projects be reduced to a less-than-significant level through
29 the adoption of feasible avoidance, minimization, or mitigation measures unless overriding
30 considerations are identified and documented.

31 The JPA is serving as the lead agency under CEQA. To comply with CEQA, the JPA released a
32 draft joint environmental impact report/environmental impact statement (EIR/EIS) on [REDACTED].
33 The public comment period on the EIR/EIS closed on [REDACTED], and the final EIR/EIS
34 was certified by the JPA on [REDACTED].

35 **1.4. Scope of the NHP**

1 **1.4.1. Geographic Scope of the NHP Planning Area**

2 The planning area for the NHP, depicted in Figure ____, encompasses all areas within the
3 boundaries of Yolo County and comprises the entire area eligible for regulatory coverage under
4 the Pan. The NHP also describes a “Study Area,” , which consists of lands that extend
5 approximately ½ mile beyond the County’s jurisdictional boundary, for the purpose of ensuring
6 that the NHP Plan sufficiently recognizes resource planning issues that occur outside of the
7 county. Much of the biological analysis conducted for the NHP Plan, including habitat mapping,
8 species data collection, and modeling of predicted distributions of species, included these areas
9 outside of Yolo County to ensure consideration of broader ecological patterns and relationships.
10 Existing and planned conservation areas identified in other conservation plans were factored into
11 the NHP Plan Conservation Strategy to help advance regional conservation goals, such as larger-
12 scale landscape connectivity.

13 **1.4.1.1. Planning Subareas**

14 The Yolo NHP is organized around three major land categories (“subareas”), depicted in Figure
15 _____, with different, but interrelated, biological and ecological characteristics: upland areas;
16 riparian corridors, including wetland areas; and agricultural lands (see Chapter 2, *Existing*
17 *Conditions*). Planning subareas were further subdivided into geographic-based planning units to
18 facilitate the plan’s analysis of potential impacts (see Chapter 4, *Assessment of Impacts and*
19 *Levels of Take*) and to support the implementation of the Conservation Strategy (see Chapter 5,
20 *Conservation Strategy*). [SUGGEST A COUPLE MORE SENTENCES REGARDING
21 INTERRELATEDNESS ONCE CONSERVATION STRATEGY IS DOCUMENTED]

22 **1.4.2. Covered Species**

23 The NHP was designed to provide the basis for regulatory coverage for __ species, including
24 species currently listed and species that have yet to be listed (see Table 2-__ in Chapter 2,
25 *Existing Conditions*). These species, for which incidental take coverage is sought, are
26 collectively referred to as Covered Species. The list was developed through a screening and
27 evaluation process that considered a total of species (See Appendix ____). The list
28 includes most of the species that were identified in the 2004 Planning Agreement (Yolo County
29 et al. 2004).

30 In addition to conserving natural communities which the covered species depend upon, the NHP
31 will benefit many other species that use the natural communities being conserved by this Plan.
32 [DISCUSS BRIEFLY CRITERIA FOR SELECTION AND GREATER EMPHASIS THAT
33 OTHER SPECIES WILL BENEFIT]

34 **1.4.3 Covered Activities**

35 A primary purpose of the NHP Plan is to obtain authorization for the incidental take of species
36 under the ESA and NCCPA for a variety of activities that occur or are likely to occur within
37 Yolo County. The JPA has sought to include a comprehensive range of activities to ensure that
38 [ADD - describe benefits – systematic mitigation, efficient compliance, streamlining, cost, long
39 term planning etc].

1 The NHP Plan sets out [four] broad classes of activities that for which take coverage is being
2 sought, including urban development, infrastructure projects, agricultural activities, and certain
3 conservation-related actions included in this plan. The types of activities and specific projects
4 covered are identified in Chapter 3, *Covered Activities*, and include:

- 5 • development as identified in the 2009 County General Plan and currently adopted
6 General Plans for the cities;
- 7 • public and private infrastructure development and operations and maintenance, including
8 those related to existing and future transportation, energy, and communications facilities
9 [*verify this restriction*];
- 10 • flood control, water supply [???],
- 11 • operation and maintenance and development of parks and recreation facilities;
- 12 • certain agricultural activities;
- 13 • specified mining projects [????];
- 14 • emergency services [????]; and
- 15 • conservation-related activities, including preserve management activities [REVISIT - and
16 associated incidental take on adjacent lands resulting from enhancement of covered
17 species populations on preserves.]

18

19 [*Review this section after completion of Chapter 3*]

20