

Purpose and Need/Objectives

1.1 Introduction

1.1.1 Summary of Key Issues

This *Environmental Impact Report/Environmental Impact Statement for the Revised Natomas Basin Habitat Conservation Plan* (EIR/EIS) presents the environmental impacts that have the potential to occur as a result of approving a habitat conservation plan, issuing incidental take permits (ITPs) for covered activities included in the proposed revised *Draft Natomas Basin Habitat Conservation Plan, Sacramento and Sutter Counties, California*¹ (HCP), and the adoption of an implementing agreement or agreements (IA[s]). The HCP, ITPs, and IA(s) collectively comprise the Proposed Action assessed in this EIR/EIS.

The applicants seeking ITPs for covered activities within the Natomas Basin are referred to as permittees (see Section 2.1). The Natomas basin is shown in Figure 1-1. The five permittees are:

- City of Sacramento (land use agency permittee)
- Sutter County (land use agency permittee)
- Natomas Basin Conservancy (Conservancy) (plan operator and permittee)
- Reclamation District No. 1000 (RD 1000) (water agency permittee)
- Natomas Central Mutual Water Company (Natomas Mutual) (water agency permittee)²

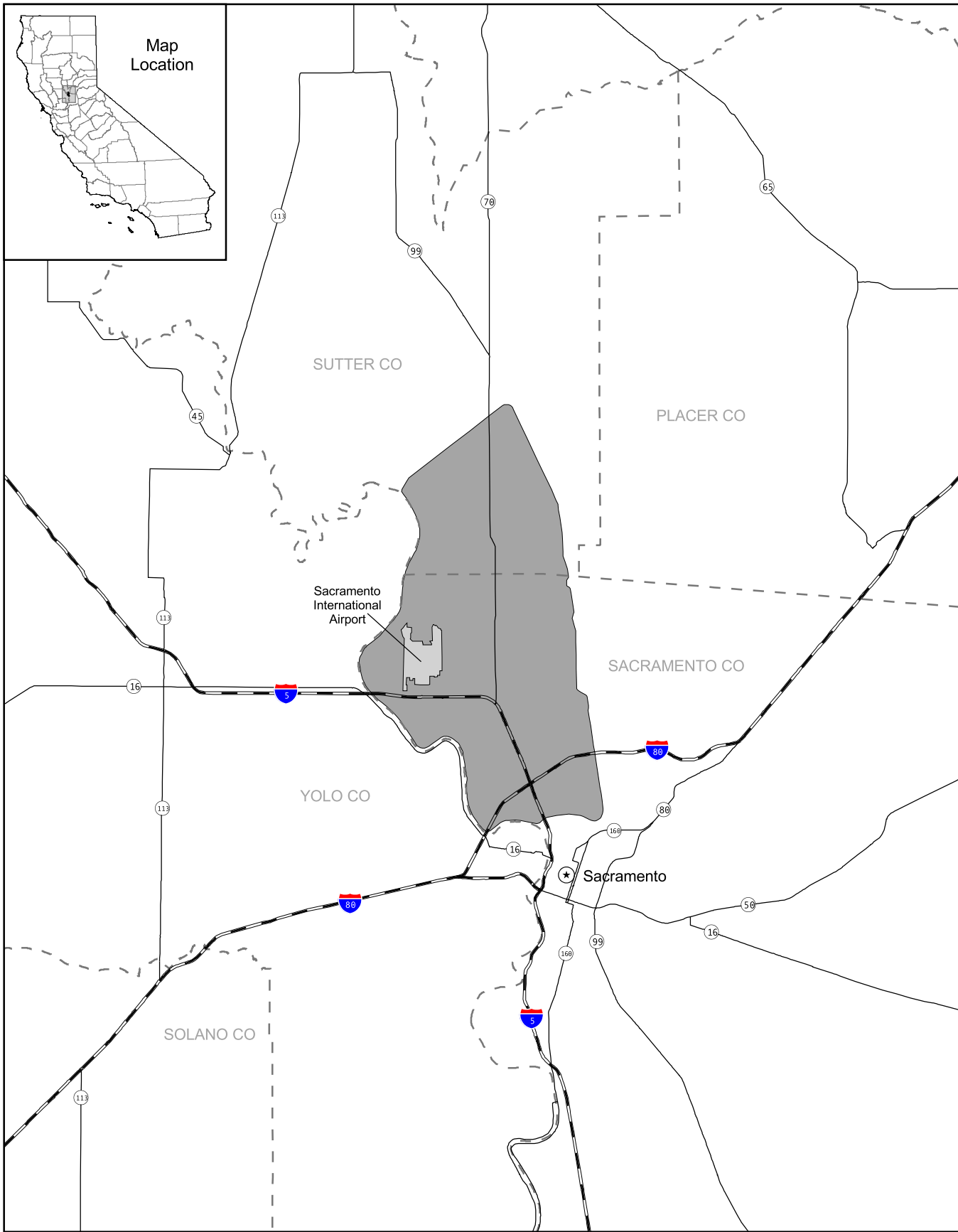
The City and Sutter County are lead agencies under the California Environmental Quality Act (CEQA), and the U.S. Fish and Wildlife Service (USFWS) is the lead agency under the National Environmental Policy Act (NEPA) (see Section 1.3.1).

Each of the permittees has a specific designated permit area for its covered activities. The permittees, their permit areas and covered activities, and the conservation measures for which each permittee is responsible are discussed in detail in Chapter 2 of this EIR/EIS. The permittees seek to obtain ITPs for covered activities for a 50-year term.


The HCP has been developed to provide and implement a multispecies conservation program to minimize and mitigate impacts of the covered activities of the Proposed Action (see Section 2.3 for a discussion of the covered activities associated with the Proposed Action). The HCP also has been prepared to meet the requirements of the California Department of Fish and Game (CDFG) in support of planned applications, or revisions to

¹ City of Sacramento, Sutter County, Natomas Basin Conservancy, July 2002.

² On the basis of ongoing discussions with USFWS on whether the water agencies (RD 1000 and Natomas Mutual) can obtain incidental take coverage for pesticide use, the water agencies have decided not to file applications for permits at this time. They have, however, identified proposed conservation measures (see Section 2.4.6.3 of this EIR/EIS) for covered activities that exclude pesticide use, and these measures are incorporated in the HCP evaluated in this EIR/EIS (see Section 2.3.3 of this EIR/EIS). The water agencies could elect at a future date to apply for an ITP and would be required at that time to execute an IA that demonstrates implementation and compliance with the HCP. A summary of the water agencies' participation in the HCP is in Section 1.2.1.



LEGEND

 Natomas Basin

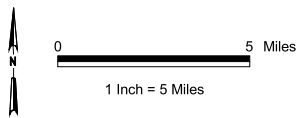


FIGURE 1-1
REGIONAL LOCATION
REVISED NATOMAS BASIN HCP
EIR/EIS

current applications, to receive incidental take authorization for state-listed species under Section 2081 of the California Fish and Game Code (see Section 1.3.2 for additional discussion of CDFG participation). The IA(s) would secure participation and compliance of the permittees.

The conservation measures in the HCP apply to 22 special-status species (the “covered species”). (See Section 2.4.3 of this EIR/EIS for a listing of the covered species. Also see Sections I and II of the HCP for a discussion of the covered species.)

The HCP that is evaluated in this EIR/EIS supercedes the prior HCP for the Natomas Basin that was previously prepared and approved in 1997 (see Section 1.2).

1.1.2 Document Overview

This EIR/EIS is a joint CEQA/NEPA document prepared in accordance with CEQA and NEPA and the implementing guidelines for EIRs and implementing regulations for EISs. The lead agencies (see Section 1.3.1) have independently evaluated, directed, and supervised the preparation of the document.

Chapter 1 of the EIR/EIS briefly summarizes the Proposed Action (see Chapter 2 for a detailed description of the Proposed Action) and provides historical information on habitat conservation planning efforts in the Natomas Basin (Section 1.2). It also presents the requirements for environmental review of the Proposed Action (Section 1.3) and the purpose and need/objectives of the lead agencies (Section 1.4). The pertinent regulations that apply to the Proposed Action (Section 1.5) and the public scoping and consultation that was conducted (Section 1.6) are also discussed.

In addition to Chapter 1, this EIR/EIS contains the following sections:

- Chapter 2: Proposed Action and Alternatives
- Chapter 3: Affected Environment
- Chapter 4: Environmental Consequences
- Chapter 5: List of Preparers
- Chapter 6: References
- Chapter 7: Glossary
- Chapter 8: Index

Table 1-1 provides a cross-reference for components that are required under CEQA, and their location in this document.

1.2 Habitat Conservation Planning in the Natomas Basin

This section presents an overview of the historical activities of habitat conservation planning in the Natomas Basin, including the legal action associated with the original Natomas Basin HCP that was previously approved in 1997 (1997 HCP) and the CDFG’s prior involvement. The intent of this discussion is to provide a context for the revised HCP and the CEQA/NEPA analysis conducted in this EIR/EIS.

TABLE 1-1
Cross-Reference for CEQA Contents

Section of CEQA Guidelines	Topic	Location in EIR/EIS
15122	Table of Contents or Index	Both a Table of Contents and an Index (Chapter 8) are provided.
15123	Summary	Executive Summary provided at beginning of document.
15124	Project Description	Project description information is found in Chapters 1: Purpose and Need/Objectives and 2: Proposed Action and Alternatives.
15125	Environmental Setting	Environmental setting information is found in Chapter 3: Affected Environment.
15126	Consideration and Discussion of Alternatives/Environmental Impacts	The alternatives are described in Chapter 2 and evaluated in Chapter 4: Environmental Consequences. The environmental impacts of the Proposed Action are discussed in Chapter 4.
15127	Limitations on Discussion of Environmental Impacts	Resources not addressed in the EIR/EIS are briefly described in Section 4.1.
15128	Effects Not Significant	Refer to Section 4.1 and individual analysis sections in Chapter 4.
15129	Organizations and Persons Consulted	Refer to Chapter 5: List of Preparers and Chapter 6: References.
15130	Discussion of Cumulative Effects	Cumulative effects are addressed throughout Chapter 4. See Section 4.1 for a discussion of cumulative effects.
15131	Economic and Social Effects	Refer to Section 4.7 (Social and Economic Effects).

1.2.1 Recent Habitat Conservation Planning Efforts

In 1994, the Sacramento Area Flood Control Agency (SAFCA) proposed a flood control project for the Natomas Basin that was subject to the jurisdiction of the U.S. Army Corps of Engineers (ACOE). In its Biological Opinion for the project (March 11, 1994, together with an amendment to that opinion on May 19, 1995), the USFWS determined that the project would remove an obstacle to urbanization in the Natomas Basin and that such development would result in the take of federally listed species. Accordingly, the ACOE's authorization for SAFCA's flood control project was approved with the condition that an HCP be prepared for the Natomas Basin. Following the ACOE's action, the local land use agencies took the lead in the effort to obtain incidental take authorization from the USFWS. The agencies that assumed responsibility for the preparation and implementation of the HCP were the City, Sacramento County, and Sutter County, with additional participation by RD 1000 and Natomas Mutual. The USFWS was responsible for approving the HCP. The jurisdictional boundaries of the local municipalities within the Natomas Basin are shown on Figure 1-2a. Underlying land uses within these jurisdictional areas as of 1997 are shown on Figure 1-2b.

Subsequent to the determination of the need for an HCP, the local land use agencies proceeded independently to prepare individual HCPs for their permit areas. In 1997, the City submitted its application to the USFWS in advance of the other agencies.

The City's HCP was revised and approved by the USFWS on the basis of public and agency comment, and the USFWS issued an ITP to the City in December 1997. Environmental review of the City's 1997 HCP under NEPA and CEQA consisted of an Environmental Assessment/Finding of No Significant Impact prepared by the USFWS (USFWS, 1997a) and an Initial Study/Negative Declaration prepared by the City (City of Sacramento, 1996), respectively.

Sutter and Sacramento counties submitted their HCP to the USFWS on an informal basis in October 1998. The USFWS, however, suspended review of the Sutter and Sacramento County HCPs because a lawsuit, discussed below, was filed challenging the City's HCP and ITP. As of the publication of this EIR/EIS, Sacramento County has not submitted an HCP for unincorporated lands in the Natomas Basin.

Although Sacramento County is not an applicant in the HCP process for which this EIR/EIS has been prepared, a separate but similar HCP has been prepared for Metro Air Park (Metro Air Park Property Owners' Association, 2000), which is a 1,983-acre³ special planning area of the County of Sacramento approved for commercial and industrial development adjacent to Sacramento International Airport (see Figure 1-2a). Metro Air Park comprises 1,983 acres of the 17,500 acres of the planned urban development. An ITP was issued to the Metro Air Park Property Owners Association on February 21, 2002. The Record of Decision for the Final EIS for the Metro Air Park HCP (USFWS, 2001) was signed on February 21, 2002. (The MAP Draft and Final EIS is incorporated by reference into this EIR/EIS).

RD 1000 and Natomas Mutual also have participated in basinwide habitat conservation planning efforts. Prior to the issuance of the NOP/NOI for this EIR/EIS, however, the water agencies elected not to participate in the HCP evaluated in this EIR/EIS based on concerns about potential liability associated with possible legal challenges to the draft HCP. As a result, the initial NOI/NOP for this EIR/EIS, which was published on December 18, 2000, did not include the water agencies as a participant in the HCP and the EIR/EIS.

Subsequent to the publication of the December 18, 2000 NOI/NOP, the City and the water agencies entered into an indemnification agreement (April 2001) to address the water agencies' concerns about liability related to participating in the HCP and to support a collaborative HCP process. The intent of the indemnification agreement (April 2002) was to provide clarification of the responsibilities of the City and the water agencies in the event that legal challenges were made to the HCP regarding land use issues.

Thus, in early 2001, RD 1000 and Natomas Mutual re-joined the City, Sutter County, and the Conservancy in developing the draft HCP evaluated in this EIR/EIS. As part of the water agencies' involvement, they identified general conservation measures for operations, maintenance, and minor construction activities. A revised NOP/NOI noticing the

³ The MAP EIS (USFWS, July 2001) identifies an area of incidental-take coverage for the MAP project of 1,892 acres. The Natomas Basin HCP evaluated in this EIR/EIS discusses MAP acreage of 1,983 acres to be consistent with the HCP.

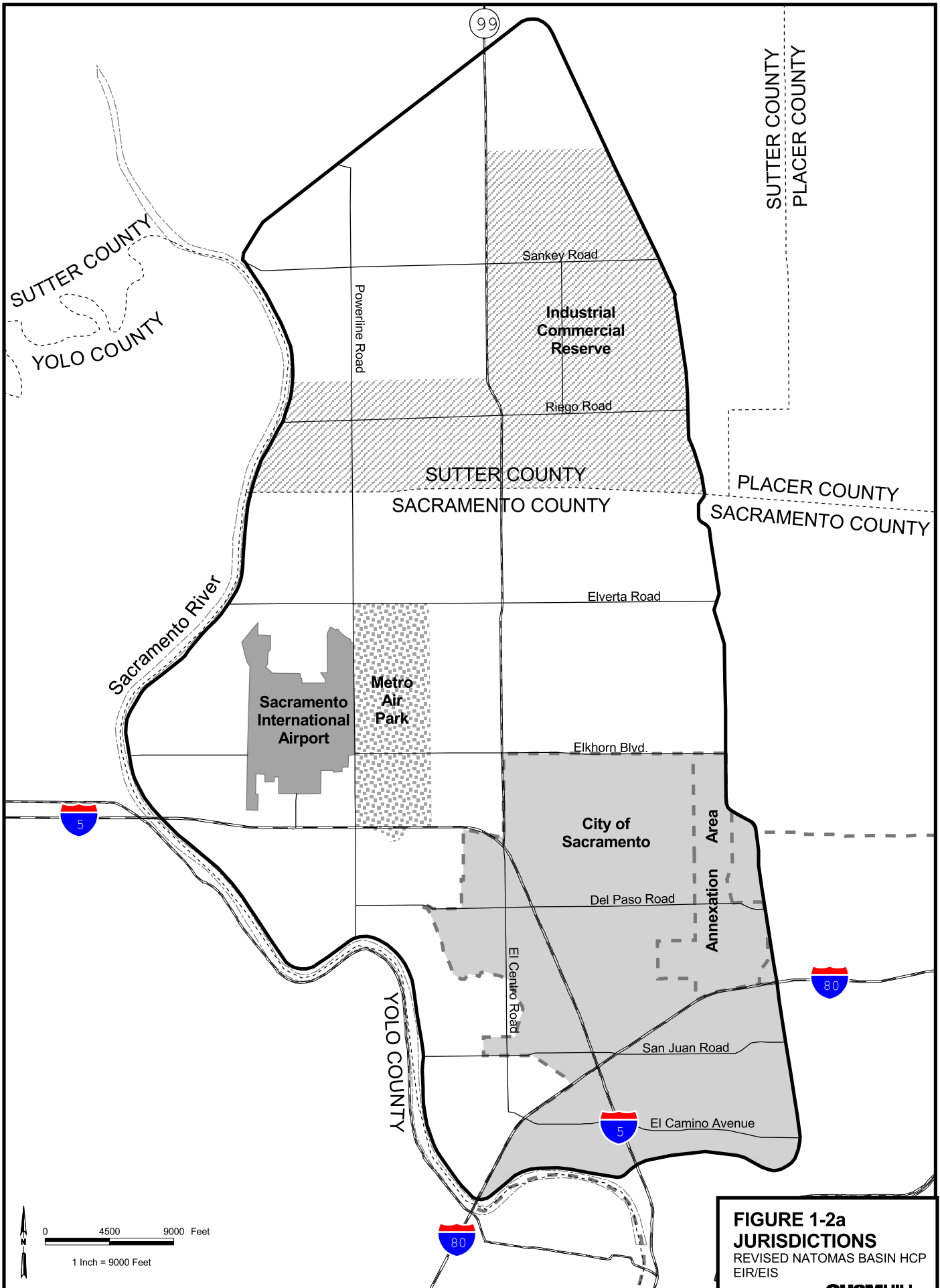
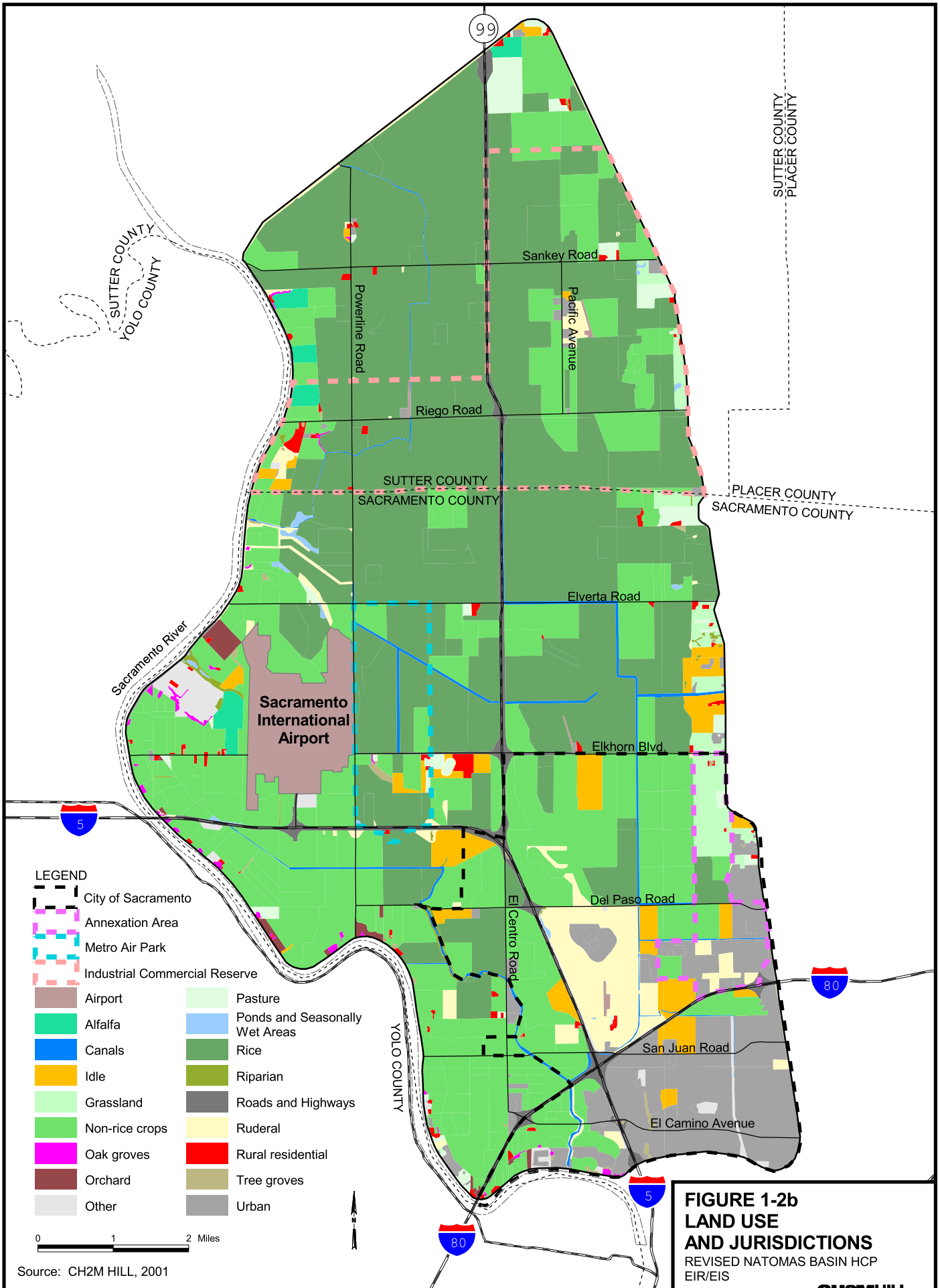


FIGURE 1-2a
JURISDICTIONS
 REVISED NATOMAS BASIN HCP
 EIR/EIS



involvement of the water agencies in the HCP process was published in local newspapers and in the *Federal Register* on August 18, 2001. Incorporation of the water agencies' conservation measures into the HCP, including clarification and further refinement of RD 1000's and Natomas Mutual's proposed conservation measures, occurred throughout 2001.

An integral part of developing the HCP has been the USFWS's and the CDFG's review and comment on the draft HCP. In conjunction with this review, the resource agencies requested further clarification on the permittees' (including the water agencies') covered activities. In December 2001 and January 2002, several meetings were held to clarify aspects of the permittees' covered activities, and in early January 2002 the HCP was revised to address these comments. Additional detail of the water agencies' covered activities, including a request for coverage for use of pesticides (e.g., aquatic herbicides, rodenticides) in accordance with label instructions, was provided to the USFWS and CDFG. In early January 2002, the USFWS clarified that the local USFWS office would be unable to process a request for take coverage for pesticides and rodenticides, given the regional USFWS guidance policy (USFWS, *Inclusion of Pesticide and Herbicide Applications as a Covered Activity in an Endangered Species Act Section 10(a)(1)(B) Permit*, July 1998) limiting take authorization for such chemicals. Subsequent meetings occurred with the water agencies and the USFWS (including discussions with the regional representative from the USFWS in Portland) to discuss the water agencies' BMPs and other activities, including pesticide and rodenticide use. It was determined that coverage of such chemicals would require further review by the USFWS. To begin this extensive review, the USFWS requested that the water agencies provide: (1) a list of pesticides for which coverage was requested and (2) any environmental analysis of the effects of those pesticides on species covered in the proposed ITPs.

In late January and February 2002, discussions were held among the USFWS, the land use agencies, and the water agencies. The USFWS indicated that a substantial length of time would be required to prepare and process adequate scientific information necessary for the USFWS to analyze the biological effects of each chemical on the covered species. The land use agencies also expressed concern regarding the length of time it would take for the water agencies to prepare and submit their initial list of chemicals and appropriate supporting biological analysis. Thus, they recommended that the HCP exclude chemical coverage for the water agencies. It was further suggested that the water agencies continue to be included in the HCP for the other covered activities (mechanical activities such as mowing and non-chemical channel maintenance activities). In March 2002, the Boards of Directors of both water agencies elected not to continue participation in the joint HCP because coverage for pesticide use would not be granted by the USFWS. The water agencies continue to be represented in the HCP as a permittee in the event they choose at a future date to apply for incidental take permits for the activities (excluding pesticides) covered by the HCP and evaluated in this EIR/EIS.

By late May 2002, the draft HCP was nearing completion and the EIR/EIS contained an analysis of the water agencies covered activities, excluding pesticide use. The land use agencies contacted the water agencies to determine if RD 1000 would continue to serve as a lead agency for the EIR. On May 31, 2002, the water agencies stated that they would not serve as a co-lead agency on the EIR because pesticide coverage was not addressed in the HCP and the associated EIR/EIS.

On June 5, 2002, the water agencies presented information to the USFWS on pesticides for which coverage is requested. Because the water agencies decided in March 2002 not to file applications for incidental take permits on the basis of pending discussions with the USFWS on pesticide coverage, and because of the substantial period of time required to analyze the impacts of various pesticides and rodenticides on the covered species proposed by the water agencies in their June 5, 2002 letter, this EIR/EIS does not analyze such proposed covered activities. The EIR/EIS does analyze other covered activities requested by the water agencies prior to December 2001 (i.e., the activities presented in the HCP). The water agencies will continue to work with the USFWS to address coverage for pesticide use independent of the current HCP.

To facilitate implementation of the Proposed Action, the City, Sutter County, and the Conservancy have filed applications for incidental take permits pending resolution of the water agencies' request for coverage of pesticide use. Because environmental analysis of the water agencies' covered activities has been conducted in conjunction with their previous participation in the HCP process, this EIR/EIS retains that analysis in the event that the water agencies elect to move forward with a separate HCP or an amendment to this HCP and associated environmental review at a future unknown date. Consequently, this EIR/EIS also evaluates both the potential environmental effects that could occur if the water agencies choose to file an application and the effects if the water agencies do not participate (i.e., implementation of the HCP and ITP issuance only to the City of Sacramento, Sutter County, and the Conservancy).

1.2.2. Court Opinion

As discussed above, the City received incidental take authorization from the USFWS in December 1997. In February 2000, the National Wildlife Federation and other plaintiffs filed suit against the USFWS's issuance of the ITP to the City. The lawsuit also challenged the HCP's compliance with the requirements of the Endangered Species Act (ESA) (*National Wildlife Federation, et al. v. Secretary of the Interior Bruce Babbitt, August 15, 2000*). The plaintiffs claimed that the USFWS violated various provisions of the Endangered Species Act (ESA) when it issued a "No-Jeopardy" opinion in its Biological Opinion in support of the issuance of the ITP. In addition, the plaintiffs asserted that the USFWS violated NEPA by preparing an Environmental Assessment rather than an EIS.

In August 2000, the United States District Court for the Eastern District of California issued a *Memorandum of Opinion and Order* (Order). The Court ruled in favor of the plaintiffs on six of nine actions. The Court ruled in favor of the USFWS on the remaining three issues: (1) the 1997 HCP met the minimum requirements of the ESA, (2) uncertainties regarding the biology of certain species addressed in the HCP did not undermine the legal adequacy of the HCP, and (3) the USFWS based its decisions on best available scientific and commercial evidence. (The revisions made to the HCP assessed in this EIR/EIS as a result of the Opinion are summarized in Table I-2 of the HCP.) Pursuant to a Settlement Agreement executed by the parties in the federal suit (effective May 10, 2001), the Order was modified to allow incidental take protection for limited land development within the City, with the provision of specific mitigation requirements.

Pursuant to the Order, the City has prepared a revised HCP (together with Sutter County, the Conservancy, RD 1000, and Natomas Mutual). The revised HCP prepared jointly by the City, Sutter County, the Conservancy, RD 1000, and Natomas Mutual is the subject of this EIR/EIS.

1.3 Requirements for Environmental Review

This section presents the requirements for environmental review associated with the Proposed Action, including the obligations of the state and federal lead agencies and the role of the CDFG.

1.3.1 Lead Agencies

The City and Sutter County have issued and intend to issue permits allowing urban development within the Natomas Basin, and this development has the potential to result in the incidental take of listed plant and animal species. Similarly, the ongoing management activities of the Conservancy, RD 1000, and Natomas Mutual have the potential to result in incidental take of these same species. Incidental take can be authorized subject to approval by the USFWS (for additional information regarding this process, see Section 1.5.1). The City, Sutter County, and the Conservancy have submitted a draft HCP and have requested ITPs from the USFWS. Contingent upon the USFWS's approval of the HCP, the USFWS will issue ITPs individually to the permittees (based on the permittees' meeting the USFWS's issuance criteria) and adopt IA(s). The permittees also intend to seek incidental take authorization from the CDFG. (The CDFG's involvement in the HCP and process for consideration of incidental take is described below.)

The USFWS's action to issue the ITPs, approve the HCP, and approve an IA is subject to environmental review under NEPA. The City, Sutter County, Conservancy, and water agency discretionary actions related to approval of the HCP (and IA[s]) and to the application for take authorization are subject to CEQA. The USFWS is the lead agency for the NEPA process, and the City and Sutter County are joint lead agencies for the CEQA process.

1.3.2 California Department of Fish and Game

In its role as a Responsible Agency under CEQA, CDFG will rely on this EIR/EIS in considering the issuance or modification of incidental take authorization to individual permittees. The CDFG has a parallel process to the USFWS's process for allowing the incidental take of species. The CDFG process is implemented in accordance with the California Endangered Species Act (CESA) and is described in Section 2081 of the Fish and Game Code and its implementing regulations. Concurrent with the USFWS's issuance of an ITP to the City in December 1997, CDFG issued a Section 2081 permit to the City for incidental take authorization for development in the Natomas Basin and implementation of the Natomas Basin HCP. Prior to the federal action against the USFWS, a similar lawsuit was filed with the Sacramento County Superior Court challenging CDFG's issuance of the 2081 permit. The Superior Court ruled in favor of CDFG. An appeal was filed on February 14, 2000, but was later withdrawn pursuant to the May 10, 2001 Settlement Agreement. At this time, the City's 2081 permit remains in effect.

The CDFG has participated in the development and review of the current HCP. On the basis of the public review of the HCP and the concurrent environmental review process under NEPA and CEQA, CDFG will consider amending its 2081 permit to the City and issuing 2081 permits to Sutter County and the Conservancy. The CDFG is a Responsible Agency under CEQA, and will use this EIR as its CEQA document for its actions pursuant to Section 2081.

1.4 Purpose and Need/Objectives

This section presents the USFWS's purpose and need (in accordance with the requirements of NEPA) and the objectives of the City, Sutter County and the Conservancy (in accordance with the requirements of CEQA). The specific biological objectives of the permittees, which are listed in Section I.C of the HCP and summarized in Section 2.4.4 of this EIR/EIS, are also incorporated in total into the purpose and need/objectives to establish and maintain a biologically sound and interconnected habitat reserve system. The purpose and need and objectives of the Proposed Action were used in the development of alternatives to the Proposed Action (see Sections 2.5 and 2.6).

1.4.1 Purpose and Need (USFWS)

This section presents the purpose and need and the objectives of the lead agencies. It also presents overall the objectives of the Conservancy (as a permittee) and the water agencies (as potential future permittees).

1.4.1.1 Purpose

Under NEPA, the USFWS's purpose in issuing ITPs, entering into an IA(s), and approving the HCP is to authorize the incidental take of the covered species resulting from the covered activities in the Natomas Basin. As stated in the USFWS's *Habitat Conservation Planning Handbook* (USFWS and National Marine Fisheries Service, 1996), a key facet of the HCP program is to reduce conflicts between listed species and economic development activities and to create a framework that would encourage "creative partnerships" among the public and private sectors and state, municipal, and federal agencies in the interests of endangered and threatened species and habitat conservation.

The specific purpose of the Proposed Action is to:

- Protect, conserve and enhance listed and unlisted species and their habitat for the continuing benefit of the people of the United States
- Ensure compliance with the ESA, NEPA, and other applicable federal laws and regulations
- Provide permanent protection and management of listed species and their habitat, and achieve long-term survival through the permittees' participation in a mitigation program
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS

1.4.1.2 Need

The need for the action is based on the potential that activities proposed by the permittees could result in the take of federally listed species and other unlisted species that could become listed in the future. The USFWS must respond to the ITP application related to activities that have the potential to result in the take of covered species within each permittee's permit area.

1.4.2 Objectives (City of Sacramento and Sutter County)

The CEQA lead agencies are also permittees. Their objectives include implementing the biological goals detailed in the HCP (Section I.C), which are summarized in Section 2.4.4 of this EIR/EIS.

The primary objectives under CEQA for the City and Sutter County are to implement their respective general plans and other planning documents (see Section 2.2 and Chapter 4) for lands within the Natomas Basin. These plans represent a foreseeable urban development scenario evaluated for the HCP. The Proposed Action addresses incidental take of the covered species resulting from 17,500 acres of planned development in the Natomas Basin (this also includes the 1,983-acre Metro Air Park project in unincorporated Sacramento County, which is covered under a separate permit, as described in Section 1.2.1). These development activities have the potential to result in the take of listed species and permanent disturbance to their habitats within the 53,537-acre Natomas Basin.

The specific objectives of the City and Sutter County are presented below.

1.4.2.1 City of Sacramento

The specific objectives of the City of Sacramento are to:

- Obtain an ITP from the USFWS. The ITP is necessary to authorize the incidental take of federally listed species that could result from the City's planned development in the basin.
- Obtain CDFG approval of modifications to the City's 2081 permit to authorize the incidental take of state-listed species.
- Implement approved land use plans guiding urban development in the City's permit area (including the "panhandle" lands proposed for annexation in the North Market Boulevard/Del Paso Road area).
- Minimize and mitigate the effects of take of the covered species.
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS.

1.4.2.2 Sutter County

The specific objectives of Sutter County are to:

- Obtain an ITP from the USFWS. The ITP is necessary to authorize the incidental take of federally listed species that could result from Sutter County's planned development in the basin.
- Obtain CDFG approval of a 2081 permit to authorize the incidental take of state-listed species.
- Implement approved land use plans guiding urban development in Sutter County's permit area.
- Minimize and mitigate the effects of take of the covered species.
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS.

1.4.2.3 Other Permittees

The overall objective for the Conservancy is to implement the provisions of the HCP on lands acquired for management by the Conservancy in a way that promotes biological conservation and provides incidental take coverage.

The specific objectives of the Conservancy are to:

- Obtain an ITP for federally listed species within the Natomas Basin and Area B that would support the acquisition, development, and management of habitat reserves in accordance with the HCP.
- Obtain CDFG approval of a 2081 permit to authorize the incidental take of state-listed species.
- Minimize and mitigate the effects of take of the covered species and enhance habitat values to support covered species.
- Conduct reserve acquisition and development in accordance with Conservancy bylaws and provisions.
- Implement reserve management plans for ongoing management of reserve lands within its permit area.
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS.

The primary objective for RD 1000 and Natomas Mutual is to continue to engage in activities associated with their system of facilities, including water canals and drainage ditches, in a way that promotes biological conservation and provides incidental take coverage.

The specific objectives of RD 1000 are to:

- Obtain an ITP from the USFWS for federally listed species within the Natomas Basin to support the continuation of RD 1000 management activities in a manner conducive to species' needs.
- Obtain CDFG approval of a 2081 permit to authorize the incidental take of state-listed species.
- Minimize and mitigate the effects of take of the covered species.
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS.

The specific objectives of Natomas Mutual are to:

- Obtain an ITP from the USFWS for federally listed species within the Natomas Basin to support the continuation of Natomas Mutual management activities in a manner conducive to species' needs.
- Obtain CDFG approval of a 2081 permit to authorize the incidental take of state-listed species.

- Minimize the effects of take of the covered species.
- Implement the biological goals and objectives as specified in Section I.C of the HCP and Section 2.4.4 of this EIR/EIS.

1.4.3 Decisions to be Made

Overall, the decision to be made by the USFWS is whether or not the issuance of ITPs for the federally listed species in the Natomas Basin would be consistent with issuance criteria for the permit. Specifically, the decisions to be made by the USFWS are:

- Is the proposed take incidental to an otherwise lawful activity?
- Are the impacts of the proposed taking minimized and mitigated to the maximum extent practicable?
- Have the permittees ensured that adequate funding will be provided to implement the measures proposed in the HCP?
- Is the proposed take such that it will not appreciably reduce the likelihood of the survival and recovery of the species in the wild?
- Are there other measures that should be required as a condition of the permit?

The USFWS could choose to issue permits conditioned on implementation of the HCP as submitted, issue permits conditioned on implementation of the HCP (as submitted together with other measures specified by the USFWS), or deny the permits.

The decision to be made by the permittees is whether the implementation of the HCP within their permit areas would result in significant environmental impacts to their respective permit areas, including whether the implementation of the HCP is consistent with other regulations and policies for these areas.

1.4.4 Other Discretionary Actions

As discussed in Section 1.3.1, this EIR/EIS is intended to support the actions of the USFWS in issuing ITPs and entering into an IA(s) for the HCP, and to support the actions of the City, Sutter County, the Conservancy, RD 1000, and Natomas Mutual in applying for ITPs, entering into an IA(s), and implementing the HCP. In addition, the EIR/EIS is also intended to support the following discretionary actions:

- Issuance of take permits by CDFG under Section 2081 of the Fish and Game Code.
- Issuance of take authorization related to specific urban development applications (e.g., Tentative Subdivision Maps) within the permit areas of the City and Sutter County.
- Issuance of incidental take authorization for other covered activities (e.g., infrastructure development and other public works projects) within the permits areas of the City and Sutter County.
- The Conservancy's activities related to the conservation strategy in the HCP, including the application of acquisition criteria and the creation of habitat reserves.

1.4.5 Independent Implementation

As discussed in Section I.A. of the HCP (and in Section 2.3 of this EIR/EIS), the individual permittees (i.e., the City, Sutter County, Conservancy, RD 1000, and Natomas Mutual) would obtain individual ITPs from the USFWS for activities within each permittee's respective permit area. Similarly, each of these permittees also would obtain individual Section 2081 permits (or amendments to existing 2081 permits) from the CDFG for activities conducted within each permittee's respective permit area. Each permittee would be required to mitigate independently the impacts of its covered activities (i.e., if any one of the permits were revoked, the other permits would still remain in effect). The conservation strategy in the HCP, as it pertains to specific permittees, can be used by the various applicants to obtain the necessary take permits needed to conduct otherwise lawful activities within each permittee's respective permit area. Because of the potential for independent implementation of the HCP by permittees, this EIR/EIS assesses impacts from individual permittees as well as overall impacts of the Proposed Action and alternatives (see Chapter 4: Environmental Consequences).

1.5 Regulatory Framework

Key relevant federal, state, and local regulations and guidelines applicable to implementation of the Proposed Action are described below.

1.5.1 Endangered Species Act

The 1973 Endangered Species Act (16 U.S.C. 1531-1544) provides for the conservation of ecosystems (both through federal action and by encouraging the establishment of state programs) upon which threatened and endangered species of fish, wildlife, and plants depend. The ESA is enforced by the USFWS, and by the National Marine Fisheries Service for salmon and other anadromous fish. Key provisions of the ESA are described below.

1.5.1.1 Section 9

Section 9 of the ESA and accompanying federal regulations prohibit the unauthorized taking of fish and wildlife species listed as threatened or endangered by government, private companies, and individuals. As defined in the ESA, taking means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in such conduct." By regulation, the USFWS have defined harm as any act that "actually kills or injures" listed wildlife. Harm could also include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."

1.5.1.2 Section 10

In recognition that take cannot always be avoided, Section 10(a)(1)(B) of the ESA allows USFWS to authorize taking of endangered and threatened species by non-federal entities that is incidental to, but not the purpose of, otherwise lawful activities. Similar provisions are found in Section 7 for actions by federal agencies (see below). Under Section 10(a)(1)(B), such authorizations are granted through the issuance of ITPs. Applicants for such permits must submit conservation plans (i.e., HCPs) that specify:

- The impact(s) that will likely result from the taking
- The measures the permittee will take to minimize and mitigate those impacts
- The source of funding available to implement the measures
- Alternatives to the taking and the reason the alternatives were not chosen
- Any other measures considered by the USFWS as necessary or appropriate for minimizing or mitigating the impacts of the taking

Section 10(a)(1)(B) also was intended by Congress to authorize the Services to approve HCPs for unlisted as well as listed species, and to issue ITPs that cover unlisted species where coverage is already being provided for listed species. If an applicant proposing an individual HCP chooses to include an unlisted species, additional mitigation would not be required within the ITP permit area upon the listing of that species. Under the Natomas Basin HCP, the USFWS would issue ITPs based on implementation measures contained in the HCP that would cover 22 listed and unlisted species.

1.5.1.3 Section 7

Under Section 7 of the ESA, federal agencies must ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat of listed species by federal agency actions. Because issuance of an ITP is a federal action, the USFWS would conduct an internal consultation on the ITP. This EIR/EIS is being prepared to support possible issuance of an ITP, which requires compliance with ESA Section 7.

1.5.1.4 Unforeseen Circumstances / “No Surprises”

On February 28, 1998, the U.S. Fish and Wildlife Service and National Marine Fisheries Service published a final rule codifying “No Surprises” into federal regulation at 50 C.F.R. Sections 17.22(b)(5) and 17.32(b)(5). The “No Surprises” regulations state, in part, that, “In negotiating unforeseen circumstances, the [USFWS] Director will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee. If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within the conserved habitat areas, if any, or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures will not 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 conservation plan without the consent of the permittee.” The regulation also states that the assurances of the No Surprises regulations apply only “where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan.”

Another category of circumstances under the federal “No Surprises” regulations is “changed circumstances.” This term is defined by the regulations as changes in circumstances affecting

a species or geographic area covered by a conservation plan (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events), which can reasonably be anticipated and planned for by the applicants and the USFWS.

1.5.2 National Environmental Policy Act

The National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 et seq.), requires that all federal agencies proposing major actions significantly affecting the quality of the human environment prepare a detailed statement of environmental effects. NEPA stipulates the factors to be considered in environmental impact statements and requires that federal agencies employ an interdisciplinary approach in related decision-making. The USFWS, pursuant to NEPA and its internal guidelines, implements NEPA through cooperating with state and local agencies and concerned public and private organizations in making informed environmental decisions to conserve, protect, and enhance fish and wildlife and their habitats for the continued benefit of the public.

1.5.3 California Environmental Quality Act

The California Environmental Quality Act (Pub. Res. Code §21000 et seq.), as amended, requires that state and local government agencies identify the significant environmental effects of their actions and either avoid those significant environmental effects or mitigate those significant environmental effects, where feasible. The City, Sutter County, and RD 1000 implement CEQA through cooperating with other state and local agencies in identifying and either avoiding, minimizing, or mitigating effects to the environment as a result of activities that they undertake or for which they provide approval. Although Natomas Mutual, a private water company, does not independently implement CEQA, it must comply with CEQA. Thus, RD 1000 serves as the public agency with discretionary authority for Natomas Mutual's activities for purpose of CEQA.

1.5.4 California Endangered Species Act

The California Endangered Species Act is part of the Fish and Game Code of the State of California. As a guide to state agencies, CESA states that "...the policy of the state [is] that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives consistent with conserving the species or its habitat which would prevent jeopardy." The act also states that such reasonable and prudent measures must at the same time maintain the project purpose to the greatest extent possible.

Similar to the federal ESA, CESA prohibits import, export, take, possession, purchase, or sale of listed plant and animal species except as otherwise provided in other provisions of the Fish and Game Code. The state restrictions on take differ from those under the ESA in how take is defined. For CESA, take is defined to mean "hunt, pursue, capture, or kill or attempt the same." Noticeably absent from this definition are certain types of takings prohibited under the ESA (e.g., to harm or harass a listed species). Accordingly, CESA prohibits the direct take of listed species except as otherwise provided under the Fish and Game Code.

Take of state-listed species may be authorized under CESA. Section 2081 of the Fish and Game Code authorizes CDFG to permit the take of state-listed endangered species, threatened species, and candidate species if all of the following conditions are met:

- The take is incidental to an otherwise lawful activity.
- The impacts of the authorized take are minimized and fully mitigated. The measures required to meet this obligation must be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the permittee's objectives to the greatest extent possible. All required measures shall be capable of successful implementation.
- The permit is consistent with any CDFG regulations.
- The permittee must ensure adequate funding to implement the minimization and mitigation measures, and for monitoring compliance with and effectiveness of those measures.
- The permit will not jeopardize the continued existence of the species.

CDFG will make this determination based on the best scientific and other information that is reasonably available, and shall include: (1) consideration of the species' capability to survive and reproduce and any adverse impacts of the taking on those abilities in light of known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

1.5.5 Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 makes it unlawful to pursue, hunt, capture, kill, possess, or attempt to do the same to any migratory bird or part, nest, or egg of such bird listed in wildlife protection treaties between the United States and Great Britain, the Republic of Mexico, Japan, and Russia. The act authorizes the Secretary of the Interior to issue Special Purpose Permits. The procedures for securing such permits are found in Title 50 of the *Code of Federal Regulations*, together with a list of the migratory birds covered by the Act. The USFWS has determined that an ITP issued under Section 10 of the ESA also constitutes a Special Purpose Permit under 50 CFR 21.27, and any take allowed under an ITP will not be in violation of the Migratory Bird Treaty Act. This does not apply to the federally threatened bald eagle, which is protected under other regulations.

1.5.6 Native Plant Protection Act

The California Native Plant Protection Act includes measures to preserve, protect, and enhance rare and endangered native plants. The definitions of "rare" and "endangered" in the Native Plant Protection Act differ from those in CESA, but the list of protected native plants generally encompasses species listed as candidate, threatened, and endangered in the federal ESA and CESA. The Native Plant Protection Act also includes its own restrictions on take, stating that "[n]o person shall import into this state, or take, possess, or sell within this state" any rare or endangered native plant except as provided in the act. The exception is where landowners have been notified of the presence of protected plants by CDFG; they are

required to notify CDFG at least 10 days in advance of changing land uses to allow CDFG an opportunity to salvage the plants.

1.5.7 Local Plans and Ordinances

The General Plan of a city or county is the blueprint for future development. It represents the community's view of its future: a "constitution" made up of the goals and policies upon which the city council, board of supervisors, or planning commission base their land use decisions. General Plans address all aspects of development, including housing availability, jobs/housing balance, traffic, open space, safety, land uses, and public facilities. A Community Plan or Specific Plan may be prepared to implement the General Plan by assessing land use issues for a specific portion of the community. In addition, local zoning ordinances regulate the specific use and development of property. Relevant local planning documents are described in Section 4.1. These land use approvals represent the local agency decisions authorizing urban development within the Natomas Basin.

1.6 Consultation and Coordination/Issues of Controversy

This section summarizes the issues of controversy and other information relevant to the scoping process conducted under CEQA and NEPA for this EIR/EIS. As discussed in Section 1.2.1, substantive activities have occurred for habitat conservation planning in the Natomas Basin. In addition to the planning efforts that have occurred, the local land use agencies and the resource agencies have actively sought public input on the decision processes.

The formulation of the HCP has occurred over fifteen years and has involved many iterations, of which one version, the 1997 HCP, provided the basis for the USFWS and CDFG to authorize incidental take by the City within a portion of the Natomas Basin. Provided below is a summary of major milestones in the public involvement process.

- July 1992 – SAFCA began issuing for public comment a series of draft EIRs that examined the impacts of a local flood control project. The USFWS elevated the project under Section 404 of the Clean Water Act because the USACE would not address the indirect impacts of the flood control project. The USFWS recommended that a comprehensive basinwide management plan be prepared to mitigate the loss of wildlife habitat in the Natomas Basin associated with the indirect effects of the project.
- January 1994 – USFWS and CDFG began participating in the Natomas Basin Habitat Conservation Plan Working Group (the group included SAFCA, the wildlife agencies, the USACE local land use agencies, RD 1000, Natomas Mutual, and landowners).
- March 1994–June 1996 – SAFCA was the lead agency in developing the HCP and prepared and circulated for public comment three drafts, but later discontinued its efforts because it had no land use authority. (The three drafts were released March 1995, October 1995, June 1996). During this time period, public workshops were held to address concerns raised by the public. Each workshop had a focus group including developers, the environmental community, and the rice industry.

- November 1996 – The City of Sacramento took the lead for the HCP effort and published and submitted to the Service a fourth version, along with an application for an incidental take permit.
- January 15, 1997 – The November 1996 version of the HCP was announced in the Federal Register and released for public comment. A draft Environmental Assessment (EA) was prepared and released with the draft HCP.
- June 18, 1997 – A draft EA was noticed in the Federal Register and released for public comment.
- August 1997 – City Council adopted a negative declaration under CEQA and approved the HCP and directed the City Manager to obtain ITPs.
- November 1997 – The City revised and published the 1997 HCP.
- December 1998 – The City appointed a board of directors for the Conservancy. The Conservancy began holding publicly noticed meetings and began its acquisition and management of habitat mitigation lands.
- December 18, 2000 – The USFWS published in the Federal Register a Notice of Intent to prepare a joint EIR/EIS on the proposed issuance of new ITPs to the City and Sutter County. The City and Sutter County published a Notice of Preparation for a Joint EIR/EIS for the state permits on the same day.
- January 3 & 4, 2001 – Public workshops were held by the USFWS, Sutter County, and City of Sacramento. Mailings and newspaper notices were distributed prior to the workshops.
- January 16, 2001 – The formal scoping period for the EIR/EIS ended. The USFWS, City and Sutter are using the scoping comments to assist in revising and preparing the HCP and EIR/EIS.
- March 2001 – The water agencies join the City and Sutter in the revised HCP process. A Revised NOP/NOI was released to indicate the water agencies’ participation in the HCP process.
- January–March 2002 – Consultations with USFWS and CDFG on the USFWS policy to prohibit or limit take coverage for pesticide use.
- March 2002 – The Boards of Directors for RD1000 and Natomas Mutual decide not to pursue ITPs under the proposed HCP because coverage for pesticide use would not be included.

Because of the extensive level of public input throughout the planning process (including the public participation that occurred prior to the environmental review of the 1997 HCP and the review of the HCP being evaluated in this EIR/EIS, the public review period for this document will be 60 days.

A Notice of Availability (NOA) for the Draft EIR/EIS was mailed to agencies, organizations, and individuals. A copy of the NOA and parties to whom the NOA was sent is in Appendix A. The Draft EIR/EIS is available on the Internet at “www.cityofsacramento.org.”

It is also available for review at the City of Sacramento Planning and Building Department, 1231 I Street, Room 300, Sacramento, CA.

1.6.1 Scoping

On December 18, 2000, the City and Sutter County jointly issued a Notice of Preparation (NOP) (per CEQA) and the USFWS issued a Notice of Intent (per NEPA), initiating the public scoping period. These are in Appendix A. The notices provided information on the background and purpose of the Proposed Action, requested public comment on the EIR/EIS, and provided information on the public scoping meetings held in support of the EIR/EIS.

The USFWS, the City, and Sutter County held three public scoping meetings over a 2-day period in January 2001 in Pleasant Grove and the City of Sacramento. The City and County placed advertisements in local newspapers prior to meeting dates in each locale describing when and where each scoping meeting would be held. The three scoping meetings were held at the following locations:

Wednesday, January 3, 2001
2 p.m. to 5 p.m.
Holt Tractor Manufacturing
7310 Pacific Avenue
Pleasant Grove, CA

Thursday, January 4, 2001
2 p.m. to 5 p.m. and 6 p.m. to 8 p.m.
City of Sacramento
1231 I Street
Sacramento, CA

The USFWS published a Notice of Intent (NOI) to prepare an EIS and an announcement of the public scoping meetings in the *Federal Register* on December 18, 2000 (65 *FR* 243:79115-79117). The NOI provided information on the background and purpose of the Proposed Action, requested public comment on the EIR/EIS for the Proposed Action, and provided information on the public scoping meetings. These scoping meetings were conducted using a workshop format and were hosted by representatives from the USFWS, the City, Sutter County, and the Conservancy. The public was greeted on arrival and asked to sign an attendance record form, listing their name, address, affiliation (if any), and whether they would like to be added to a project mailing list. Each guest was also given the option to provide written comments or concerns they would like addressed in the EIR/EIS, and was provided with a comment form. The public was asked to complete and return the form upon leaving the meeting or to complete the form later and return it to the USFWS by the close of the scoping period (January 16, 2001).

A short presentation was given, beginning with a welcome statement by a local government representative (a Sutter County representative in Pleasant Grove and a City of Sacramento representative in Sacramento). A representative of the USFWS then described the habitat conservation planning process and the intended purpose of the HCP. A representative of the consulting firm preparing the EIR/EIS provided a brief overview of the NEPA/CEQA process and the format of the scoping workshop. At that time, the public was invited to participate in the workshop portion of the meeting. At various workshop stations, the meeting hosts answered questions regarding the Proposed Action, the NEPA and CEQA processes, and the general purposes of habitat conservation planning.

Approximately 60 separate comments on the scope of the EIR/EIS were received from individuals and organizations during the public comment period. Two written comment

forms were received from the public scoping meeting held in Pleasant Grove. Three written comment forms were received from the two meetings held in Sacramento. Twenty additional comment letters were received by the end of the comment period on January 16, 2001, or shortly thereafter. Comments were submitted by private individuals, public agencies, and private conservation groups.

The approximately 60 individual comments received regarding the EIR/EIS were categorized into five topic areas: (1) resources to be addressed in the EIR/EIS; (2) alternatives to be considered in the EIR/EIS, (3) description of the affected environment; (4) scope of the cumulative impacts analysis, and (5) effectiveness of HCP measures.

Subsequent to the publication of the NOI and NOP, RD 1000 and Natomas Mutual joined the process. A supplemental NOI and NOP were published in the *Federal Register* and in local newspapers of general circulation on August 17, 2001. Additional written comments were solicited regarding participation by RD 1000 and Natomas Mutual. Two additional comment letters were submitted. Individual comments in these letters did not specifically address the inclusion of RD 1000 and Natomas Mutual as applicants.

1.6.2 Agency Coordination

The HCP was prepared in consultation with an interdisciplinary team of biological resource and land use specialists from the USFWS, the City, Sutter County, CDFG, RD 1000, Natomas Mutual, and the Conservancy. This interdisciplinary team also prepared and/or contributed to this EIR/EIS, along with consultant staff. Additional biological evaluation will occur with the USFWS's endangered species division as part of the required internal consultation process.