

APPENDIX C
Implementing Agreement

FINAL

IMPLEMENTING AGREEMENT

for the

HABITAT CONSERVATION PLAN

for

SOUTH SACRAMENTO COUNTY

January 2018

1.0 PARTIES

The Parties to this Implementing Agreement are the County of Sacramento, City of Galt, City of Rancho Cordova, Sacramento County Water Agency, the Southeast Connector Joint Powers Authority and the SSHCP Implementing Entity (collectively the “Plan Permittees”), and the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) (collectively the “Parties”).

2.0 RECITALS AND PURPOSE

2.1 Recitals.

2.1.1 The Plan Area, and in particular the Preserve System, has been determined to provide, or potentially provide, habitat for the Covered Species as defined in Section 3.

2.1.2 The Plan Area is currently used for a variety of purposes including the potential for development. Plan Permittees are desirous of undertaking a number of activities, including public, residential, commercial and industrial development activities as summarized in Section 5 within the Plan Area in a manner that is designed to avoid or minimize adverse impacts to the Covered Species. Additionally, Plan Permittees wish to undertake actions that would be beneficial to and contribute to the conservation of the Covered Species.

2.1.3 Plan Permittees have developed a series of measures, described in the South Sacramento Habitat Conservation Plan (“SSHCP”, “Plan” or “HCP”), to minimize and mitigate to the maximum extent practicable the effects of Take of Covered Species incidental to Plan Permittees’ Covered Activities.

2.2 Purpose. The purpose of this Agreement is to clarify the provisions of the SSHCP and the processes the Parties intend to follow to ensure successful implementation of the SSHCP in accordance with the Permit and applicable law.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Additional terms and acronyms are contained in Appendix A of the SSHCP:

3.1 Terms defined in Endangered Species Act or Implementing Regulations. Terms used in this Agreement and specifically defined in the Endangered Species Act (“ESA”) or in regulations adopted by the USFWS under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 Certificate of Inclusion. means a document other than a Development Authorization, executed by a Plan Permittee and a third party that extends the incidental Take authorization granted to Plan Permittees to such third party for the purpose of carrying out a

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Covered Activity in the Plan Area. Execution of a Certificate of Inclusion by the third party places such third Party under the legal control of that Plan Permittee for purposes of enforcing and implementing the Permit, including the SSHCP and this Agreement. A Certificate of Inclusion template is attached to this agreement as Exhibit “C”.

3.3 Changed Circumstances. means as defined in the “No Surprises” rule at 50 C.F.R. Section 17.3, means changes in circumstances affecting a Covered Species or the Plan Area covered by the SSHCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the SSHCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed Circumstances and the planned responses to those circumstances are described in Chapter 11 of the SSHCP. Changed Circumstances are not Unforeseen Circumstances.

3.4 Covered Activities. means certain activities carried out by Plan Permittees in the Plan Area that may result in incidental Take of Covered Species that is authorized under the Permit. Covered Activities means the activities analyzed in detail in Chapter 5 of the SSHCP provided that these activities are otherwise lawful.

3.5 Covered Entity. means the recipient of a Development Authorization or a Certificate of Inclusion issued pursuant to the governmental powers of Plan Permittees.

3.6 Covered Species. means those 28 species within the Plan Area, each of which the SSHCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental Take permit under ESA § 10(a)(1)(B). These species are discussed in Appendix B of the HCP and listed in Exhibit “A” to this Agreement.

3.7 Development Authorization. means a permit, lease, license, contract or similar written authorization issued pursuant to the governmental powers of Plan Permittees, under which the recipient has the right to engage in a Covered Activity and against whom Plan Permittees have the legal authority and has committed to enforce applicable terms of the Permit, including the SSHCP and this Agreement.

3.8 Effective Date. means the date following execution of this Agreement by the Parties, on which the Permit is issued. Any Plan Permittees executing this Agreement after the Effective Date shall, upon execution, become a Party to this Agreement, with all rights and obligations of Parties defined herein, and this Agreement shall be enforceable between each later executing Plan Permittees and all prior signing Parties.

3.9 HCP, Plan or SSHCP. means the South Sacramento Habitat Conservation Plan prepared by Plan Permittees as depicted on Figure 1-1 attached to the SSHCP.

3.10 Land Use Authority Permittee. means the County of Sacramento, and the Cities of Galt and Rancho Cordova.

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3.11 Listed Species. means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.12 Permit. means the incidental take permit issued by the USFWS to Plan Permittees pursuant to Section 10(a)(1)(B) of the ESA for Take of the Covered Species incidental to Covered Activities within the Plan Area, as it may be amended from time to time.

3.13 Plan Area. means the area in which all conservation actions will be implemented and generally where the Plan Permittees have Take Authorization for Covered Species and species habitat resulting from Covered Activities.

3.14 Plan Permittees. means the County of Sacramento (“County”), City of Galt (“Galt”), City of Rancho Cordova (“Rancho Cordova”), Sacramento County Water Agency (“SCWA”), the Southeast Connector Joint Powers Authority (“JPA”) and the SSHCP Implementing Entity.

3.15 SSHCP Implementing Entity. means joint powers authority formed by the County and Cities to provide primary policy direction for implementation of the SSHCP, as set forth in Chapter 9 of the SSHCP.

3.16 Take. means as defined in the ESA and implementing regulations means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted animal Covered Species. Harm means an act that actually kills or injures a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Take of plant species is not prohibited under the ESA; however, the plant species identified in Chapter 1 of the HCP and in Exhibit A of this Agreement are listed on the Permit as Covered Species in recognition of the conservation measures provided for such species under the plan and receive No Surprises Assurances under the Permit. For purposes of determining any outstanding mitigation owed upon termination of the Permit under Section 6 herein, Take includes impacts to Covered plant species.

3.17 Unforeseen Circumstances. means as defined in the “No Surprises” rule at 50 C.F.R. section 17.3 means changes in circumstances affecting a Covered Species or geographic area covered by the SSHCP that could not reasonably have been anticipated by Plan Permittees and the USFWS at the time of the SSHCP’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species as addressed in Chapter 11 of the HCP.

3.18 Unlisted Species. means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

3.19 Other Terms. means any other capitalized term not otherwise defined herein shall carry the same meaning and definition as that term is used and defined in the SSHCP.

4.0 INCORPORATION OF HCP

Subject to Section 15.11 herein, the SSHCP and each of its provisions are intended to be, and by this reference are, incorporated herein. Notwithstanding such incorporation, it is acknowledged by the Parties that the HCP was drafted by the Plan Permittees and submitted to USFWS in support of the application for the Permit. Characterizations, analyses, and representations in the HCP, and in particular, characterizations, analyses and representations in the HCP of Federal or State laws, regulations and policies, represent the views of the Plan Permittees and shall not control the administration of the Permit by USFWS in accordance with Federal and State laws, regulations and policies. In the event of any inconsistency between the HCP and this Agreement, the provisions of the Agreement control. Similarly, in the event of any inconsistency between the HCP or Agreement and the Permit, the Permit controls.

5.0 OBLIGATIONS OF THE PARTIES

5.1 Obligations of Plan Permittees. Plan Permittees will fully and faithfully implement the Take minimization, mitigation and other requirements of the HCP, this Agreement and the Permit.

5.1.1 Mitigation Obligations. Plan Permittees will implement and fulfill the obligations described in Chapters 5 [Covered Activities], 7 [Conservation Strategy], 8 [Monitoring and Management], 9 [Implementation], 10 [Permit Application Process] and 12 [HCP Funding Program] of the SSHCP.

5.1.2 Interim Obligations upon a Finding of Unforeseen Circumstances. If the USFWS makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Plan Permittees will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected Covered Species.

5.1.3 Duty to enforce. Plan Permittees shall undertake all necessary actions to enforce all applicable terms of the HCP, this Agreement and the Permit as to itself, and any entity or individual for which a Development Authorization or Special Participating Entity approval has been issued over which Plan Permittees have committed to enforce the terms of the HCP, this Agreement and the Permit. Any substantial non-compliance by Plan Permittees, or any entity or individual for which a Development Authorization or Special Participating Entity approval has been issued may be deemed by USFWS a violation of the Permit by Plan Permittees. In addition, any failure by Plan Permittees to enforce the applicable provisions of the HCP, this Agreement or the Permit against itself, or any entity or individual for which a Development Authorization or Special Participating Entity approval has been issued may be deemed by USFWS a non-compliance by Plan Permittees with the HCP, this Agreement or the Permit and a violation of the Permit by

Plan Permittees. USFWS shall take into account all efforts undertaken by Plan Permittees to enforce the terms of the HCP, this Agreement and the Permit as to itself, any entity or individual for which a Development Authorization or Special Participating Entity approval has been issued and all actions taken by Plan Permittees to redress the effects of such non-compliance, particularly the enforcement efforts and redress actions specifically described in the HCP.

5.1.4 Changed Circumstances. Plan Permittees shall undertake all appropriate measures provided in Chapter 11 of the SSHCP to respond to Changed Circumstances.

5.1.5 Transfer of Preserve System. As set forth in more detail in Chapter 9, Plan Permittees may not transfer ownership or control, including fee title or a conservation easement, of any portion of the Preserve System, that is intended to stay within the Preserve System, to a third party, other than an agency of the Federal government, unless a conservation easement or equivalent legal protection, in a form approved by USFWS and which names USFWS as a third-party beneficiary, has been recorded. Nothing herein prohibits the sale of Preserve System land to a third party for non-conservation purposes if the USFWS and the SSHCP Implementing Entity find that the land is not supporting the Preserve System.

5.2 Obligations of the USFWS. Upon execution of this Agreement by each Party, and satisfaction of all other applicable legal requirements, the USFWS will issue Plan Permittees a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental Take by Plan Permittees of each listed wildlife Covered Species resulting from Covered Activities in the Plan Area. The Permit will be conditioned on compliance with all terms and conditions of the Permit, including the HCP, this Agreement and applicable law.

5.2.1 Permit coverage. The Permit will identify all Covered Species. The Permit will take effect for listed Covered Species at the time the Permit is issued. Subject to compliance with all other terms of this Agreement, the Permit will take effect for an unlisted Covered Species upon the listing of such species. Any reference in this Agreement or in the HCP to incidental Take or Take of Covered Species shall, for the purpose of Covered plant Species include loss or impacts to Covered plant Species identified in the Permit.

5.2.2 “No surprises” assurances. Upon issuance of the Permit, Plan Permittees shall receive regulatory assurances pursuant to the “No Surprises” regulations at 50 C.F.R. 17.22(b) (5) and 17.32(b) (5). Pursuant to the “No Surprises” regulations, as long as Plan Permittees have complied with their obligations under the HCP, this Agreement, and the Permit, USFWS shall not require additional conservation and mitigation measures that involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land water or other natural resources otherwise available for development or use under the original terms of the HCP without the consent of Plan Permittees.

5.2.3 USFWS Cooperation and Assistance. USFWS shall cooperate and provide, to the extent appropriated funds are available for that purpose, technical assistance to the

Plan Permittees. Nothing in this Agreement shall require the USFWS to act in a manner contrary to the requirements of the Anti-Deficiency Act.

5.2.4 Assurances Regarding SSHCP. After opportunity for public review and comment, based on the best available current scientific and commercial data, the USFWS has found that the SSHCP, as implemented by this Agreement: 1) is consistent with and will complement other applicable conservation planning and regulatory programs and efforts addressing wildlife within the region, 2) minimizes and mitigates the potential significant adverse impacts of the Covered Activities on the Covered Species, 3) will ensure that the measures agreed upon by the Plan Permittees and the USFWS will be met, and 4) will be implemented. The USFWS shall not take a position inconsistent with the acknowledgments set forth in this section, including, without limitation, in the form of comments offered by the USFWS in the context of any CEQA or NEPA process associated with approvals for Covered Activities with regard to effects on Covered Species.

5.2.5 Take Authorization for Newly Regulated Covered Species; Savings Provision. Subject to compliance with all other terms of this Agreement, the Section 10(a) Permit will automatically become effective for each unlisted Covered Species upon the listing of such species as endangered or threatened under FESA. If it is judicially determined that the USFWS was not authorized to cause the Section 10(a) Permit to become effective automatically as to Covered Species as they become listed pursuant to FESA, the USFWS shall accept the minimization and mitigation measures in the SSHCP and this Agreement as the basis for an application for a Section 10(a) amendment or separate Section 10(a) Permits, Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712) (“MBTA”) Permits, and/or other Take Authorizations. The USFWS shall use reasonable efforts to review and process the application expeditiously so as to ensure, provided the Permit amendment or application meets the requirements of the ESA and other applicable federal laws, that the Take Authorization is effective concurrently with the listing of the Covered Species under FESA. In issuing such Permits, amendments and/or Take Authorizations, and to the extent that such judicial determination creating the circumstances requiring such additional review and processing allows, the USFWS shall not request, impose, recommend or require further mitigation, conservation, compensation, enhancement or other protection for such Covered Species except as expressly provided in this Agreement.

5.2.6 Changes in the Environmental Laws. It is acknowledged and agreed by the USFWS that the Permittees are agreeing to perform substantial avoidance, minimization, mitigation, conservation and management measures as set forth in this Agreement. If a change in, or an addition to, any federal law governing or regulating the impacts of the Covered Activities on land, water or biological resources as they relate to Covered Species, including, but not limited to, ESA and NEPA, the USFWS shall give due consideration to the measures required under the SSHCP in applying the new laws and regulations to the Plan Permittees.

5.2.7 Section 7 Consultations. The USFWS will evaluate the direct, indirect, and cumulative effects of the Covered Activities in their internal ESA biological opinion issued in connection with the SSHCP and issuance of the Section 10(a) Permit. As a result, and to the maximum extent allowable, in any consultation under Section 7 of ESA subsequent to the Effective Date involving the Plan Permittee(s) or any entity or individual for which a Development Authorization or Special Participating Entity has been issued with regard to Covered Species and Covered Activities, the USFWS shall ensure that the ESA biological opinion issued in connection with the proposed project that is the subject of the consultation is consistent with the internal ESA biological opinion. Such project must be consistent with the terms and conditions of the SSHCP and this Agreement. Any reasonable and prudent measures included under the terms and conditions of an ESA biological opinion issued subsequent to the Effective Date with regard to the Covered Species and Covered Activities shall, to the maximum extent appropriate, be consistent with the implementation measures of the SSHCP and this Agreement. The USFWS shall not impose measures in excess of those that have been or will be required by the Plan Permittee(s) pursuant to the SSHCP and this Agreement. The USFWS shall process subsequent ESA consultations for Covered Activities in accordance with the process and time periods set forth in 50 Code of Federal Regulations, section 402.14. The Parties agree that this section does not create an independent cause of action.

5.2.8 Future Recovery Plans. Recovery plans under ESA delineate actions necessary to recover and protect federally listed species. These plans frequently include information, or may lead to the development of information, that can contribute to the development of an adaptive management program. However, recovery plans do not obligate any Plan Permittee, individual or entity to undertake specific tasks.

The Parties acknowledge that ESA recovery plans have no effect on the implementation of this SSHCP, except to the extent that they may contribute information to, or assist in achieving the goals of, the Plan's Adaptive Management provisions. Any recovery plan applicable to any Covered Species within the SSHCP Plan Area that is developed after the Effective Date shall:

- A. Not require any additional land or financial compensation by Permittees;
- B. Be finalized only after the USFWS has consulted with and requested input from the SSHCP Implementing Entity on the preparation of the recovery plan; and
- C. Not in any way diminish the Take Authorization for Covered Species granted to Plan Permittees pursuant to the SSHCP, this Agreement, or the Section 10(a) Permit.

5.2.9 Migratory Bird Treaty Act. The Section 10(a) Permit shall constitute a Special Purpose Permit under 50 Code of Federal Regulations section 21.27, for the Take of

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Covered Species Adequately Conserved listed under ESA and which are also listed under the MBTA, in the amount and/or number specified in the SSHCP, subject to the terms and conditions specified in the Section 10(a) Permit. Any such Take will not be in violation of the MBTA. The MBTA Special Purpose Permit will extend to Covered Species listed under ESA and also under the MBTA after the Effective Date of the Section 10(a) Permit. This Special Purpose Permit shall be valid for a period of three (3) years from its Effective Date, provided the Section 10(a) Permit remains in effect for such period. The Special Purpose Permit shall be renewed pursuant to the requirements of the MBTA, provided the Permittees remain in compliance with the terms of this Agreement and the Section 10(a) Permit. Each such renewal shall be valid for a period of three (3) years, provided that the Section 10(a) Permit remains in effect for such period.

6.0 TERM

6.1 Initial Term. This Agreement, the HCP, and the Permit will remain in effect for a period of fifty (50) years from the Effective Date of the original Permit. Notwithstanding the stated term, the Parties agree that preservation of the Preserve System shall be permanent.

6.2 Permit Renewal. Upon agreement of the Parties and in compliance with all applicable laws, the USFWS may extend the Permit beyond the initial term under the applicable regulations in force on the date of such extension. If the Plan Permittees desire to extend the Permit, they will so notify the USFWS at least four (4) months before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the SSHCP and this Agreement for the same amount of time, subject to any modifications agreed to by the Parties at the time of extension.

6.3 Surrender of the Permit. Any one or combination of Plan Permittees may withdraw from the Permit by surrendering the Permit to the USFWS in accordance with the regulations of the USFWS in force on the date of such surrender. (These regulations are currently codified at 50 CFR 17.22(b)(7) and 17.32(b)(7) and by their express terms apply in place of 50 CFR 13.26 to the extent of any conflict.

6.4 Procedure Applicable to Early Surrender of the Permit. If anyone or a combination of Plan Permittees elects to surrender the Permit before expiration of the full term, then in addition to surrendering the Permit, relevant Plan Permittees will provide a status report detailing the nature and amount of any incidental Take of the Covered Species, the minimization and mitigation measures provided for Take up through the date of early surrender, and the status of compliance with all other terms of the HCP. Within 90 days after receiving the surrendered Permit and a status report meeting the requirements of this paragraph, USFWS will use reasonable efforts to give written notice to the relevant Plan Permittees identifying all required outstanding mitigation and minimization measures.

6.5 Effect of Early Surrender. Upon the relevant Plan Permittee(s)' surrender of the Permit in accordance with Section 6.3, no further Take by relevant Plan Permittee(s) or any entity

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or individual for which a Development Authorization has been issued by that Plan Permittee(s) shall be authorized under the terms of the Permit. Notwithstanding early surrender of the Permit, the relevant Plan Permittees shall implement each of the post-termination mitigation and minimization measures identified by USFWS in their written notice under Section 6.3, for any incidental Take of a Covered Species resulting from Covered Activities carried out in accordance with the Permit prior to the date of surrender, provided, however, that the post-termination mitigation and minimization measures identified by USFWS are subject to the voluntary dispute resolution procedure outlined in Section 14.2 herein. USFWS will only cancel the Permit upon determination that all applicable post-termination mitigation and minimization measures have been implemented. If prior to termination of the Permit, USFWS has approved the transfer of a portion of the Permit in accordance with all applicable statutory and regulatory requirements, then the transferred portion of the Permit shall remain in effect notwithstanding termination of the remaining portion.

7.0 SUSPENSION OR REVOCATION OF THE PERMIT

USFWS may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. (The regulations governing permit suspension and revocation are currently codified at 50 CFR 13.27 (suspension) and 50 CFR 13.28, 17.22(b)(8) and 17.32(b)(8) (revocation). Suspension or revocation may apply to the entire Permit, or only to specified Covered Species, portions of the Plan Area or Covered Activities. Except where USFWS determines emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend the Permit without first requesting the Plan Permittees to take appropriate remedial actions, if any such actions are available, and providing the Plan Permittees with written notice of the facts or conduct which may warrant the suspension, and an adequate and reasonable opportunity, including, where appropriate, use of the voluntary dispute resolution procedure outlined in Section 14.2, to demonstrate why suspension is not warranted.

7.1 Continuing Liability for Outstanding Mitigation. Notwithstanding revocation of the Permit, Plan Permittees affected by the suspension will remain liable for all incidental Take of Covered Species that occurred prior to revocation and shall fully implement all measures required under the HCP to minimize and mitigate for such Take. USFWS shall use their reasonable efforts to notify Plan Permittees in writing of all required outstanding minimization and mitigation measures within 90 days of permit revocation.

7.2 Other Rights and Authorities Not Affected. Nothing in this Section 7 prevents Plan Permittees from seeking review by a court of competent jurisdiction of any decision of the USFWS to revoke the Permit. Likewise, nothing in this Section affects or circumscribes the authority of USFWS to carry out their enforcement and other responsibilities under the ESA.

8.0 FUNDING

Plan Permittees warrant that they will expend SSHCP program funds as may be necessary to fulfill their obligations under the HCP. Plan Permittees will promptly notify the USFWS of

any material change in Plan Permittees' financial ability to fulfill its obligations. The funding program is set forth in detail in Chapter 12 of the SSHCP.

9.0 MONITORING AND REPORTING

9.1 Planned Periodic Reports. As described in the HCP, the SSHCP Implementing Entity will submit periodic reports describing their activities and results of the monitoring program provided for in the SSHCP. In accordance with Chapters 8 and 9 of the SSHCP, the SSHCP Implementing Entity will submit an annual report by April 1 of each year that describes for the reporting period the status of Covered Activities, the results of the required monitoring, any instances of noncompliance with the provisions of the HCP, actions taken to rectify the non-compliance, any problems under the HCP, and all other of the reporting requirements set forth in Chapters 8 and 9 of the SSHCP.

9.2 Other Reports. The SSHCP Implementing Entity, Plan Permittees, or both, as relevant, will provide, within 30 days of being requested by the USFWS if feasible, any additional information in their possession or control related to implementation of the SSHCP that is requested by the USFWS for the purpose of assessing whether the terms and conditions of the Permit, including the HCP, are being fully implemented.

9.3 Certification of Reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

I certify under penalty of law, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

9.4 Monitoring by USFWS. Plan Permittees acknowledge the necessity for USFWS to monitor compliance with the Permit and will cooperate fully in such monitoring. USFWS may conduct inspections and monitoring in connection with the Permit in accordance with its regulations. (See 50 C.F.R. § 13.21(e)(2))

10.0 CHANGED CIRCUMSTANCES

10.1 Plan Permittees-Initiated Response to Changed Circumstances. Plan Permittees will give notice to the USFWS after learning that any of the Changed Circumstances listed in Chapter 11 of the HCP have occurred. As soon as practicable thereafter, Plan Permittees will use best efforts to modify their activities in the manner described in Chapter 11 of the HCP, to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to the USFWS on their actions. Plan Permittees will make such modifications without awaiting notice from the USFWS.

10.2 Service-Initiated Response to Changed Circumstances. If the USFWS determines that Changed Circumstances have occurred and that Plan Permittees have not responded in accordance with Chapter 11 of the HCP, the USFWS will so notify Plan Permittees and will direct Plan Permittees to make the required changes. Within 30 days after receiving such notice, Plan Permittees will make the required changes and report to the USFWS on their actions. If such actions are not feasible within this time frame, or if the Plan Permittees disagree with the direction from the USFWS, the SSHCP Implementing Entity will meet and confer with the USFWS. USFWS and the SSHCP Implementing Entity will use best efforts to develop a mutually agreeable action plan and schedule. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

11.0 ADAPTIVE MANAGEMENT

11.1 Plan Permittees-Initiated Adaptive Management. Plan Permittees will implement the adaptive management provisions in Chapter 8 of the SSHCP, when changes in management practices are necessary to achieve the SSHCP's biological objectives, or to respond to monitoring results or new scientific information. Plan Permittees will make such changes without awaiting notice from the USFWS, and will report to the USFWS on any actions taken pursuant to this section.

11.2 Service-Initiated Adaptive Management. If the USFWS determines that one or more of the adaptive management provisions in the HCP have been triggered and that Plan Permittees have not changed their management practices in accordance with Chapter 8 of the SSHCP, the USFWS will so notify Plan Permittees and will direct Plan Permittees to make the required changes. Unless Plan Permittees invoke the voluntary dispute resolution procedure outlined in Section 14.2 to demonstrate why the required adaptive management changes are not warranted, Plan Permittees will make the required changes and report to the USFWS on their actions within 60 days after receiving such notice. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP, except as provided in this section.

11.3 Reductions in Mitigation. Plan Permittees will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the SSHCP, unless the USFWS first provides written approval. Plan Permittees may propose any such adaptive management changes by notice to the USFWS, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 60 days of receiving such a notice, the USFWS will either approve the proposed adaptive management changes, approve them as modified by the USFWS, or notify Plan Permittees that the proposed changes constitute permit amendments that must be reviewed under Section 13.2 of this Agreement. If the USFWS has not responded within the 60 day period, the proposed adaptive management changes will be deemed approved.

11.4 No Increase in Take. This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, on Covered Species beyond that analyzed under the original SSHCP and any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 13.2 of this Agreement.

12.0 LAND TRANSACTIONS

12.1 Acquisition of Preserve System Lands. Land for the Preserve System will be acquired pursuant to Chapter 9 of the SSHCP.

12.2 Transfer of Preserve System Lands. Plan Permittees may not transfer ownership or control, including fee title or a conservation easement, of any portion of the Preserve System that is intended to stay within the Preserve System, to a third party, other than an agency of the Federal government, unless a conservation easement or equivalent legal protection, in a form approved by USFWS and which names USFWS as a third-party beneficiary, has been recorded pursuant to Section 5, above. Plan Permittees may transfer all or a portion of the Preserve System to an agency of the Federal government if, prior to the transfer, the USFWS determines in writing that the transfer will not compromise the effectiveness of the SSHCP based on adequate commitments by that agency regarding management of such land. Transfers of all or portions of the Preserve System under this section may be processed as minor modifications to the SSHCP in accordance with Section 13.1. Nothing herein prohibits the sale of Preserve System land to a third party for non-conservation purposes if the USFWS and the SSHCP Implementing Entity find that the land is not supporting the Preserve System.

13.0 MODIFICATIONS AND AMENDMENTS

13.1 Minor modifications.

13.1.1 Procedure. Either Plan Permittees or USFWS may propose minor modifications to the HCP or this Agreement by providing notice to all Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, if any, including the effects of the proposed modification on operations under the SSHCP and on Covered Species. The other Parties will use reasonable efforts to respond to proposed modifications within 30 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written approval or shall be deemed approved by a Party if no response is received within 30 days of receipt of such notice. If USFWS determines that such modifications would result in operations under the SSHCP that are significantly different from those analyzed in connection with the SSHCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the SSHCP, or additional Take not analyzed in connection with the SSHCP, it may be processed as an amendment of the Permit in accordance with Section 13.2 of this Agreement. Parties may also institute the Dispute Resolution process set forth in Section 14.2 of this Agreement to resolve the objection.

13.1.2 Subject Matter of Minor Modifications. Subject to Section 13.1.1, Minor modifications to the HCP and Agreement processed pursuant to this subsection may include but are not limited to Chapter 9.10.2 of the SSHCP.

13.1.3 Other Proposed Changes to HCP or Agreement. Except for Administrative Revisions described in Chapter 9.10.1 of the SSHCP, any other proposed modifications to the SSHCP or Agreement will be processed as amendments of the Permit in accordance with Section 13.2 of this Agreement.

13.2 Amendment of the Permit. The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the USFWS' permit regulations. In addition, the Party seeking to amend the Permit shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The Party seeking to amend the Permit shall follow the procedures outlined in Chapter 9 of the SSHCP.

13.3 Amendment of this Agreement. In addition to other approval requirements identified in this Section that may apply, this Agreement may only be amended consistent with the ESA and with the written consent of each Party.

14.0 ENFORCEMENT OF PERMIT AND DISPUTE RESOLUTION

14.1 General Authorities and Legal Rights. Nothing contained in this Agreement is intended to, or shall, limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement and other responsibilities under the ESA or other applicable federal law. Nothing contained in this Agreement limits the rights of the Plan Permittees under applicable federal or state law to seek redress against the USFWS as otherwise permitted by law.

14.2 Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, or termination of the Permit, including the SSHCP and this Agreement may arise from time to time. The Parties will work together in good faith to resolve such disputes, and may use the informal dispute resolution procedures set forth in Section 14.2.1, or such other procedures upon which the Parties may adopt. However, if at any time, any Party determines that circumstances so warrant, it may seek any available administrative or judicial remedy without engaging in or waiting to complete informal dispute resolution.

14.2.1 Informal Dispute Resolution Process. Unless the Parties elect another dispute resolution process, or unless a Party has initiated administrative proceedings or suit in Federal court, the Parties may use the following process to attempt to resolve disputes:

(a) The USFWS will notify the Plan Permittees of the alleged non-compliance with, or violation of the Permit, including the HCP and this Agreement, the basis for

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contending that the non-compliance or violation has occurred, and the remedies the USFWS proposes to correct the alleged non-compliance or violation. Where Plan Permittees allege that USFWS's alleged reasons for non-compliance or violation of the Permit, including HCP implementation, is inconsistent with the terms of the SSHCP, this Agreement and/or the Permit, Plan Permittees will notify USFWS of their objection, the basis for the objection and the manner in which Plan Permittees believe the SSHCP, Agreement and/or Permit should be interpreted and implemented.

(b) The notified Party will have 60 days, or such other time as may be agreed to by the Parties, to respond. During this time either Party may seek clarification of the information provided in the initial notice. The Parties will use reasonable efforts to provide any information then available that may be responsive to such inquiries.

(c) Within 30 days after such response is provided or is due, representatives from each Party will meet and negotiate in good faith toward a solution satisfactory to both Parties, or will establish a specific process and timetable to seek such a solution.

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

15.0 MISCELLANEOUS PROVISIONS

15.1 No Partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

15.2 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally, or by overnight mail, to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Deputy Manager
United States Fish and Wildlife Service
California/Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825
Telephone: 916-414-6464
Telefax: 916-414-6486

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California Department of Fish and Wildlife Service
[Plan Permittees Address]
Telephone:
Telefax:

County of Sacramento
[Plan Permittees Address]
Telephone:
Telefax:

City of Galt
[Plan Permittees Address]
Telephone:
Telefax:

City of Rancho Cordova
[Plan Permittees Address]
Telephone:
Telefax:

Sacramento County Water Agency
[Plan Permittees Address]
Telephone:
Telefax:

Southeast Connector Joint Powers Authority
[Plan Permittees Address]
Telephone:
Telefax:

SSHCP Implementing Entity
[Plan Permittees Address]
Telephone:
Telefax:

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

15.4 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. Each Party shall maintain in their records a complete original of this Agreement.

15.5 No Third-Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-Party beneficiary hereof, nor shall this Agreement be construed to authorize anyone to maintain a suit for personal injuries or damages or any other cause of action pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

15.6 Relationship to the ESA and Other Authorities. The terms of this Agreement shall be construed in accordance with the ESA and applicable federal law. Nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the federal government.

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

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

15.9 Successors and Assigns. This Agreement shall be incorporated as a term and condition of the Permit. Assignment or other transfer of the Permit shall be governed by the USFWS' regulations in force at the time.

15.10 Permit Renewal. The Permit may be extended or renewed in accordance with all applicable laws and regulations in force at the time such action is initiated.

15.11 Agreement not an Enforceable Contract. Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the USFWS and Plan Permittees under the law with regard to the Permit or otherwise and none of the Parties to this Agreement shall be liable in damages to any other Party or any other third party or person for any performance or failure to perform any obligation identified in this Agreement. The sole purposes of this Agreement as between the USFWS and Plan Permittees are to clarify the provisions of the HCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP in accordance with the Permit and applicable Federal law.

15.12 Compliance with the California Environmental Quality Act (CEQA). The Parties agree that the Plan provides extensive analysis and mitigation for the protection of Covered Species. For this reason, the Parties agree that compliance with the SSHCP constitutes full mitigation for impacts to Covered Species under the California Environmental Quality Act (CEQA) for Covered Activities. Nothing in this Section negates the requirement for full

compliance with CEQA for Covered Activities, as determined by the applicable Plan Permittee.

15.13 Annexation and Deannexation of Lands. Each of the Plan Permittees shall enforce the terms of the Plan, the Permit, and this Agreement as to all individuals or entities subject to its jurisdiction, including lands in the Plan Area annexed into the Plan Permittees' jurisdictions after the Effective Date of this Agreement provided the Minor Modification requirements of Section 13.1 of this Agreement have been met. Any land annexed into the Plan Area shall receive Take Authorization pursuant to the Permit provided the Minor Modification requirements of Section 13.1 of this Agreement have been met. If the Minor Modification requirements cannot be met, a Permit Amendment will be required.

In the event of the annexation or deannexation of any land within the Plan Area to another jurisdiction that is not a Plan Permittee, the Parties shall seek to enter into an agreement between the Plan Permittees, the Local Agency Formation Commission ("LAFCO"), the annexing or deannexing jurisdiction and the USFWS as part of the annexation process to ensure that any development of the annexed lands proceeds in accordance with the conservation goals of the SSHCP. If an agreement can be reached, that jurisdiction shall become a Plan Permittee after executing an addendum to this Agreement and complying with Section 9.10.3 of the SSHCP. If an agreement cannot be reached, or if the SSHCP requirements are not imposed as a condition of annexation by LAFCO, then the annexed or deannexed land will not receive Take Authorization pursuant to the Permit, the SSHCP or this Agreement. Additionally, such annexation or deannexation may result in the revocation or suspension of the Permits pursuant to Section 7.0 of this Agreement. Parties within such annexed or deannexed land that qualify as Participating Special Entities may receive Take Authorization.

15.14 Incorporation of New Cities within SSHCP Boundaries. During the term of the SSHCP, and after the Effective Date, one or more new cities may be incorporated within the Plan Area. Such newly incorporated cities, upon execution of an Implementing Agreement with the USFWS substantially similar in form to this Agreement, shall receive Take Authorization pursuant to the Permit and all other rights and obligations granted by the Permit, the SSHCP and this Agreement. Incorporation of a new city within the Plan Area shall constitute a Minor Modification and shall be processed as such pursuant to Section 13.1 of this Agreement. In the event a newly incorporated city fails to participate in the SSHCP, the Permit may be revoked or suspended as set forth in Section 7.0 of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement.

BY _____
[insert USFWS official who will sign the permit]
Deputy Manager
United States Fish and Wildlife Service, Region 8
Sacramento, California

Date _____

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BY _____ Date _____
Deputy Director
Habitat Conservation Division
California Department of Fish and Wildlife
Sacramento, California

BY _____ Date _____
[Name], Chair
County of Sacramento

BY _____ Date _____
[Name], Mayor
City of Galt

BY _____ Date _____
[Name], Mayor
City of Rancho Cordova

BY _____ Date _____
[Name], Chair
Sacramento County Water Agency

BY _____ Date _____
[Name], Chair
Southeast Connector Joint Powers Authority

BY _____ Date _____
[Name], Chair
SSHCP Implementing Entity

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Exhibit A
Covered Species and Listing Status

Scientific Name Common Name	Status		
	Federal	State	CRPR
<i>Invertebrates</i>			
<i>Lepidurus packardii</i> Vernal pool tadpole shrimp	E*	—	—
<i>Branchinecta lynchi</i> Vernal pool fairy shrimp	T*	—	—
<i>Branchinecta mesovallensis</i> Mid-valley fairy shrimp	—	—	—
<i>Desmocerus californicus dimorphus</i> Valley elderberry longhorn beetle	T	—	—
<i>Hydrochara rickseckeri</i> Ricksecker's water scavenger beetle	—	—	—
<i>Amphibians</i>			
<i>Ambystoma californiense</i> California tiger salamander, (Central Valley population)	T*	T	—
<i>Spea hammondi</i> Western spadefoot	—	CSC	—
<i>Reptiles</i>			
<i>Actinemys marmorata</i> Western pond turtle	—	CSC	—
<i>Thamnophis gigas</i> Giant gartersnake	T	T	—
<i>Birds</i>			
<i>Accipiter cooperii</i> Cooper's hawk	—	WL	—
<i>Agelaius tricolor</i> Tricolored blackbird	BCC	T (Emergency Listed)	—
<i>Athene cunicularia hypugea</i> Western burrowing owl	BCC	CSC	—
<i>Buteo regalis</i> Ferruginous hawk	BCC	—	—
<i>Buteo swainsoni</i> Swainson's hawk	BCC	T	—
<i>Circus cyaneus</i> Northern harrier	—	CSC	—
<i>Elanus leucurus</i> White-tailed kite	—	CFP	—
<i>Grus canadensis tabida</i> Greater sandhill crane	—	T; CFP	—
<i>Lanius ludovicianus</i> Loggerhead shrike	BCC	CSC	—
<i>Mammals</i>			
<i>Lasiurus blossevillii</i> Western red bat	—	CSC	—
<i>Taxidea taxus</i> American badger	—	CSC	—

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**Exhibit A
Covered Species and Listing Status**

Scientific Name Common Name	Status		
	Federal	State	CRPR
<i>Plants</i>			
<i>Downingia pusilla</i> Dwarf downingia	—	—	2.2
<i>Gratiola heterosepala</i> Boggs Lake hedge-hyssop	—	E	1B.2
<i>Juncus leiospemus</i> var. <i>ahartii</i> Ahart's dwarf rush	—	—	1B.2
<i>Legenere limosa</i> Legenere	—	—	1B.1
<i>Navarretia myserii</i> Pincushion navarretia	—	—	1B.1
<i>Orcuttia tenuis</i> Slender Orcutt grass	T*	E	1B.1
<i>Orcuttia viscida</i> Sacramento Orcutt grass	E*	E	1B.1
<i>Sagittaria sanfordii</i> Sanford's arrowhead	—	—	1B.2

Status Definitions

Federal:

- E = Listed as endangered under the federal ESA
- T = Listed as threatened under the federal ESA
- * = Species has designated Critical Habitat located within the Plan Area.
- = No federal ESA listing
- BCC = Bird of Conservation Concern, USFWS 2008.

State:

- E = Listed as endangered under CESA
- T = Listed as threatened under CESA
- CFP = Fully protected under the California Fish and Game Code
- CSC = Species of special concern in California
- WL = Watch List
- = No state status

California Rare Plant Rank (CRPR)

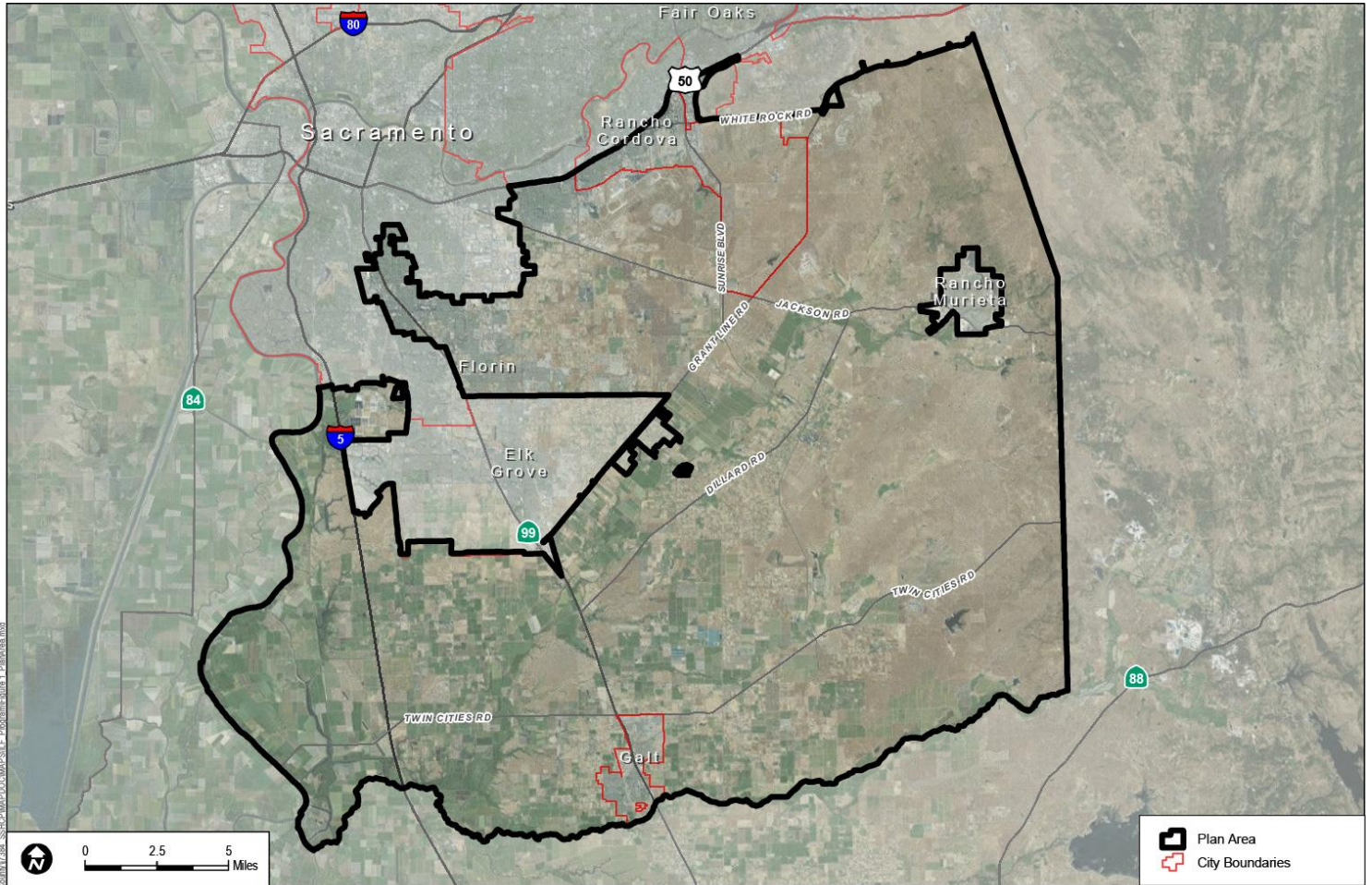
- 1B = Rare, threatened, or endangered in California and elsewhere
- 2 = Rare, threatened, or endangered in California but more common elsewhere

CRPR Threat Ranks

- 0.1 = Seriously threatened in California (high degree/immediacy of threat)
- 0.2 = Fairly threatened in California (moderate degree/immediacy of threat)
- 0.3 = Not very threatened in California (low degree/immediacy of threats or no current threats known)

Exhibit B

Map of Plan Area



Path: Z:\Enrichal\Sacramento_County\72384_SSHCP\MAP\DOC\MAPS\1_E_PlanArea.mxd

SOURCE: ESRI, County of Sacramento 2014

SOUTH SACRAMENTO HABITAT CONSERVATION PLAN

FIGURE 1
Plan Area

Exhibit C

Certificate of Inclusion

