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MEMORANDUM

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TO: Ken Schreiber

FROM: Chris Beale

DATE: October 11, 2007

RE: Implementing Entity Criteria

Below are some suggested criteria to use in selecting an appropriate implementing entity, as you requested. It is important to bear in mind that the right legal identity or organization for the HCP/NCCP implementing entity will depend a great deal on what that entity will be expected to do. The entity should be selected that is best able to perform its duties under the HCP/NCCP-- the form of the implementing entity should follow its function.

The local partners themselves will ultimately be responsible for ensuring that all aspects of the HCP/NCCP are properly implemented. They may elect to implement some or all of the HCP/NCCP with their "in-house" resources, including important components of the HCP/NCCP such as acquiring and managing land, managing mitigation fee revenues, and seeking state and federal grants. The extent to which the local partners wish to "outsource" implementation of these and other components of the HCP/NCCP to a separate implementing entity is perhaps the most fundamental consideration in selecting the right entity. Generally speaking, the more the local partners intend to rely on the implementing entity for implementation, the greater the legal authority, capacity, and expertise, etc., that entity must possess to assume the obligation. In addition, if the successful implementation of the HCP/NCCP is largely in the hands of the implementing entity, the local partners are likely to want to exercise more control over the entity to ensure that it carries out its responsibilities. Conversely, if the implementing entity has a more limited role in implementation, it may not need to meet all of the criteria below, and the local partners are likely to be more comfortable allowing the entity to act more independently and with somewhat less oversight.

Suggested Criteria

1. **Legal authority.** The extent to which the entity has the legal authority to perform its obligations under the HCP/NCCP. Some or all of the following may be useful or necessary for implementing the plan:
 - a. Acquire and own land
 - b. Hire staff or retain consultants
 - c. Assess fees
 - d. Manage fees subject to the Mitigation Fee Act
 - e. Apply for and manage public and private grants
 - f. Take enforcement action
 - g. Sue and be sued
 - h. Condemn land (i.e., in a friendly condemnation)

2. **Control and Accountability.** The degree of control or oversight the local partners have over the entity. What level of control do the local partners want over the entity to ensure that the HCP/NCCP is properly implemented?
 - a. Direct control: the local partners manage the entity themselves.
 - b. Contract right: the local partners contract with an independent entity (or among themselves) to implement specific components of the HCP/NCCP. The contract or agreement may include accounting controls and other controls to ensure sufficient accountability.

3. **Efficiency.** The extent to which the entity can act efficiently. Important considerations may include the following:
 - a. Startup costs (i.e., for creating new entity)
 - b. Overhead costs
 - i. Use of existing entity(ies) to minimize added overhead costs
 - ii. Relative administrative costs associated with various types of public and private organizations
 - c. Contracting—speed and efficiency with which the entity may use consultants and other contractors to perform work
 - i. Public agency contracting requirements
 - d. Real property transactions—speed and efficiency with which entity may acquire land or conservation easements

4. **Capacity/capability.** The extent to which the entity has the expertise and resources to perform its obligations under the conservation plan. Relevant expertise may include the following:
 - a. Biology
 - b. Land acquisition
 - c. Land management
 - d. Financial management (e.g., mitigation fees, grant funds, long-term endowments for management)
 - e. Habitat restoration

- 5. Revenue generation and management.** The extent to which the entity will be able to obtain outside private or public funding for implementation of the conservation plan or for complementary conservation actions.

 - a. State bond funds and grants
 - b. Federal grants
 - c. Private donations
- 6. Stability/durability.** Long-term viability of entity. Will the entity be around for the duration of the HCP/NCCP?

 - a. Public vs. private entity
 - b. Established entity vs. newly formed entity
- 7. Focus.** The extent to which the entity's focus may be divided among competing obligations or interests. This is likely to be important to the wildlife agencies and perhaps the public. If the entity's primary focus is on matters unrelated to land management or natural resources conservation, it could be a serious concern for the agencies.
- 8. Credibility.** The extent to which the entity's mission or reputation gives it credibility with the wildlife agencies and the public.
- 9. Timing.** Will the entity have to be formed before the implementation agreement is signed and before permits are issued? If the entity will directly assume certain implementation obligations, or will receive its own incidental take permit from the wildlife agencies, it will have to sign the implementation agreement. If, instead, the implementing entity will act under the direction of one or more of the local partners (e.g., under contract), and will receive take authorization under one of the local partners' permits, it may be formed or identified after the implementation agreement is signed.