

**EDWARDS AQUIFER
HABITAT CONSERVATION PLAN PROGRAM
("EAHCP PROGRAM")**

PROGRAM OPERATIONAL RULES

FOR

**EAHCP PROGRAM ADAPTIVE MANAGEMENT STAKEHOLDER
COMMITTEE MEMBERS AND PARTICIPANTS**

SECTION 1. PROMULGATION AND PURPOSE.

1.1. Promulgation. These Rules are promulgated by the EAHCP Program Adaptive Management Stakeholder Committee ("Stakeholder Committee") created in compliance with the requirements of the Funding and Management Agreement ("FMA") and in furtherance of the spirit of Senate Bill 3 ("S.B. 3").

1.2. Purpose. The purpose of these Rules is to provide rules and procedures (a) to ensure that the Stakeholder Committee is an open process that provides advance public notice of meetings and proposed actions, opportunity for stakeholder participation, open communication, and Consensus-based decision-making; and (b) to enable the EAHCP Program to meet the purposes, goals, requirements, and, to the maximum extent feasible, deadlines imposed by the FMA.

SECTION 2. APPLICATION AND CONSTRUCTION.

2.1. Application. These Rules, and any amendment of these Rules made under Section 10, shall be effective and apply to the actions of the Stakeholder Committee from and after the respective date of approval of the Rules or the amendment.

2.2. Construction. These Rules shall be construed to comply with the FMA. In the event of any inconsistency in any portion of these Rules and the FMA, the inconsistent portion shall be disregarded or, to the extent feasible, deemed modified to conform to the FMA.

2.3. Good Faith Exceptions. These Rules recognize the critical importance to the EAHCP Program of requirements for procedural transparency, including, but not limited to, requirements for prior public notice and opportunity for participation in proposed EAHCP Program activities. However, Participants also acknowledge that for the EAHCP Program to efficiently and timely meet its goals, it is not feasible for every discussion pertaining to the EAHCP Program to be conducted in strict compliance with the procedural requirements in these Rules for prior notice and public participation. Accordingly, these Rules are not intended to prohibit discussions of EAHCP Program-related topics among Stakeholder Committee members or among the Program Manager, Chair, other Stakeholder Committee members, and other persons, provided such discussions are conducted in good faith and in furtherance of the goals of the EAHCP Program.

Persons participating in such discussions shall use their own best judgment in determining when reasonable notice to other Members and Participants, either in advance or after-the-fact, of such discussions is appropriate in order to further the interests of the EAHCP Program.

2.4. Percentages. Whenever these Rules provide for a specified percentage of persons to constitute a quorum, to consider or approve some action, or to perform any other duty or responsibility, and the result is not a whole number, the result shall be rounded up to the next whole number.

SECTION 3. DEFINITIONS.

Certain terms used in these Rules shall have the meanings assigned in this section unless the context clearly indicates another meaning. Any terms used as captions of sections or subsections are for convenience only and have no special meaning unless assigned a meaning in this section.

“Abstention” means that a Member or Alternate Member affirmatively indicates, in good faith, his or her intention not to vote on a matter.

“Alternate Member” means a person designated as provided in Subsection 5.2 to serve as an alternate to a Member of the Stakeholder Committee. Lower case “alternate member” means a person who serves as an alternate to a member of an Issue Team, Subcommittee, or Work Group.

“Chair” means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected or appointed to chair the meetings of the group. Unless another group is indicated, “Chair” refers to the Stakeholder Committee Chair, who has the duties provided in Subsection 6.2.

“Consensus” means approval of a decision by all Members, or members, of the Stakeholder Committee, Subcommittee, Issue Team, or Work Group as determined by an explicit request for approval to the group at a time when the requisite quorum is present and in response to which no Member, or member, indicates opposition to the decision.

“Consensus-based decisions” mean decisions reached by Consensus or by the process provided in Subsections 7.8 and 7.9 of these Rules.

“EAA” means the Edwards Aquifer Authority.

“EAHCP” or “HCP” means the habitat conservation plan prepared pursuant to S.B. 3 and Section 10(a)(2)(A) of the federal Endangered Species Act: Edwards Aquifer Authority, et al., Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan (Nov. 2012), as amended.

“EAHCP Program” means the activities undertaken in furtherance of the EAHCP, including the FMA.

“Entire Stakeholder Committee” or “entire membership of the Stakeholder Committee” or “by vote of the entire membership,” or a similar phrase using “entire” in a reference to a requirement for quorum or Consensus or voting means the requirement is based on the total number of persons serving as Members of the Stakeholder Committee,

including any Alternate Member temporarily replacing a Member, but not including a Member whose position has been Vacated.

“Expedited Tier 1 Decision” means a Tier 1 decision that, because of exigent circumstances, must be acted upon and resolved prior to the end of the Stakeholder Committee meeting at which the decision is initially presented for resolution. The types of Tier 1 Decisions subject to identification as Expedited Tier 1 Decisions are limited by Subpart 7.8.8.

“Facilitator” means a person responsible for facilitating discussion and Consensus-building among Stakeholder Committee Members at EAHCP meetings or among Subcommittee members at Subcommittee meetings. A Facilitator may be the Program Manager, a person appointed by the Program Manager, or an independent facilitator. A person may not be appointed as the Facilitator without the concurrence of the Stakeholder Committee.

“FMA” means the Funding and Management Agreement submitted to the U.S. Fish and Wildlife Service with the EAHCP and effective on January 1, 2012, as amended.

“Implementing Committee” means the committee created pursuant to Section 7.7 of the FMA.

“Issue Team” means a group of persons, which may include Members and Participants, appointed by the Stakeholder Committee to assist the Stakeholder Committee in reaching Consensus on certain Tier 1 Decisions, as provided in Subsection 7.8.

“Member” means a person who serves as a member of the EAHCP Stakeholder Committee established under the FMA and any Alternate Member with respect to any meeting or procedure for which the Alternate actually acts as the alternate to an unavailable Member. When used in these Rules in a reference to a quorum or a vote of the Stakeholder Committee or a vote of the entire membership of the Stakeholder Committee, the term “Member” does not include any Member whose position has been Vacated. Lower case “member” means a person who serves as a member of an Issue Team, Subcommittee, or Work Group.

“Non-Tier 1 Decision” means a decision of or action taken by the Stakeholder Committee, other than a vote relating to the selection of Stakeholder Committee officers, which is not enumerated in these Rules as a Tier 1 Decision.

“Participant” means a person, other than a Stakeholder Committee Member, who signs up to receive emails regarding activities related to the EAHCP and is involved in activities of the Stakeholder Committee.

“Program Manager” means the person selected by the EAA, as provided in the FMA, to manage the EAHCP Program.

“Quorum” means the minimum number of Members of the Stakeholder Committee or members of any Subcommittee, Issue Team, or Work Group described in these Rules required to either consider or take action on a matter within that group’s authority.

“Rules” means these Program Operational Rules for the EAHCP Program Adaptive Management Stakeholder Committee Members and Participants, as they may be amended from time to time.

“S.B. 3” means Article 12 of Senate Bill 3, 80th Regular Session, 2007, of the Texas Legislature and Article 2 of House Bill 3, 80th Regular Session, 2007, of the Texas Legislature. The Articles amend the Edwards Aquifer Authority Act (“Act”), Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993. Section 1.26A of the Act provides for the development of a recovery implementation program. Senate Bill 3 and House Bill 3 contain identical relevant provisions.

“Secretary” means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected to serve as secretary of the group. Unless another group is indicated, “Secretary” refers to the Stakeholder Committee Secretary, who has the duties provided in Subsection 6.4.

“Section” means a section of these Rules, unless the term is part of a reference to a section of the FMA.

“Special Circumstances,” for purposes of Subsection 7.15, and subparts thereof, means unusual circumstances that make it unreasonably difficult, unreasonably risky, or unreasonably burdensome to hold an in-person meeting. The COVID-19 outbreak is an example of Special Circumstances.

“Sponsor” means a state agency, political subdivision of the state, governmental entity, public utility, a Stakeholder association or group, or other entity authorized in the FMA to be represented through the designation of a representative to serve as a Member of the Stakeholder Committee. The term Sponsor includes an entity authorized to designate a representative of a specified Stakeholder class as a Member of the Stakeholder Committee.

“Stakeholder” means an individual or group that has an interest in the protection of the species listed in the EAHCP as covered species or the management of the San Antonio Segment of the Edwards (Balcones Fault Zone) Aquifer, or both.

“Stakeholder Committee” means the committee established pursuant to Subsection 7.8.1 of the FMA to take certain actions and provide input into operations and decisions under the EAHCP Program.

“Subcommittee” means any Subcommittee established by the Stakeholder Committee, unless the context indicates the term is used to mean all Subcommittees.

“Subsection” means a subsection of these Rules, unless the term is used as part of a reference to a subsection of the FMA.

“Subpart” means a separately numbered portion of a Subsection.

“Tier 1 Decision” means one of the Stakeholder Committee decisions enumerated immediately below:

- (a) Recommendations to the Implementing Committee, the Program Manager, or one or more members of the Implementing Committee on a proposed Routine AMP Decision, proposed Nonroutine AMP Decision or proposed Strategic AMP Decision, as those terms are used in the FMA;
- (b) Membership, responsibilities, and procedures of subcommittees;
- (c) Adjusting the decision process of the Stakeholder Committee for an individual decision without amending the Rules when such an adjustment is authorized under the terms of Subsection 7.13;
- (d) Adoption or amendment of Program Operational Rules;
- (e) Appointments to the Science Committee;
- (f) Recommendations to the Program Manager or the Implementing Committee on the design of studies related to the Biological Goals or the Biological Objectives;
- (g) Recommendation of an organization to establish the Science Review Panel in the event that the National Academies of the National Academy of Science is not retained for that function pursuant to Section 7.10 of the FMA; and
- (h) Any significant action determined by the Stakeholder Committee to require Tier 1 decision-making.

“USFWS” means the United States Fish and Wildlife Service.

“Vacancy” or ***“Vacated”*** means a position on the Stakeholder Committee for a particular entity or class listed in Subsection 7.8.1 of the FMA that, because of the applicability of one of the conditions listed in Subsection 5.5, is not then active on the Stakeholder Committee.

“Vice Chair” means the member of the Stakeholder Committee, Subcommittee, Work Group, or Issue Team who is elected to serve as Vice Chair of the group. Unless another group is indicated, “Vice Chair” refers to the Stakeholder Committee Vice Chair, who has the duties provided in Subsection 6.3.

“Virtual Means” is defined as communication undertaken using internet-based conferencing services, phone-based call services with or without video components, and combinations of both.

“Virtual Meeting” means a meeting in which some or all Members, or members, participate via Virtual Means rather than in person.

“Work Group” means a specific ad hoc work group of Members, which may also include Participants, established under Subsection 8.11.

SECTION 4. PARTICIPATION IN THE EAHCP.

4.1. Participants.

4.1.1. Any individual Stakeholder, including a representative of a class or group, who participates in activities of the Stakeholder Committee and provides information for receiving communications from EAHCP staff is considered to be a Participant in the EAHCP Program.

4.1.2. Each Participant is subject to the procedural requirements of these Rules.

SECTION 5. ORGANIZATION OF THE STAKEHOLDER COMMITTEE.

The Stakeholder Committee is organized as provided in this Section 5.

5.1. Composition of the Stakeholder Committee. The Members of the Stakeholder Committee shall be those persons designated to represent the Sponsors listed in, or identified pursuant to, Subsection 7.8.1 of the FMA. Nothing in this provision shall be construed to prevent an organization from withdrawing from representation on the Stakeholder Committee.

5.2. Alternate Members. The Program Manager will request each Sponsor and Member to ensure an Alternate Member is designated in writing to act for the Member in the event of the Member's temporary unavailability. In the absence of a written communication to the Program Manager from the relevant Sponsor indicating otherwise, an Alternate Member identified by a Member in a written communication to the Program Manager is presumed to be a validly designated alternate for the Member. In the case of inconsistency in designations, the Sponsor's designation will control. An Alternate Member may act at any given time, in a meeting or otherwise, on behalf of only one Sponsor or only one Member and may not act on any matter at the same time as the Member the Alternate Member is designated to temporarily replace; provided that an Alternate Member may participate in EAHCP Program discussions in which such Member also participates.

5.3. Replacement of a Member. If a Member resigns or becomes unavailable to participate in meetings for a period reasonably expected to include three or more consecutive meetings, the Program Manager will request the Sponsor indicated in Subsection 7.8.1 of the FMA for the specific position at issue to designate in writing a person to replace the Member. After the effective date of the resignation or removal of a Member, the designated Alternate Member may continue to serve as the Alternate Member for up to three consecutive meetings unless, prior to that time, the position on the Stakeholder Committee becomes Vacated pursuant to Subsection 5.5 or the Sponsor designates the Alternate Member as the new Member, designates a different new Member and Alternate Member, or notifies the Program Manager that the Alternate Member is not authorized to continue in that capacity. If the Sponsor designates someone other than the Alternate Member as the new Member, the Sponsor may designate the Alternate Member to continue to serve in that capacity.

5.4. Lack of Participation of Members and Alternates and Forfeiture. A Member absent from three consecutive meetings, without attendance of a designated Alternate Member, automatically forfeits status as a representative of an entity or class on the Stakeholder Committee, and the Program Manager will request the Sponsor to designate in writing a person to replace the Member. Forfeiture under this Subsection becomes effective for both the Member and the Alternate Member upon written notification of forfeiture to the Sponsor by the Program

Manager. To help Members avoid membership forfeiture, the Secretary shall work with the Program Manager to provide prompt notice to the Member, the Alternate Member, and the Chair, after two such consecutive absences. If the person who served as the Alternate Member is named by the Sponsor to replace the Member whose position was forfeited, the Program Manager will request written designation of a new Alternate Member.

5.5. Vacated Position on Stakeholder Committee. A position of an entity or class on the Stakeholder Committee shall be Vacated or deemed Vacated when one of the following occurs:

5.5.1. a Member or Sponsor notifies the Program Manager in writing that the Sponsor has withdrawn from participation on the Stakeholder Committee; or

5.5.2. a Sponsor has not designated a person to replace a Member who resigns, forfeits status as a representative pursuant to Subsection 5.4 for non-attendance, or is removed by the Sponsor within 90 days after the removal or 90 days after the Sponsor is notified in writing by the Program Manager of the resignation or forfeiture (if the Sponsor charged with designating a person is the EAA or the Stakeholder Committee, the period for action to avoid a Vacancy extends until the end of the second meeting of the EAA Board or the Stakeholder Committee, whichever is relevant, following notification of the resignation, notification of forfeiture, or the decision to remove the Member); or

5.5.3. a Sponsor notifies the Program Manager in writing that the Sponsor is unable or unwilling to designate a Member.

5.5.4 For purposes of Subpart 5.5.2, notification of resignation or forfeiture to a Sponsor is effective on the date the written notification from the Program Manager is sent to the Sponsor or, if a resignation has a delayed effective date, on the later of the date the notification from the Program Manager is sent or the date that the resignation is effective.

5.6. Notice of Vacated Position or Curing of Vacancy. The Program Manager will provide notice to the Stakeholder Committee when a position is Vacated or a Vacancy is cured consistent with the FMA and these Rules. Consistent with the FMA, a Vacancy may be cured by action of the Sponsor.

SECTION 6. STAKEHOLDER COMMITTEE GOVERNANCE.

6.1. Election of Officers. The Stakeholder Committee will elect from among its Members a Chair, Vice Chair, a Secretary, and other officers as may be desired. Election of any officer requires an affirmative vote of 75 percent of the entire Stakeholder Committee. Absent extenuating circumstances, the regular election of officers shall occur during the last meeting of a calendar year. An officer may participate in discussions of Tier 1 Decisions and Non-Tier 1 Decisions and may vote on any such decisions. Although not an enforceable requirement, the Stakeholder Committee should strive to achieve a change in Members holding officer positions on a regular basis to provide the opportunity for officers to represent diverse stakeholder interests if such a change can be achieved consistent with ensuring efficient implementation of the responsibilities and duties of the Committee.

6.2. Duties of the Chair. The Chair will have the following duties:

- 6.2.1. coordinate with the Program Manager and Members of the Stakeholder Committee the scheduling of Stakeholder Committee meetings;
 - 6.2.2. coordinate with the Program Manager and Members of the Stakeholder Committee the development of an agenda for each Stakeholder Committee meeting;
 - 6.2.3. preside over Stakeholder Committee meetings in a manner that encourages Consensus-based decision-making, full participation, full and open discussion to allow expression of all points of view, and consideration of alternative proposals for resolving controversial issues;
 - 6.2.4. work with the Program Manager to arrange for the facilitation of discussions of Tier-1 Decisions;
 - 6.2.5. facilitate discussion of agenda items either personally or by requesting the Program Manager or a Facilitator to facilitate such discussion;
 - 6.2.6. provide leadership of the Stakeholder Committee;
 - 6.2.7. perform in a representative capacity for the Stakeholder Committee as requested by the Stakeholder Committee; and
 - 6.2.8. meet, in coordination with and after notice to the Program Manager, with elected and appointed officials and other persons on matters related to the EAHCP Program, and if the Chair and Program Manager determine it is in the interest of the EAHCP Program to do so, include other Participants in such meetings;
 - 6.2.9. communicate to Participants information relevant to Stakeholder Committee decisions; and
 - 6.2.10. other duties as requested by the Stakeholder Committee.
- 6.3. Duties of the Vice Chair.** In addition to the duties listed in Subsections 7.3 and 7.15, the Vice Chair will exercise the duties of the Chair in the event of the unavailability of the Chair.
- 6.4. Duties of the Secretary.** The Secretary will oversee the taking of the roll at Stakeholder Committee meetings, preparation of minutes of Stakeholder Committee meetings, and will coordinate with the Program Manager on the management of records of the Stakeholder Committee. The Secretary will exercise the duties of the Chair in the event of the unavailability of both the Chair and the Vice Chair and the duties of the Vice Chair listed in Subsections 7.3 and 7.15 if the Vice Chair is not available to perform those duties or is exercising the duties of the Chair.
- 6.5. Duties of other Officers and Designation of Alternate Presiding Officer.** The election of and duties of other Stakeholder Committee officers will be determined by the Stakeholder Committee from time to time. In the event that the Chair, Vice Chair, and Secretary are all unavailable to preside at a meeting, the Stakeholder Committee may, by Consensus, name one of its Members as an alternate presiding officer to fulfill the duties of the Chair during that meeting.
- 6.6. Terms of Office for Officers.** Except as otherwise provided in this Subsection or Subsection 6.8, each officer shall serve a term not longer than one calendar year, commencing on

the first day of the calendar year following the date of election if the election is held at the last meeting during a calendar year or commencing immediately upon election if the election is held at a different time or is held to fill an open position pursuant to Subsection 6.8 and ending on the last day of the calendar year in which the term commences. Unless he or she has resigned, is unable to continue to serve, or has been removed from office, an officer's term shall continue until a replacement is named. A Member may be elected to an office for any number of additional one-year terms.

6.7. Removal of Officer. An officer subject to a vote of confidence requested as provided in Subpart 7.3.4 must receive, at the first meeting for which there is a quorum following the submission of a request for vote of confidence in compliance with Subpart 7.3.4, an affirmative vote of confidence from at least 75 percent of the entire Stakeholder Committee to continue in office or is otherwise immediately removed.

6.8. Election of Replacement Officer. The Stakeholder Committee will elect by affirmative vote of 75 percent of the entire Stakeholder Committee a Member as replacement officer to complete any unexpired portion of a term of any officer who resigns, is unable to complete a term, or is removed from office.

SECTION 7. CONDUCT OF MEETINGS.

7.1 Open Meetings. All meetings of the Stakeholder Committee and any Subcommittee, Issue Team, or Work Group will be held in, or near, the Edwards Aquifer region at meeting locations to be determined or through Virtual Means as provided in Subsection 7.15. The meetings will be open to the public and, except as provided in Subsection 7.15, held in facilities that can accommodate members of the public who may wish to attend. All or part of a Stakeholder Committee meeting may be closed, so that only Members and, if appropriate, key EAHCP Program staff may attend and participate in a discussion, if such closing is required by law or if, upon the request of two or more Members or the Program Manager, at least 75 percent of the entire membership of the Stakeholder Committee determines there is good cause to close that portion of the meeting.

7.2. Notices. Notices of meetings of the Stakeholder Committee, and any Subcommittee and Work Group, and the agendas for such meetings, will be posted on the EAA website at least six calendar days prior to the meeting. The meeting notice and agenda will also be distributed by email to the email list maintained by the EAHCP Program staff, which will include email addresses for Stakeholder Committee Members, Alternate Members, and Participants who have provided email addresses, at least six calendar days prior to the meeting. Notices of any Issue Team meeting set pursuant to Subsection 7.8 that is not held as part of a Stakeholder Committee meeting will be posted on the EAA website and distributed by email to the email list maintained by the EAHCP Program staff at least 72 hours prior to any meeting. Notices of any closed meetings will be posted in accordance with the requirements of this Subsection.

7.3. Agenda. The Chair, Vice-Chair, and Program Manager, after consideration of discussion among and input from Stakeholders, will develop an agenda for each scheduled Stakeholder Committee meeting as provided in this Subsection.

7.3.1. The agenda will identify each matter or item, including each Tier 1 Decision, Expedited Tier 1 Decision, and Non-Tier 1 Decision, which the Stakeholder Committee may discuss or consider for action, and will identify any matter or item that it is

anticipated the Stakeholder Committee will consider in a closed meeting pursuant to Subsection 7.1.

7.3.2. The Chair, Vice-Chair, and Program Manager may, at their joint discretion, place an item on the agenda for discussion at the next meeting pursuant to a written request from any Member or Participant received by the Program Manager by mail or email at least eight days prior to the meeting.

7.3.3. The Chair, Vice-Chair, and Program Manager shall place any item on the agenda for discussion at the next Stakeholder Committee meeting if a written request is made by at least three Members and received by the Program Manager by mail or email at least eight days prior to the meeting or if so requested by a majority of the entire Stakeholder Committee at a prior meeting.

7.3.4. If written request for a vote of confidence with respect to one or more officers is made by at least 20 percent of the Members and received by the Program Manager by mail or email at least eight days prior to a Stakeholder Committee meeting, the Chair and Program Manager shall place on the agenda for action at that meeting:

- (a) a vote of confidence, to be held as provided in Subsection 6.7, and
- (b) the possible election of a replacement officer, to be held as provided in Subsection 6.8 in the event such replacement is needed.

7.4. Quorum. A Stakeholder Committee decision shall be made only at a meeting noticed pursuant to Subsection 7.2 above. Seventy-five percent of the entire Stakeholder Committee membership will constitute a quorum for a meeting of the Stakeholder Committee. Members will make best efforts to attend all Stakeholder Committee meetings, either in person, via Virtual Means, or through a designated Alternate Member, and will act in good faith in participating in the activities of the EAHCP Program. In the absence of a quorum, the Stakeholder Committee may move forward with discussion items but may not make decisions or take any official action.

7.5. Meeting Rules of Order. To the extent not inconsistent with these Rules, the Stakeholder Committee will follow Roberts Rules of Order, in a current edition approved by the Stakeholder Committee from time to time, for the conduct of its meetings. The rules of order may be temporarily suspended at any time by an affirmative vote of a majority of the Stakeholder Committee upon determining that suspension will facilitate discussion, deliberation, and Consensus by Participants. Failure to follow these Rules is not intended to constitute grounds for a challenge of an action or decision. The Chair may request the Program Manager to provide guidance on the interpretation of any rule of order, any of these Rules, any provision of the FMA, or applicable law with respect to the conduct of any meeting.

7.6. Consideration of Items. The Chair will request approval, by Consensus or, in the absence of Consensus, by affirmative vote of the majority of the entire Stakeholder Committee membership, of the order of the agenda as the first item of business at each Stakeholder Committee meeting, and will introduce items for consideration at each such meeting in the order of the agenda unless the Stakeholder Committee, by Consensus or, in the absence of Consensus, by majority vote of the entire membership, approves a different order or approves postponing consideration of an item to a subsequent meeting. If, at a meeting, a Member or Participant inquires about an item not on the agenda, any responsive discussion about such an item must be

limited to a proposal to place the subject on a future agenda, a statement of factual information, or a recitation of existing policy.

7.7. Consensus-based Decisions. In compliance with the spirit of S.B. 3 and the FMA, the goal of the Steering Committee is that all decisions will be made by Consensus. The process for Consensus-based decision making on all Stakeholder Committee decisions will be as provided in this Subsection 7.7 and Subsections 7.8 and 7.9.

7.7.1. Appointment of Facilitator. A Facilitator may be appointed to facilitate the discussion of and attempt to reach Consensus on any proposed Stakeholder Committee decision, and, upon the request of any Member, shall be appointed to facilitate the discussion of and attempt to reach Consensus on any proposed Tier 1 Decision. In order to be appointed as Facilitator for a particular decision, a person must be approved by an affirmative vote of at least 75 percent of the entire Stakeholder Committee, upon recommendation of the Program Manager or any Member. If a Facilitator is not appointed, the discussion of and attempt to reach Consensus on the decision may be led by the Chair.

7.7.2. Discussion Generally. In any discussion of Tier 1 and Non-Tier 1 Decisions, the Chair or Facilitator will encourage Members to reach Consensus on the proposed decision. All points of view will be given full and fair review and consideration. The Chair or Facilitator will invite Participants and Members to comment and voice opinions and, if appropriate, to direct questions and requests for clarification to other Participants and Members in the attempt to reach Consensus on the proposed decision. The Chair or Facilitator will encourage commenters to speak to the topic at hand and avoid irrelevant comments, may limit individual comments to a reasonable length of time, and will exercise reasonable judgment in calling an end to discussion and assessing Consensus approval of the proposed decision after the topic has received full review.

7.7.3. Discussion and Consensus on Tier 1 Decisions. The Facilitator for any Tier 1 Decision will facilitate the discussion as provided in Subpart 7.7.2 and this Subpart. Unless Consensus is reached in less than an hour, the time for discussion of each proposed Tier 1 Decision will ordinarily be between one and two hours. The Facilitator will extend the discussion period, if needed, to allow full comment on the range of Stakeholder views and for the Stakeholder Committee to attempt to reach Consensus on the proposed decision. The Facilitator may call a temporary recess to allow Participants and Members to caucus in Stakeholder groups or may continue the discussion to the next Stakeholder Committee meeting. At the conclusion of discussion of a proposed Tier 1 Decision, the Facilitator will determine if the Stakeholder Committee has reached Consensus by inquiring if there is objection. If the Stakeholder Committee indicates, by the absence of objection after fair notice and opportunity, it has reached Consensus on the proposed Tier 1 Decision, that Consensus will be recorded as the action of the Stakeholder Committee on the decision. If the Stakeholder Committee indicates it has not reached Consensus on the proposed Tier 1 Decision, the Facilitator will proceed as provided in Subsection 7.8. If a Facilitator is not appointed, the Chair may take the actions otherwise assigned to the Facilitator pursuant to this Subpart.

7.8. Tier 1 Decision-Making in Absence of Initial Consensus. If, after following the procedures of Subpart 7.7.3, the Stakeholder Committee has not reached Consensus on any Tier 1 Decision, an Issue Team will be appointed to further deliberate and develop the Tier 1 Decision. Each Issue Team will be comprised of between three and nine persons, which may include

Participants in addition to Members. The members of each Issue Team will be nominated by the Facilitator, or by the Chair if there is no Facilitator, and approved by at least 75 percent vote of the entire Stakeholder Committee and must be representative of the full range of views on the proposed Tier 1 Decision. The Issue Team will be assigned a title to indicate the assigned Tier 1 Decision, and will proceed as provided in this Subsection. Except in the case of an Expedited Tier 1 Decision, the Facilitator, or in the absence thereof the Chair, may also nominate, and the Stakeholder Committee may approve, by 75 percent vote of the entire membership, one or more alternates to take the place of any Issue Team member who is unable to serve.

7.8.1. Initial Issue Team Action. The Issue Team may, and in the case of an Expedited Tier 1 Decision shall, convene initially during a recess of the Stakeholder Committee meeting at which Team members are appointed. No notice beyond an oral announcement in the Stakeholder Committee meeting shall be required for such an initial meeting. Unless the Stakeholder Committee has appointed a Team Chair, the Issue Team will elect, by affirmative vote of 75 percent of its membership, a Team Chair from among its Members and attempt to reach a Consensus on the decision or to restate the proposed Tier 1 Decision for reconsideration by the Stakeholder Committee at that meeting.

(a) In the case of consideration of an Expedited Tier 1 Decision, regardless of the outcome of the Issue Team meeting, the Team Chair shall orally report to the Stakeholder Committee on the outcome of the meeting and any Consensus reached. If Consensus is not reached, any member of the Issue Team shall be entitled to present a succinct summary of his or her position and perspective on the deliberations of the Issue Team.

(b) In the case of any Tier 1 Decision that is not an Expedited Tier 1 Decision, if unable to meet or to reach such Consensus during a recess of the Stakeholder Committee meeting, the Issue Team shall convene one or more separate meetings.

7.8.2. Separate Meetings. Except in the case of consideration of an Expedited Tier 1 Decision, the Issue Team shall convene separate meetings, as often as necessary, to fully discuss the Tier 1 Decision and to attempt in good faith to reach Consensus on the decision originally proposed or on a restated version. Each such Issue Team meeting will be noticed as provided in Subsection 7.2. The quorum for each meeting is 75 percent of the Team members.

7.8.3. Issue Team Report. Except in the case of consideration of an Expedited Tier 1 Decision, following the final separate meeting, the Team Chair will submit to the Facilitator, or in the absence thereof the Chair, a written report stating one of the following:

- (a) the Team Consensus on the proposed decision;
- (b) the Team Consensus on a restatement of the proposed decision; or
- (c) a summary of the full range of views discussed and the reasons the Team could not reach Consensus on the proposed decision or on a restatement of the proposed decision.

Any members of the Issue Team who disagree with the report may so declare at the final meeting of the Team and may attach one or more minority reports to the Team Chair's report. The Team Chair's report, including any minority report, will be submitted as soon as practicable, and in any event not more than 20 days after the Issue Team is first appointed, unless by affirmative vote of 75 percent of the entire membership of the Stakeholder Committee a different deadline has been established. The report, and consideration of any action on the report, will be placed on the agenda of the next Stakeholder Committee meeting.

7.8.4. Stakeholder Committee Consideration of Consensus by Issue Team. If the Team Chair reports that the Issue Team has reached Consensus on the decision as originally proposed or on a restated version of the decision, the Stakeholder Committee will, after discussing the Issue Team report, determine if the Stakeholder Committee can reach Consensus on the initial or restated decision. If Consensus is not reached in a reasonable period of time, the approval process in Subpart 7.8.6 shall be followed.

7.8.5. Stakeholder Committee Consideration of No Consensus by Issue Team. If the Issue Team reports that it is unable to reach Consensus on a proposed decision or restated decision to propose to the Stakeholder Committee for consideration, the Stakeholder Committee, by majority vote of the entire membership, may

- (a) allow further discussion in an attempt to reach Consensus;
- (b) call for the vote provided for in Subpart 7.8.6;
- (c) resubmit the proposed decision or a variation of that decision to the Issue Team for further consideration; or
- (d) except for Expedited Tier 1 Decisions, submit the proposed decision or a variation of that decision to a new Issue Team.

7.8.6. Tier 1 Decision Vote. A Tier 1 Decision that has been submitted to the Issue Team process, but after completion of that process still has not been approved by Consensus of the Stakeholder Committee, shall be considered approved if it receives the affirmative vote of 75 percent of the Members of the entire Stakeholder Committee. Because the primary role of the Stakeholder Committee is to provide recommendations to the Implementing Committee, this vote total is necessary to avoid providing the Implementing Committee members, all of whom are represented on the Stakeholder Committee, a combined number of votes sufficient to unilaterally block a Stakeholder Committee recommendation. The vote total also reflects the requirements of the FMA and the desire to reflect a strong endorsement across different interest groups while also minimizing the likelihood of a stalemate in making a Stakeholder Committee recommendation. It is the intent of the Stakeholder Committee to revisit the affirmative vote percentage requirement periodically in order to maintain an affirmative vote total that serves these goals as, and if, interest groups withdraw from membership on the Stakeholder Committee.

7.8.7. Reconsideration of Tier 1 Decision. If a Tier 1 Decision that has been submitted to the Issue Team process is voted upon pursuant to Subpart 7.8.6 and is not approved, the Stakeholder Committee, by majority vote of the entire membership, may assign a revised version to the Issue Team using the procedures provided in Subparts

7.8.1 through this Subpart 7.8.7 either at the same meeting or, if not considering an Expedited Tier 1 Decision, at a subsequent meeting.

7.8.8. Eligibility for Expedited Tier 1 Decision Status. Only a matter jointly identified by the Program Manager and Chair as an Expedited Tier 1 Decision and indicated as such on the Stakeholder Committee meeting agenda shall be subject to the procedural constraints applicable to Expedited Tier 1 Decisions. A recommendation on a Nonroutine AMP Decision or a Strategic AMP Decision, as those terms are defined in the FMA, is not eligible for identification as an Expedited Tier 1 Decision.

7.9. Non-Tier 1 Decision. A Non-Tier 1 Decision will be considered and discussed consistent with the provisions of Subparts 7.7.1 and 7.7.2. At the conclusion of discussion of a Non-Tier 1 Decision, the Chair will determine if the Stakeholder Committee has reached Consensus by requesting a showing of objection. If Consensus has not been reached, a Non-Tier 1 Decision will be decided by majority vote of the entire Stakeholder Committee if it does not involve a recommendation to the Program Manager or the Implementing Committee. In the absence of Consensus, a recommendation to the Program Manager or the Implementing Committee may be approved only by an affirmative vote of at least 75 percent of the Stakeholder Committee.

7.10. Manner of Voting. For any decision or action that requires a vote, the Stakeholder Committee will vote by show of hands of the Members or, for Virtual Meetings, a comparable method that indicates the vote of each Member. The number of ayes and nays for each vote at a meeting will be noted in the minutes for the meeting. Upon request by any Member, a roll call of votes shall be taken and the results of the roll call shall be noted in the minutes for the meeting.

7.11. Effect of Abstention. The abstention of any Member does not affect the number of Members required for determining if a quorum is present and the person or persons abstaining shall be counted as being present for that purpose. The abstention of any Member does not affect the ability to determine if Consensus has been achieved because the Member abstaining is not considered to have stated an objection to the matter being considered. The abstention of any Member does not affect the number of votes needed to determine if an action is approved in the absence of Consensus, and the number of affirmative votes needed for approval shall be determined based on the entire membership of the voting body, including any abstaining Member.

7.12. Determination of Quorum. In determining the presence of a quorum at a meeting, any Alternate Member temporarily replacing a Member shall be included in all calculations, but any position that is then Vacated shall not be included in calculating the number required for achieving a quorum or for approving an action. Similarly, any position that is temporarily unfilled because both the Member and Alternate Member have resigned or been removed by the Sponsor, the Member has resigned or been removed by the Sponsor and there is no designated Alternate Member, or membership has been forfeited as provided in Subsection 5.4, but for which the conditions for Vacating the position have not been met, shall not be included in calculating the number required for achieving a quorum or for approving an action. Unless these Rules provide otherwise, a person must be physically present to be counted in determining the presence of a quorum.

7.13. Special Procedures for Individual Decisions. The Stakeholder Committee may, as an Expedited Tier 1 Decision, establish by resolution specific procedures, consistent with the requirements of the FMA, governing the Tier 1 Decision process for an individual decision.

Those procedures may depart from the requirements of these Rules to the extent such departures are essential to address unavoidable time constraints that would otherwise prevent the Stakeholder Committee from making a decision by the applicable deadline.

7.14. Meeting Minutes. Written minutes of each Stakeholder Committee shall be posted on the EAA website. As soon as practicable after each meeting, EAHCP Program staff will work with the Secretary to prepare a written draft of the meeting minutes. EAHCP Program staff shall post, not later than two weeks after a Stakeholder Committee meeting, the draft minutes, which shall be prominently identified as being in draft form, on the EAA website along with the agenda and other materials for the meeting. The draft minutes will be presented for approval by the Stakeholder Committee at its next meeting and, within two weeks of approval, a final version of the minutes will be posted in place of the draft minutes.

7.15 Virtual Meetings. As determined necessary to address Special Circumstances, the Stakeholder Committee, and any Subcommittee, Issue Team, or Work Group, may hold meetings entirely or partially via Virtual Means. Any such determination of necessity requires unanimous concurrence of the Program Manager and the Chair, as well as the Vice Chair if there is a Vice Chair, of the Committee, Subcommittee, Issue Team, or Work Group. Notwithstanding other provisions of these Rules, such meetings may be held with all Members, or members, participating through Virtual Means or through some combination of in-person and Virtual Means that meets the requirements of Subpart 7.15.4.

7.15.1. Ratification of Prior Actions. Actions taken in meetings held entirely via Virtual Means in response to the COVID 19 virus prior to the effective date of Subsection 7.15 may be fully ratified by the Stakeholder Committee, acting through the Tier 1 decision process at a meeting held after the effective date of this provision. Such ratification shall have the effect of curing any procedural deficiencies associated with relying on Virtual Means for holding such meetings and taking such actions.

7.15.2. Partial Virtual Meetings. In addition to holding Virtual Meetings upon a determination of the necessity to address Special Circumstances, the Stakeholder Committee and any Subcommittee or Work Group may hold meetings with some Members, or members, participating via Virtual Means. For Virtual Meetings of the Stakeholder Committee held without a determination of necessity to address Special Circumstances, a majority of the Members of the Stakeholder Committee must attend in person unless there are no action items other than approval of minutes of previous meetings or unless, for each action item other than approval of minutes, all Members participating in the meeting agree to waive the requirement for a majority of the full Committee to participate in person. In the absence of such agreement for an individual action item, the meeting may continue but no action shall be taken on the item.

7.15.3. Virtual Meeting or Action for Subcommittees, Work Groups, or Issue Teams in Absence of Special Circumstances. In the absence of objection from any member, a Subcommittee or Work Group may hold meetings with all members participating via Virtual Means without a determination of the necessity to address Special Circumstances. In addition, in the absence of objection from any member, a Subcommittee, Issue Team, or Work Group may poll its members via email, without convening a meeting, to formalize agreement on the final language of a report, the substance of which was agreed-upon in a previous meeting, or to approve meeting minutes.

7.15.4. Participation Requirements for Virtual Meetings. To the extent reasonable under the circumstances, Members, or members, participating in a Virtual Meeting must be provided the opportunity to hear and see the other Members, or members, participating in the meeting and the public must be accorded reasonable opportunities for participation in a manner that allows the participants from the public to hear the Members, or members, and to be heard during public comment opportunities.

(a) Neither limitations on connectivity for individual Members, members, or participants from the public nor unintentional limitations or disruptions in connectivity that result in some Members, members, or participants communicating solely by phone or in some Members, members, or participants losing connection for portions of a meeting are, alone, sufficient to represent an impairment of the reasonable opportunity for participation. However, if such limitations or disruptions are known to occur, participating Members, or members, must be accorded a reasonable opportunity to provide input and indicate a position before a final decision is made on any action item.

(b) Quorum requirements must be met at the time of action on any individual action item and only Members, or members, able to be heard and to hear other Members, or members, at that time may be counted towards meeting those requirements.

(c) If technical difficulties arise during a Virtual Meeting, the meeting may be recessed temporarily, for a specified period of up to two hours, while those difficulties are addressed.

SECTION 8. SUBCOMMITTEES AND WORK GROUPS.

8.1 Appointment of Subcommittees and Work Groups. The Stakeholder Committee may appoint Subcommittees and Work Groups as provided in this Section 8. The appointment of members of and determination of a charge to any Subcommittee is a Tier 1 Decision. The appointment of members of and determination of a charge to a Work Group may be proposed by the Chair or Program Manager and made upon the approval of a majority of the Members of the entire Stakeholder Committee. In approving appointments, the Stakeholder Committee shall strive to ensure that the membership of a Subcommittee or a Work Group, to the extent relevant to the charge to the group, represents the diversity of interests of Members and Participants. The members of any Subcommittee may include Stakeholder Committee Members and Participants. The members of Subcommittees may be nominated by the Chair and Program Manager and shall be appointed by the Stakeholder Committee pursuant to the requirements of Subsections 7.7 and 7.8. Any such Subcommittee will operate as provided in these Rules, unless the Stakeholder Committee approves, as a Tier 1 Decision, other specific operational procedures for the Subcommittee, which will supersede any inconsistent provision in these Rules.

8.2. Quorum for Subcommittee Meetings. Seventy-five percent of the members of the Subcommittee shall constitute a quorum for any meeting of a Subcommittee at which the Subcommittee will make a decision on a recommendation to the Stakeholder Committee in response to a specific charge from the Stakeholder Committee. For any other meeting of a Subcommittee, 51 percent of the members shall constitute a quorum.

8.3. Reports of Subcommittees. Each Subcommittee shall operate on a Consensus basis to the maximum extent possible. In the event that Consensus of the members cannot be obtained on all or any part of any report, evaluation, or recommendation to the Stakeholder Committee, the Subcommittee shall prepare its report, evaluation, or recommendation and identify those parts, if less than all, on which Consensus has been reached, identify those parts on which Consensus has not been reached, explain why Consensus was not reached, and indicate the votes of individual members of the Subcommittee. In any recommendation to the Stakeholder Committee, a recommendation of a Subcommittee will have the Consensus-based approval of the

Subcommittee when at least 75 percent of the entire membership of the Subcommittee has voted in favor of the recommendation.

8.4. Terms of Members of Subcommittees. The term of each member of a Subcommittee shall commence on the date of appointment or reappointment and end on the earlier of the date that the Subcommittee ceases to exist or the last day of the calendar year next following the year of the appointment or reappointment. However, any member of a Subcommittee whose term has ended prior to the termination of the Subcommittee shall remain as a member until replaced or reappointed. A person may be reappointed to serve any number of terms on a Subcommittee, and may serve on more than one Subcommittee simultaneously. A person may be appointed by the Stakeholder Committee to serve the unexpired portion of the term of a Subcommittee member who resigns, is removed, or is unavailable to serve.

8.5. Conduct of Subcommittee Meetings; Officers. Except as specifically provided otherwise in these rules or in the written charge to a Subcommittee, all activities and meetings of any Subcommittee shall be governed by applicable definitions in Section 3; by Subsections 2.3, 5.4, 7.1, 7.2, 7.5, 7.10, 7.11, 7.12, and 7.15; and by the provisions of this Section 8. To the extent applicable, any reference in the provisions cited in the preceding sentence to the conduct and activities of the Stakeholder Committee shall be construed also as a reference to the conduct and activities of a Subcommittee and any reference to Member, or Alternate Member shall be construed also as a reference to member or alternate member, respectively. The Stakeholder Committee will give each Subcommittee a written charge and timetable for reporting to the Stakeholder Committee. If the Stakeholder Committee has not appointed a Subcommittee Chair, the Subcommittee will elect a Subcommittee Chair, by affirmative vote of at least 75 percent of the entire membership, from among its members. The Subcommittee Chair will coordinate with the Program Manager to call meetings of the Subcommittee, preside over meetings, and prepare and submit reports to the Stakeholder Committee. Any Subcommittee may, at its discretion, elect from among its members, by affirmative vote of at least 75 percent of the entire membership, a Vice Chair or a Secretary, or both, and assign appropriate responsibilities to such Subcommittee officers. The term of office of each Subcommittee officer, and the replacement of any officer, will be the same as for appointment to the Subcommittee. A Subcommittee may request the Program Manager to designate a Facilitator to assist in its deliberations and attempts to reach Consensus.

8.6. Subcommittee Discussions. The Subcommittee Chair or Facilitator will encourage Subcommittee members to reach Consensus on their recommendations and responses to their charge. The Chair or Facilitator will encourage members and Participants to speak to the topic at hand and avoid irrelevant comments, may limit individual comments to a reasonable length of time, and will exercise reasonable judgment in limiting discussion on a topic to the members of the Subcommittee.

8.7. Work Groups. The Stakeholder Committee may from time-to-time, as a Non-Tier 1 Decision, establish ad hoc Work Groups to consider specific administrative matters, other than Tier 1 Decisions, and request any such Work Group to report its findings and recommendations to the Members and Participants within a specified period of time. Unless the Stakeholder Committee establishes different procedures in the appointment of and charge to any Work Group, the activities, including membership, officers, notice, quorum, and reports of a Work Group will be subject to the provisions in these Rules applicable to a Subcommittee.

8.8. Alternate Members. Each member of a Subcommittee shall submit to the Subcommittee Chair and Program Manager a written designation of an alternate member to act

for the member in the event of the member's temporary unavailability. An alternate member may act at any given time, in a meeting or otherwise, on behalf of only one Sponsor or only one member and may not act on any matter at the same time as the member the alternate member is designated to temporarily replace; provided that an alternate member may participate in Subcommittee discussions in which such member also participates.

SECTION 9. STAKEHOLDER COMMITTEE SUPPORT AND RECORDS

9.1. Stakeholder Committee Support. Consistent with the EAHCP Program budget, the Program Manager will be responsible for arranging staff support for Stakeholder Committee activities.

9.2. Records of Stakeholder Committee Activities. The Program Manager will be responsible for compiling and maintaining the records of Stakeholder Committee activities as part of the EAHCP Program administrative record.

9.3. Stakeholder Committee Budget. To the extent that funds for Stakeholder Committee activities are available from previous funding for the EARIP Steering Committee or become available from another funding source not specifically provided for in the FMA, the Program Manager shall oversee those funds in cooperation with the Stakeholder Committee, pursuant to a budget adopted as a Tier 1 Decision. Nothing in this provision grants the Stakeholder Committee control over funds collected pursuant to the FMA.

SECTION 10. AMENDMENT.

10.1. Rule Amendment. These Rules may be amended, supplemented, or superseded by action of the Stakeholder Committee as a Tier 1 Decision. Consideration of the amendment or other change shall be noticed on the posted agenda of a regular Stakeholder Committee meeting, and a written statement of the proposed change and the reason for the change shall be provided to Members and Participants for discussion. Approval of the Rule change by the Stakeholder Committee may be on the agenda of a subsequent meeting, or, if a proposed Rule change is made available for review at the same time as the agenda and is expressly listed as being considered for adoption on the agenda of the meeting for which it is first presented for discussion and if no Member objects to taking action at that meeting, the Stakeholder Committee can take action on the Rule change during the same meeting at which the proposed text is first discussed. The text of the approved rules shall be included with the minutes of the meeting at which adoption of any rule change occurred and shall be posted on the EAA website.

10.2. Effective date of change. Unless a later effective date is noted at the time of adoption, any change to these Rules will be effective upon the date of its approval by the Stakeholder Committee.