

Appendix A

Implementing Agreement



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A. IMPLEMENTING AGREEMENT

A.1 Introduction

Following is the draft of an Implementing Agreement for our HCP/NCCP.

A.2 Implementing Agreement

IMPLEMENTING AGREEMENT
FOR THE
THE MENDOCINO REDWOOD COMPANY HABITAT CONSERVATION PLAN AND
NATURAL COMMUNITY CONSERVATION PLAN

DRAFT
AUGUST 31, 2011

DRAFT

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This agreement (“Agreement”) is entered into as of the Effective Date with regard to the Mendocino Redwood Company Habitat Conservation Plan and Natural Community Conservation Plan (“HCP/NCCP”) by and among: the United States Fish and Wildlife Service (“USFWS”) of the United States Department of the Interior; the National Oceanic and Atmospheric Administration National Marine Fisheries Service (“NMFS”) of the United States Department of Commerce; the California Department of Fish and Game (“CDFG”) and the California Department of Forestry and Fire Protection (“CAL FIRE”) of the State of California Natural Resources Agency; and the Mendocino Redwood Company, LLC (“MRC”).

These entities may be referred to collectively as the “Parties” and individually as a “Party.” USFWS and NMFS may be referred to collectively as the “Services” and individually as a “Service.” USFWS, NMFS and CDFG may be referred to collectively as the “Wildlife Agencies.”

RECITALS

As of the Effective Date, MRC owns approximately 228,000 acres within several major watersheds in Mendocino County that MRC has managed since 1998 for commercial timber harvesting pursuant to the California Forest Practice Act (“CFPA”) and the California Forest Practice Rules (“CFPR”). In addition, MRC’s timber harvest operations have been certified as meeting the principles and conditions of the Forest Stewardship Council by two independent accredited certifying bodies: Scientific Certification Systems and SmartWood. MRC wishes to conduct profitable timber harvest operations while protecting and rebuilding the important ecological attributes of its lands.

A portion of MRC’s ownership, comprising approximately 213,000 acres, constitutes the initial “**Plan Area**,” the area initially covered by the HCP/NCCP. Over the next eighty (80) years, MRC may acquire land near the Plan Area. **Exhibit A** depicts the general location of the Plan Area, as well as the area outside the Plan Area where additional lands may be acquired and included in the HCP/NCCP subject to certain conditions in the HCP/NCCP (the “**Adjustment Area**”). The total geographic area analyzed by the HCP/NCCP, as well as the EIS/PTEIR (see below for explanation of the EIS/PTEIR), includes both the Plan Area, Adjustment Area, and additional lands assessed but excluded from the Adjustment Area. The size of the Plan Area may be increased, if MRC acquires land within the Adjustment Area, or decreased, if MRC removes current land holdings from the HCP/NCCP pursuant to the terms and conditions of this Agreement.

The lands within the Plan Area will be managed according to MRC’s HCP/NCCP. The Plan Area contains habitats and natural communities that are important to the conservation and recovery of various species classified as endangered, threatened, rare, or of special concern by the Wildlife Agencies. MRC’s timber operations will impact such species by affecting these habitats and natural communities. The HCP/NCCP describes the measures MRC will implement over the next eighty (80) years, which are intended to provide for the conservation and management of certain “**Covered Species**” and to minimize

and mitigate to the maximum extent practicable the effects of “Authorized Take” of Covered Species, while carrying out certain “**Covered Activities**” in the Plan Area. The Covered Species and Covered Activities are described in Chapter 1 of the HCP/NCCP. The Mendocino Redwood Company Timber Management Plan (the “**TMP**”) describes how MRC will achieve the maximum sustained production of high quality timber projects within the Plan Area, taking into account biologic and economic factors. The TMP specifically takes into account the forest growth and the harvest constraints needed to achieve the goals and objectives of the HCP/NCCP.

USFWS and NMFS have jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and their habitats under various federal laws, including the federal Endangered Species Act (“**ESA**”), the Migratory Bird Treaty Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742(a) et seq.).

CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants and habitat necessary for sustainable populations of those species under various state laws, including but not limited to the California Endangered Species Act (“**CESA**”), the Natural Community Conservation Planning Act (“**NCCPA**”), the Native Plant Protection Act (Cal. Fish & G. Code §§ 1900 et seq.), fully protected species statutes (Cal. Fish & G. Code §§3511, 4700, 5050, and 5515) and California Fish and Game Code sections 1600 et seq., 1802, and 3500.

CAL FIRE has jurisdiction over commercial timber harvest on non-federal lands in the State of California as set forth in the CFPA, the California Land Productivity Act of 1982, and the CFPR.

The CFPR allows for the preparation of a program timberland environmental impact report (“**PTEIR**”) that assesses impacts and provides mitigation for impacts resulting from timber operations involved with an ownership, portion of an ownership, or multiple ownerships. If the Director of CAL FIRE certifies that the PTEIR meets the requirements of the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000 et seq.) (“**CEQA**”) and certain requirements of the CFPR, timber operations covered in the PTEIR may be carried out using a “programmatic timber harvesting plan” (“**PTHP**”). The contents of the PTHP must meet specified requirements in the CFPR but will be tailored to reflect the approach to timber management analyzed in the PTEIR. In addition, where the PTEIR has adequately addressed and mitigated an environmental impact, the PTHP may refer to the PTEIR’s analysis and apply the PTEIR’s mitigation measures, rather than conducting a new analysis and developing new or different measures. If new standards or prescriptions are added to the CFPR, MRC may continue to use the standards and prescriptions analyzed in the PTEIR if MRC shows that the PTEIR’s standards and prescriptions are at least as protective as those added to the CFPR. The PTEIR approach allows for large-scale, long-term timber management planning, and

provides flexibility and efficiency in the development and review of individual PTHPs and related mitigation measures. The TMP explains MRC's ownership-wide, long-term approach to timber management, describes alternate operational standards to be applied in PTHPs, and provides the basis for a PTEIR that analyzes and mitigates the potential environmental impacts of that approach and provides for the use of PTHPs. The HCP/NCCP prescribes standards, guidelines and measures to be included in MRC's PTHPs to protect Covered Species and to fulfill the requirements of ESA and the NCCPA.

ESA prohibits the "take" of wildlife and fish species listed as endangered or threatened under ESA. Under Section 10(a)(1)(B) of ESA (16 USC § 1539(a)), the Services may issue permits authorizing the take of endangered or threatened species incidental to otherwise lawful activities if certain statutory requirements are met by the applicant and the incidental take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. To obtain a federal incidental take permit, the applicant must submit a habitat conservation plan describing, among other things, the steps the applicant will take to minimize and mitigate to the maximum extent practicable the impact of such taking. MRC submitted its HCP/NCCP to USFWS and NMFS, and applied for federal permits for incidental Take of Covered Species within the Plan Area.

CESA prohibits the take of species listed as endangered, threatened or candidate species under CESA. Section 2835 of the NCCPA allows CDFG to authorize by permit the take of species during otherwise lawful activities, whether or not they are listed as endangered or threatened under CESA, where the conservation and management of the species are provided for at a landscape level in a natural community conservation plan approved by CDFG. MRC submitted its HCP/NCCP to CDFG for approval and issuance of a state permit authorizing take of Covered Species within the Plan Area.

The HCP/NCCP was developed through an iterative process of: analysis of the Covered Species, the Covered Activities, the Plan Area and the Adjustment Area; discussions between MRC and the Wildlife Agencies; input from independent science advisors and the public; and environmental review under the National Environmental Policy Act ("NEPA") and CEQA. A planning agreement between MRC and CDFG (dated June 23, 2003 and amended July 1, 2009) guided preparation of the HCP/NCCP, and a memorandum of understanding between MRC, the Wildlife Agencies, CAL FIRE and Stillwater Sciences, Inc. ("MOU")(dated July 28, 2005) guided the development of the EIS/PTEIR.

After the Effective Date, to the extent that Section 898.2(d) of Title 14 of the California Code of Regulations or a successor provision requires CAL FIRE to disapprove THPs that would result in the take of species listed as endangered, threatened or rare under ESA or CESA unless the take is authorized by the appropriate Wildlife Agency, MRC intends that the Federal and State Permits issued with this Agreement will satisfy that regulation with regard to each of the Covered

Species for PTHPs submitted by MRC for Covered Activities within the Plan Area.

MRC is making substantial commitments of land, natural resources, financial resources, and human resources to provide for the conservation and management of the Covered Species, their habitats and other natural communities, and substantial restrictions on its use of Covered Lands, to obtain the take authorization and regulatory assurances provided pursuant to state and federal law by the Wildlife Agencies.

DEFINITIONS

Terms used in this Agreement shall be interpreted as defined in the ESA and its implementing regulations for purposes of applying the ESA, interpreted as defined in CESA and its implementing regulations for purposes of applying CESA, and interpreted as defined in the NCCPA for purposes of applying the NCCPA; provided, however, that the following terms, when capitalized, shall be interpreted as defined in this Section.

“Adaptive Management” means the collective use by the Parties of new information gathered through the monitoring program of the HCP/NCCP and from other reliable and relevant sources to adapt management strategies and practices to better provide for the conservation of Covered Species, as further described in Chapter 13.

“Additional Covered Lands” means land within the Adjustment Area in which MRC acquires sufficient legal control after the Effective Date to harvest timber and to implement the HCP/NCCP in accordance with this Agreement and the Federal and State Permits, and which MRC designates as part of the Plan Area through written notice to the Wildlife Agencies accompanied by adequate supporting documentation evidencing legal control, as further described in Section 9.

“Adjustment Area” means the area depicted in Exhibit A. Lands within the Adjustment Area are eligible to become Additional Covered Lands in accordance with Section 9.

“Agreement” means this document.

“Alternate Standard” means operational (specific prescriptive) standards for timber operations that have been accepted by the CAL FIRE Director and that provide equal or better resource protection as afforded by the default standard in the CFPR at the time a PTHP is submitted. The CAL FIRE Director will not accept an alternate standard unless it has been analyzed in the PTEIR and the Director concludes based on that analysis that the alternate standard is not likely to result in a significant adverse environmental impact.

“Amendment” means an amendment of the HCP/NCCP or the Federal and State Permits, as described in Section 9.4.

“Authorized Take” means the extent of incidental take of Covered Species authorized by the USFWS and NMFS in the Federal Permits issued to MRC pursuant to Section 10(a)(1)(B) of ESA, and the extent of take of Covered Species authorized by CDFG in the State Permit issued to MRC pursuant to section 2835 of the Fish and Game Code.

“CAL FIRE” means the California Department of Forestry and Fire Protection, a Department within the California Natural Resources Agency charged with implementing the California Forest Practice Act.

“CDFG” means the California Department of Fish and Game, a subdivision of the California Natural Resources Agency charged with administering several wildlife protection laws, including but not limited to CESA and the NCCPA.

“CEQA” means the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000 et seq.), including all regulations promulgated pursuant to that Act.

“CESA” means the California Endangered Species Act (Cal. Fish & G. Code §§ 2050 et seq.), including all regulations promulgated pursuant to that Act.

“CFPA” or **“California Forest Practice Act”** means the California Z’berg-Nejedly Forest Practice Act of 1973 (Cal. Pub. Resources Code §§ 4511 et seq.)

“CFPR” means the “California Forest Practice Rules,” regulations implemented by CAL FIRE (Cal. Code Regs, tit. 14, Chapters 4, 5, & 10) to carry out the California Forest Practice Act.

“Changed Circumstances” means for purposes of the Federal Permits, pursuant to 50 CFR 17.3, changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by plan or agreement developers and the USFWS and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events). “Changed Circumstances” for purposes of the State Permit, pursuant to NCCPA, are reasonably foreseeable circumstances that could affect a covered species or geographic area covered by the plan.

“Chapter” means a chapter of the HCP/NCCP. A Chapter may be divided into subchapters.

“Controllable Erosion” means a condition created by and controllable by human action that could deliver more than ten (10) cubic yards of soil to a watercourse within a forty (40) year period.

“Covered Activities” means the land uses and conservation and management

activities identified in Chapter 1 to be carried out by MRC and its agents in the Plan Area that may in some cases result in Authorized Take of Covered Species during the term of the HCP/NCCP.

“Covered Species” means the species whose conservation and management are expressly provided for by the HCP/NCCP and for which incidental take that is otherwise prohibited under the ESA or CESA is authorized by the Wildlife Agencies pursuant to the Federal and State Permits. The Covered Species are listed in Chapter 1.

“Days” means calendar days.

“Effective Date” means the calendar day after all of the following have occurred: this Agreement has been executed by all Parties and all of the Federal and State Permits have been issued.

“EIS/PTEIR” means the Joint Environmental Impact Statement and Program Timberland Environmental Impact Report prepared pursuant to NEPA, CEQA, the CFPA and the CFPR to analyze the potential environmental impacts of proposed timber harvest and conservation and management activities in the TMP, HCP/NCCP, and this Agreement.

“Federal Listed Species” means the Covered Species which are listed as threatened or endangered species under ESA as of the Effective Date.

“Federal Permits” means the federal incidental take permits issued by USFWS and NMFS to MRC pursuant to Section 10(a)(1)(B) of ESA.

“Federal and State Permits” means the Federal Permits and the State Permit.

“ESA” means the Federal Endangered Species Act of 1973, as amended (16 USC §§1531 et seq.), including all regulations promulgated pursuant to that Act.

“HCP/NCCP” means the Habitat Conservation Plan/Natural Community Conservation Plan prepared by MRC and approved by the USFWS and NMFS under Section 10(a)(1)(B) of ESA and by CDFG under Section 2820 and Section 2835 of the NCCPA.

“LWD” means large woody debris.

“Minor Modification” or **“Modification”** means a minor modification of the HCP/NCCP, as provided in Section 9.2 and Section 9.3.

“MRC” means the Mendocino Redwood Company, LLC.

“MRC Lands” means those lands in Mendocino County in which MRC has sufficient legal control to harvest timber and to implement the HCP/NCCP in

accordance with this Agreement and the Federal and State Permits.

“Migratory Bird Treaty Act” means the Federal Migratory Bird Treaty Act (16 USC § 701 et seq.), including all regulations promulgated pursuant to that Act.

“NCCPA” means the Natural Community Conservation Planning Act (Cal. Fish & G. Code §§ 2800 et seq.), as amended on January 1, 2003.

“NEPA” means the National Environmental Policy Act (42 U.S.C. §§ 4621 et seq.).

“NMFS” means the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service, a subdivision of the United States Department of Commerce.

“Operating Conservation Program” means, consistent with 50 CFR §17.3, the body of conservation and management measures provided in the HCP/NCCP intended to avoid, minimize, mitigate and monitor the Covered Activities’ impacts on Covered Species, and to provide for the conservation and management of the Covered Species and natural communities within the Plan Area, as described at Chapters 7, 8, 9, 10 and 11. The Operating Conservation Program also includes the Monitoring and Adaptive Management processes in Chapter 13, the measures described at Chapter 14 to respond to Changed Circumstances, and the Roads, Landings, and Skid Trails Management Plan in Exhibit E.

“Party” or **“Parties”** means any or all of the signatories to this Agreement.

“Plan Area” means the area covered by the HCP/NCCP, as it may from time to time be modified by the acquisition of Additional Covered Lands within the Adjustment Area and inclusion in the HCP/NCCP, or by the removal of MRC Lands, pursuant to this Agreement. The Plan Area as of the Effective Date is depicted in Exhibit A and is described in Chapter 1 of the HCP/NCCP.

“PTHP” means a Program Timber Harvesting Plan prepared by a registered professional forester for commercial timber harvesting on forest stands in the Plan Area under California Code of Regulations, title 14, chapter 4, subchapter 7, article 6.8. Under the CFPA and the CFPR, MRC must file a PTHP, or any successor or alternative document that may apply to commercial timber harvesting under future amendments or revisions to the CFPA or CFPR, prior to a commercial timber harvest.

“Removed Lands” means lands removed from the Plan Area by a transfer of ownership or by other means, as provided in Section 9.7.

“Section” means a section or subsection of this Agreement, except where the specific context makes it clear that it refers to something else (e.g., “Section 7 of the ESA”).

“Services” means the USFWS and NMFS.

“State Permit” means the Take permit issued by CDFG to MRC pursuant to Section 2835 of the Fish and Game Code.

“Take” means, for purposes of the Federal Permits, “take” as defined in Section 3 of FESA (“to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct”) and, for purposes of the State Permit, “take” as defined in section 86 of the Fish & Game Code (“to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”).

“TMP” and **“Timber Management Plan”** mean the Timber Management Plan prepared by MRC that is incorporated into the EIS/PTEIR.

“USFWS” means the United States Fish and Wildlife Service, a constituent agency of the United States Department of the Interior.

“Wildlife Agencies” means the USFWS, NMFS and CDFG.

PURPOSE AND EFFECT OF THIS IMPLEMENTATION AGREEMENT

The purposes of this Agreement are to clarify the provisions of the HCP/NCCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP/NCCP in accordance with the Federal and State Permits and applicable Federal and State law, including but not limited to section 2820(b) of the Fish and Game Code, and to explain how CAL FIRE will collaborate with the other Parties regarding implementation of the HCP/NCCP through the PTHP process and in accordance with the FPR and FPA.

The HCP/NCCP and each of its provisions is intended to be, and by this reference are, incorporated herein.

The provisions of the HCP/NCCP and this Agreement are intended to be consistent with and to complement each other and shall be interpreted accordingly. However, to the extent that this Agreement contradicts or conflicts with the HCP/NCCP, the terms of this Agreement shall control.

The provisions of the Federal and State Permits and this Agreement are intended to be consistent with and to complement each other and shall be interpreted accordingly. To the extent that one of the Federal Permits or State Permit contradicts or conflicts with this Agreement, the terms of the Federal Permit or State Permit shall control with regard to that Permit only. Each Wildlife Agency has reviewed the Federal or State Permit that it issued and has concluded that it is consistent with this Agreement and does not contradict or conflict with any term or condition of this Agreement. Similarly, MRC has reviewed the Federal and State Permits and has concluded that they are consistent with this Agreement and do not contradict or conflict with any term or condition of this Agreement.

FINDINGS AND OBLIGATIONS OF THE WILDLIFE AGENCIES

USFWS

USFWS Findings

As further described in the findings issued by USFWS, USFWS has found that the HCP/NCCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of the ESA for each Covered Species that is a Federal Listed Species within the jurisdiction of USFWS. For each Covered Species that is not a Federal Listed Species as of the Effective Date, USFWS has found that the HCP/NCCP satisfies the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if such Covered Species were a Federal Listed Species.

USFWS Obligations

Concurrent with its execution of this Agreement, and on satisfaction of all other requirements, USFWS issued to MRC a Federal Permit under Section 10(a)(1)(B) of the ESA authorizing the incidental Take by MRC of each Covered Species that is a wildlife species within the jurisdiction of USFWS resulting from Covered Activities in the Plan Area. The Federal Permit is conditioned on compliance with the terms and conditions of the USFWS Federal Permit, the HCP/NCCP, and this Agreement.

An ESA Take authorization for plants is not required because the ESA does not prohibit Take of federally listed plants. Plant species included on the list of Covered Species are listed on the Federal Permits in recognition of the conservation measures and benefits provided for those plants under the HCP/NCCP. MRC receives assurances pursuant to the Federal “No Surprises” rule for such plant species. For the purpose of the USFWS Federal Permit, reference in this Agreement or in the HCP/NCCP to “Authorized Take” does not include Take of any Covered Species that are plants.

Subject to Section 12.7 of this Agreement, USFWS shall provide technical assistance and timely collaboration and consultation to MRC regarding implementation of the HCP/NCCP, in accordance with the HCP/NCCP and this Agreement, throughout the duration of the USFWS Federal Permit.

NMFS

NMFS Findings

As further described in the findings issued by the NMFS, the NMFS has found that the HCP/NCCP satisfies the permit issuance criteria under Section 10(a)(2)(B) of ESA for each Covered Species that is a Federal Listed Species within the jurisdiction of the NMFS. For each Covered Species that is not a Federal Listed Species as of the Effective Date, NMFS has found that the HCP/NCCP satisfies the permit issuance criteria under section 10(a)(2)(B) of the ESA that would otherwise apply if such Covered Species were a Federal Listed Species.

NMFS Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other requirements, NMFS issued to MRC a Federal Permit under Section 10(a)(1)(B) of the ESA, authorizing the incidental Take by MRC of each Covered Species within the jurisdiction of NMFS resulting from Covered Activities in the Plan Area. The Federal Permit is conditioned on compliance with the terms and conditions of the Federal Permit, the HCP/NCCP, and this Agreement.

Subject to Section 12.7 of this Agreement, NMFS shall provide technical assistance and timely collaboration and consultation to MRC regarding implementation of the HCP/NCCP, in accordance with the HCP/NCCP and this Agreement, throughout the duration of the Federal Permit.

CDFG

CDFG Findings

As further described in the State Permit and the findings issued by CDFG, CDFG has found that the HCP/NCCP satisfies the permit issuance criteria listed in Sections 2820, 2821 and 2835 of the California Fish and Game Code for each Covered Species within the jurisdiction of CDFG.

CDFG Obligations

Concurrent with the execution of this Agreement by all Parties, and on satisfaction of all other requirements, CDFG issued to MRC the State Permit authorizing the Take by MRC of each Covered Species within the jurisdiction of CDFG resulting from Covered Activities in the Plan Area. The State Permit is conditioned on compliance with the terms and conditions of the State Permit, the HCP/NCCP, and this Agreement.

CDFG shall monitor MRC's implementation of the HCP/NCCP and compliance with the State Permit, provide technical assistance and timely collaboration and consultation to MRC regarding implementation of the HCP/NCCP, attend meetings, and participate, as available, in inspections and effectiveness and validation monitoring activities, in accordance with the HCP/NCCP and this Agreement, throughout the duration of the State Permit.

CDFG shall seek to acquire, or to fund the acquisition of, the additional marbled murrelet stands, as further described in Chapter 10.3.2.3.2.

CAL FIRE

CAL FIRE Findings

As further described in the PTEIR Certification and CEQA Findings issued by CAL FIRE, CAL FIRE has found that the PTEIR will achieve the resources protection goals in sections 4513, 4551, 4561, and 4581 of the CFWA.

CAL FIRE Obligations

CAL FIRE shall fully and faithfully perform all obligations assigned to it under this Agreement. CAL FIRE shall also provide technical assistance and timely collaboration and consultation to MRC regarding implementation of PTHPs under the PTEIR, as provided in the PTEIR and this Agreement.

Environmental Review

Federal Law – National Environmental Policy Act

Issuance of the Federal Permits under Section 10(a)(1)(B) of ESA to MRC by USFWS and NMFS are actions subject to review under NEPA. USFWS and NMFS are co-lead agencies under NEPA. Prior to the Effective Date, the Services evaluated the HCP/NCCP pursuant to NEPA in the Mendocino Redwood Company HCP/NCCP Final EIS/PTEIR.

State Law – California Environmental Quality Act

CAL FIRE's approval of the PTEIR, and CDFG's approval of the HCP/NCCP and issuance of the State Permit, are actions subject to review under CEQA. CAL FIRE is the lead agency for the PTEIR. CDFG is a responsible agency under CEQA for purposes of the HCP/NCCP and the State Permit. Prior to the Effective Date, CAL FIRE evaluated the potential environmental effects of proposed timber harvest activities described in the TMP pursuant to CEQA based on the EIS/PTEIR and issued findings addressing whether the implementation of the proposed timber harvest activities would cause significant adverse impacts to the environment. CAL FIRE agrees that, unless it determines that new information or a change in circumstances warrants supplemental review pursuant to CEQA, to the extent that issues are addressed in the PTEIR, and taking into consideration site-specific conditions, the conclusions of significance in these CEQA findings shall apply to CAL FIRE's review of PTHPs prepared under the EIS/PTEIR. Where a PTHP is found by the CAL FIRE Director not to be within the scope of the PTEIR, MRC may modify the PTHP to be within the scope of the PTEIR, submit a THP according to standard CFPR rules and procedures, or prepare for CAL FIRE's review and certification an addendum, supplement or subsequent PTEIR that addresses any remaining impacts identified in the PTHP.

As a CEQA responsible agency, CDFG independently reviewed the EIS/PTEIR and evaluated the HCP/NCCP pursuant to CEQA. Based on its review, CDFG issued findings addressing whether the implementation of the HCP/NCCP, including the Covered Activities, would cause significant adverse impacts to the Covered Species. CDFG agrees that, unless new information or a change in circumstances necessitates supplemental review pursuant to CEQA, CDFG's conclusions of significance in these CEQA findings as they pertain to Covered Activities' impacts on Covered Species shall apply to CDFG's subsequent review of individual Covered Activities.

RIGHTS AND OBLIGATIONS OF MENDOCINO REDWOOD COMPANY

MRC shall fully and faithfully perform all obligations assigned to it under this Agreement, the HCP/NCCP, and the Federal and State

Permits.

In addition, MRC shall adhere to the PTEIR, CFPA and CFPR provisions regarding PTEIRs and PTHPs for all of its commercial timber harvest and timber management activities in the Plan Area, subject to approval by CAL FIRE of PTHPs. As of the Effective Date, MRC may conduct its commercial timber operations in accordance with the PTEIR as a means of complying with the CFPA and CFPR. MRC may prepare PTHP's in accordance with the PTEIR, incorporate relevant environmental analyses from the PTEIR and any other required analyses, and submit the PTHP's to CAL FIRE in lieu of conventional THPs.

Implementation in Rough Proportion to Timber Harvest

MRC shall implement the Operating Conservation Program primarily through PTHPs, each of which will include mitigation, conservation and monitoring measures as described in the HCP/NCCP. These measures will be implemented at the pace and scale that timber harvest occurs, as all timber harvest covered by the Federal and State Permits will occur within the context of PTHPs.

Other components of the HCP/NCCP will be implemented, at least in part, independent of PTHPs, according to separate schedules or standards specific to each component. The components of the Operating Conservation Program that will at least in part be implemented independent of PTHPs are:

- road maintenance, construction and reconstruction, and restoration;
- vegetation management;
- LACMA establishment and management;
- AMZ establishment;
- Type 1 reserves;
- Wildlife Agency purchase of conservation easements;
- instream habitat improvement, including structure replacement, channel re-alignment, and bedload reduction (See Chapter 8);
- terrestrial habitat improvement, including control of invasive plants that threaten rare plants, creation and enhancement of amphibian habitat, and creation of habitat for the Point Arena mountain beaver (see Chapter 8); and
- monitoring and adaptive management.

MRC shall implement each of these components as described in the HCP/NCCP.

As further described in Chapter 7.10.1, MRC will ensure that the Operating Conservation Program is implemented, at a minimum, at the same pace and scale, on an acre-for-acre basis, as Covered Activities. This will ensure that implementation of the Operating Conservation Program will be roughly proportional in time and extent to the impact on habitat and Covered Species authorized under the Federal and State Permits.

Monitoring by Wildlife Agencies

MRC acknowledges that the rights to entry and inspection by the USFWS and NFMS are specific requirements for issuance of federal permits and, by accepting the Federal Permits, consents to entry to the Covered Lands in accordance with 50 CFR 13.21(e)(2), 13.47 and 222.302(j) accordingly. In addition, MRC shall allow entry to the Covered Lands by authorized agents and employees of the Wildlife Agencies engaged in and for the purpose of ensuring compliance with the Federal and State Permits and as otherwise described in the HCP/NCCP. In all cases, each Wildlife Agency shall ensure that its agents and employees that enter Covered Lands act in a reasonable, safe and professional manner, and in compliance with all laws and regulations that apply to the Wildlife Agencies, and that the entry occurs in a manner that minimizes any disruption to the Covered Activities or any other operation of MRC to the extent consistent with the purpose of the entry.

To the maximum extent practicable, entry by a Wildlife Agency shall occur only at reasonable hours and after provision of reasonable advance notice to MRC, so as to provide MRC's representatives the opportunity to accompany the authorized agency or employee; provided, however, that the Wildlife Agencies may enter the Covered Lands without notice at any time if the entry is for law enforcement purposes and complies with the Fourth Amendment to the Constitution.

IMPLEMENTATION OF OPERATING CONSERVATION PROGRAM

MRC shall ensure implementation of the Operating Conservation Program, which is a condition for Authorized Take of the Covered Species in the Permits. For purposes of the NCCPA, the Operating Conservation Program comprises the conditions for Authorized Take of Covered Species, and the conservation measures for Covered Species, as provided in section 2820(b)(2) of the Fish and Game Code. The Operating Conservation Program is informed by the habitat and species information and the conservation planning approach explained in Chapters 3 through 7.

Preparation and Implementation of PTHPs

The Operating Conservation Program is designed primarily to provide guidelines, standards and measures for, and to be implemented in conjunction with, MRC's ongoing timber operations, which will be implemented in accordance with the CFPA and CFPR and the HCP/NCCP, primarily through PTHPs. Timber operations under MRC's PTHPs may also include other Covered Activities that will be implemented within a PTHP area, such as vegetation management, road and landing construction, reconstruction and maintenance, use of rockpits and quarries, and instream habitat improvement. MRC shall include and implement all applicable measures and adhere to all applicable standards of the Operating Conservation Program in each PTHP within the Plan Area as of the Effective Date.

PTHP Review

CAL FIRE shall review MRC's PTHPs as set forth in CFPA, CFPR, section 1092, et seq., or successor regulations, and applicable policies of the Board of Forestry, to confirm that the PTHPs are consistent with the PTEIR.

The Wildlife Agencies may at their discretion review some or all of MRC's PTHPs to confirm that they are consistent with and will properly implement the Operating Conservation Program. The Wildlife Agencies acknowledge that one of MRC's main reasons for developing and implementing the HCP/NCCP is to integrate state and federal environmental review and permitting requirements for Covered Species into one concurrent review that follows CFPR procedures for PTHPs. Wherever reasonably possible, the Wildlife Agencies shall review PTHPs during and in accordance with such procedures. However, a Wildlife Agency's failure to review individual PTHPs during and in accordance with PTHP procedures shall not affect its permit enforcement authority. If, at any time, one or more of the Wildlife Agencies conclude that a PTHP is not consistent with the Operating Conservation Program, it shall promptly notify MRC in writing. If such notice is provided to CAL FIRE before it approves the PTHP, CAL FIRE shall not approve the PTHP until such time as the inconsistency is resolved. The Wildlife Agencies and MRC shall use reasonable efforts to resolve the inconsistency with sixty (60) days of the applicable Wildlife Agencies' written notice.

Alternative Fish, Plant and Wildlife Protection Measures

The HCP/NCCP envisions that under limited circumstances MRC may depart from the specific prescriptive measures in the HCP/NCCP and propose, analyze and use alternative site-specific measures in PTHPs or amendments to PTHPs to implement the Operating Conservation Program. Except where an alternative measure is specifically allowed in the HCP/NCCP without consultation with the Wildlife Agencies, MRC shall obtain the Wildlife Agencies approval before submitting the PTHP or PTHP amendment with the alternative measure to CAL FIRE, as described in this Section. To obtain the Wildlife Agencies' approval, MRC shall notify them in writing, explaining the alternative measure and the rationale for using it, and why the measure will not result in an impact to the environment that is greater than or different from the impacts in the HCP/NCCP and the EIS/PTEIR. Within thirty (30) days of receiving MRC's written notice, each Wildlife Agency shall either approve or deny the alternative measure or shall notify MRC when such determination will be made. A Wildlife Agency shall deny an alternative measure if it concludes the measure would not be as effective as the measure it would replace or would result in an impact to the environment that is greater than or different from the impacts analyzed by the Wildlife Agencies for purposes of the HCP/NCCP and the EIS/PTEIR. If the Wildlife Agency does not approve the alternative measure, MRC shall not include the measure in the PTHP. The Wildlife Agency shall be reasonably available to meet and confer with MRC regarding any proposed alternative measure within thirty (30) days of a meeting request by MRC.

Extension of PTHP Review Period

If requested by one or more of the Wildlife Agencies, MRC shall request the Director of CAL FIRE to extend the PTHP review period by two weeks, or such longer period of time as MRC may request, to enable the Wildlife Agencies to confer directly with MRC to resolve concerns about the PTHP's consistency with the HCP/NCCP or proper implementation of the Operating Conservation Program. CAL FIRE shall extend the PTHP review period in accordance with any such request. CDFG shall not file a non-concurrence with CAL FIRE (see section 1037.5(e) of the CFPR) regarding any PTHP without first requesting MRC to seek an extension of the PTHP review period.

CAL FIRE Enforcement of PTHPs

CAL FIRE will coordinate with the Wildlife Agencies regarding the enforcement of all terms of the HCP/NCCP that are included in each approved PTHP through CAL FIRE's enforcement authority under the FPA.

Additional Measures Voluntary

For each PTHP that incorporates all measures of the Operating Conservation Program that apply to the particular area covered by the PTHP, and so long as MRC is fully and faithfully implementing the Operating Conservation Program according to the HCP/NCCP and this Agreement, neither CAL FIRE nor the Wildlife Agencies shall require additional monitoring, avoidance, minimization or mitigation measures for any of the Covered Species that might be affected by such PTHP, except as provided in Section 10. Any Wildlife Agency may recommend or request additional conservation measures for Covered Species, but in making any such recommendation or request shall state explicitly that the measure is in addition to the requirements of this Agreement, the HCP/NCCP and the Federal and State Permits, and implementation of the additional measures by MRC is voluntary. This section does not pertain to requirements under the CFPR, CFPA or CEQA regarding other types of environmental impacts (i.e., impacts other than impacts to Covered Species).

Previously Approved THPs

After the planning agreement (see Section 1.10) was executed, and before the Effective Date, MRC prepared and CAL FIRE approved THPs for commercial timber harvest activities and operations on certain lands within the Plan Area. These "previously approved THPs" were prepared in accordance with interim guidelines established in the planning agreement, as well as the CFPR. Previously approved THPs may be implemented, or continue to be implemented, after the Effective Date according to their previously approved terms and applicable State and Federal law; provided, however, that such THPs shall not be Covered Activities, shall not be subject to the HCP/NCCP requirements, and shall not receive Authorized Take coverage. Any amendment to a previously approved THP after the Effective Date shall comply with the HCP/NCCP, this Agreement and the Permits, and the specific action included in the amendment shall be a Covered Activity.

Road Maintenance, Reconstruction and Restoration

The HCP/NCCP includes measures for constructing new roads and landings, as well as assessing, upgrading and repairing existing roads, landings and skid trails to reduce and prevent sedimentation, improve habitat for aquatic species, protect beneficial uses of water, provide efficient infrastructure for forest operations, extend protections to terrestrial wildlife species, and limit the introduction of invasive species and pathogens, as further described in

Chapter 8. MRC will implement these measures primarily through PTHPs, which will address roads, landings and skid trails within each PTHP area. However, MRC will implement some sediment reduction measures independent of PTHPs, targeting the highest priority roads and Controllable Erosion sites, as further described in Chapter 8.3. MRC will implement all sediment reduction measures as set forth in this Section and further described in Chapter 8.3.

Eligibility for Grant Funding

Nothing in the HCP/NCCP, this Agreement or the State and Federal Permits shall render any grant proposal to treat Controllable Erosion ineligible for public grant funds if the proposal is for a project that would treat Controllable Erosion sites beyond the rate or amounts provided in Chapter 8.3.

Specifically, the Wildlife Agencies shall not deem any grant proposal for a project that would treat Controllable Erosion in excess of, or in addition to, the Controllable Erosion requirements summarized in Table 8-16 and Table 8-17 to be ineligible for state or federal grant funds on the basis that the project is required mitigation under the HCP/NCCP. Any treatment of Controllable Erosion funded with public grant funds shall not be credited toward Controllable Erosion mitigation requirements in the HCP/NCCP, this Agreement or the State and Federal Permits.

Vegetation Management

Vegetation management is the non-commercial alteration of a forest or plant community's composition and structure to promote conifer growth, health, and vigor, control exotic species, and promote riparian function. It includes planting desirable plant species, removing undesirable plant species, prescribed burning, and burning slash piles. Vegetation management will occur within the context of PTHPs (e.g., site preparation), but much will occur independent of PTHPs because it will not be linked to a specific commercial timber operation. MRC shall adhere to the HCP/NCCP and incorporate applicable measures of the Operating Conservation Program in all of its vegetation management activities as described in Chapters 8, 9, 10 and 11, whether or not they are included in a PTHP. Where measures or standards of the Operating Conservation Program apply to "harvest" or "PTHPs", MRC shall where applicable incorporate the measure or adhere to the standard for vegetation management. By way of example, and without limitation:

MRC shall not carry out a prescribed burn where timber harvest would not be allowed under the HCP/NCCP, except as described in Chapter 1, or for conservation purposes with the concurrence of the Wildlife Agencies;

In cases where MRC uses heavy equipment for vegetation management, it shall where applicable adhere to Equipment Exclusion Zones and other guidelines for heavy equipment in the HCP/NCCP; and

In cases where MRC must upgrade or repair a road to carry out vegetation management, it shall adhere to and implement applicable standards in Appendix E of the HCP/NCCP.

Habitat Improvement

Improvement of terrestrial habitat includes control of invasive plants that threaten rare plants (Chapter 11), creation and enhancement of amphibian habitat (Chapter 8), and creation or enhancement of habitat for marbled murrelet and Point Arena mountain beaver (Chapter 10). Instream habitat improvement includes structure

placement and reestablishing natural channel alignment (Chapter 8). MRC's removal of culverts, natural alignment of stream channels, and prevention and reduction of sedimentation (Chapter 8) will improve instream habitat. In addition, MRC shall improve instream habitat by placing LWD in Class 1 Watercourses as described in this Section and further described in Chapter 8.2.3.

High Priority Watercourses

Based on its watershed analyses (see Chapter 7.6) and CDFG's and NMFS' coho recovery planning analyses, MRC shall, as further described in Chapter 8, identify Class 1 watercourses with high demand for LWD and a high degree of channel responsiveness. MRC shall identify such high priority watercourses, as they are updated from year to year, in each Annual Report.

Site-Specific Plans

Before placing more than individual pieces of LWD in a watercourse, MRC shall prepare and submit to the Wildlife Agencies a site-specific LWD plan that shows where and how the LWD will be placed, as further described in Chapter 8.2.3.

Individual Trees

MRC may place individual trees felled for a cable corridor or safety hazard in watercourses without a site-specific plan, as further described in Chapter 8.2.3. MRC shall describe any such individual tree placement in the Annual Report, identifying the location and describing the manner of placement.

Monitoring

MRC shall implement each of the compliance, effectiveness and validation monitoring programs described in Chapter 13 according to the time schedules and harvest levels set forth within Chapter 13.2.2.7. Any Party may propose changes to any HCP/NCCP monitoring program, as described in Chapter 13.2, and MRC will incorporate any such changes that are mutually agreeable to MRC and the Wildlife Agencies. MRC and the Wildlife Agencies shall convene regularly as described in Chapter 13 to review and discuss potential Modifications to the monitoring programs.

Reporting

Appendix D of the HCP/NCCP summarizes the reporting requirements for scientific data and analysis described throughout the HCP/NCCP, including an annual HCP/NCCP implementation budget, and all periodic data, survey and monitoring reports, and inventories that MRC is to provide the Wildlife Agencies, and the interval in which each type of report or information shall be given. Following the timelines set forth in Appendix D of the HCP/NCCP, MRC shall provide Annual Reports to the Wildlife Agencies containing all scientific reports and other scientific information and data described in the HCP/NCCP, including information that is reported less frequently than on an annual basis. The form, frequency, scope and substance of the various reports and other information shall be substantially as presented in Appendix D. However, MRC and the Wildlife Agencies may modify the form, frequency, scope and substance of the reports and other information from time to time without the need for an Amendment of Appendix D of the HCP/NCCP or this Agreement. MRC shall summarize any such Modifications in its Annual Report. MRC and the Wildlife Agencies shall cooperate to identify a format for the Annual Report, including all information and data contained therein, that is economical to

compile and accessible to use.

Public Review of Annual Report

The Annual Report shall be made available to the public, and MRC shall conduct annual public workshops to provide information and evaluate progress toward attaining the conservation objectives of the HCP/NCCP. MRC shall invite the Wildlife Agencies to the public workshops and shall take meeting notes at each workshop. MRC shall provide a copy of its meeting notes to the Wildlife Agencies.

Certification of Annual Report

Each Annual Report shall include the following certification from a duly authorized MRC representative who supervised or directed preparation of the Report:

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

Additional Information

MRC shall provide any additional pertinent information in its possession or control related to implementation or monitoring of the HCP/NCCP that the Wildlife Agencies request on the basis that it is reasonably necessary for the purpose of assessing whether the terms and conditions of the HCP/NCCP are being implemented. MRC shall use reasonable efforts to provide such additional information within thirty (30) days of the request.

The Wildlife Agency requesting the additional information shall provide a reasonable basis for the request in writing, make the request as specific and focused as possible consistent with the Wildlife Agency's oversight responsibilities and, to the extent feasible, coordinate the request with the other Wildlife Agencies. MRC shall not be required to prepare any additional reports; instead, MRC shall be required only to provide information in its possession or control and in its current state. Nothing in this Agreement shall compel MRC to disclose communications that are subject to the attorney work product or attorney-client privilege, or any other evidentiary privilege applicable at the time the information request is made. MRC may designate, by notifying the Wildlife Agencies in writing, any trade secrets or commercial, proprietary, or financial information ("Sensitive Information") requested by the Wildlife Agencies as exempt from disclosure by the Wildlife Agencies pursuant to a request made under the federal Freedom of Information Act ("FOIA") and/or the California Public Records Act ("PRA"), because such trade secret and/or information so designated (1) is Confidential Information, (2) has not been disclosed to the public by MRC, and (3) to MRC's knowledge is not routinely available to the public from other sources. Should Sensitive Information be requested pursuant to FOIA or the PRA, the Wildlife Agencies will contact MRC sufficiently prior to releasing any such information so as to allow MRC a reasonable opportunity to protect the Sensitive Information from release. This provision shall not limit the applicability of, or to require any Wildlife Agency to violate, FOIA or the PRA. Biological data pertaining directly to HCP/NCCP implementation shall not be regarded as Sensitive Information.

Training

For any of its employees, representatives, and contractors that will participate in the implementation of a Covered Activity, MRC shall provide appropriate training regarding the applicable requirements of the HCP/NCCP. In particular, MRC shall provide mass wasting hazard training as described in Chapter 8.3.1.1.4, controllable erosion repair training as described in Chapter 8.3.1.2.2, marbled murrelet tree assessment training, as described within Chapter 10.3.2.3.7, Point Arena mountain beaver survey training, as described in Appendix M of the HCP/NCCP, and training for plant identification, as described in Chapter 9.6.3.3. MRC shall include the Wildlife Agencies and CAL FIRE in such training, as further described in Chapter 8.3. MRC shall ensure that its employees comply with applicable Federal and State laws and regulations regarding scientific permits.

Activities Not Covered by and not Subject to the HCP/NCCP

Activities that are not Covered Activities shall not be governed by or subject to the HCP/NCCP and shall not be covered by the State Permit or the Federal Permits. Activities not governed by or subject to the HCP/NCCP include, without limitation, pesticide and herbicide applications; removal of trees that are utility hazards; use of roads or lands within the Plan Area for purposes other than Covered Activities, subject to the requirement in Chapter 10.3.2.1 that MRC will restrict public entry into the Lower Alder Creek; fire suppression actions; hunting or other recreational activities; placement of cell towers; commercial gravel extraction; and activities outside of the Plan Area.

ONGOING CONSULTATION AND ADAPTATION OF THE OPERATING CONSERVATION PROGRAM

The HCP/NCCP's Operating Conservation Program is intended to be dynamic and adaptable, incorporating relevant new information and scientific analysis and becoming more effective and efficient over time. However, the Operating Conservation Program is also intended to provide a firm basis for MRC's long-term land management planning, and a consistent regulatory framework within which MRC may carry out Covered Activities. To adapt the Operating Conservation Program in a way that meets MRC's need for consistency and stability in its implementation of the HCP/NCCP and also better achieves the HCP/NCCP's goals and objectives, the Parties will meet for the purpose of identifying, refining and reaching agreement about appropriate adaptations to the Program and to a set of parameters to define the scope of potential future adaptations, as further described in Chapter 13.12.

For some conservation measures, the HCP/NCCP specifies actions to be taken if monitoring reveals that HCP/NCCP goals or objectives are not being achieved. For example, Chapter 13.8.1 specifies actions to be taken if objectives for wildlife trees, hard snags and downed wood are not met. Where this is the case, MRC shall implement the specified adaptations independently, notifying the Wildlife Agencies where required in the HCP/NCCP. However, the HCP/NCCP envisions that some adaptations will be developed when monitoring data or watershed analyses reveal a specific need and will be tailored to address the need and its circumstances. These adaptations will occur within the set limits of allowable change described in Chapter 13 and will be identified and developed at an annual meeting of the Parties following review of the Annual Reports, as provided in Section 7.1. The Parties may elect to meet more frequently by mutual agreement.

Ongoing Consultations and Review of Annual Report

Except where specific adaptations are identified in the HCP/NCCP or are

specifically left to MRC's discretion, the need for adaptations of the Operating Conservation Program and the specific adaptations needed shall be determined at an annual meeting of the Parties that shall commence within sixty (60) days after MRC's delivery of the Annual Report to each of the Wildlife Agencies and CAL FIRE (the "**Annual Meeting**"). The Annual Meeting may consist of a series of meetings and may be conducted by telephone, as necessary to accommodate conflicting schedules or ongoing discussions. However, the Parties shall use all reasonable efforts to conclude the Annual Meeting within a two (2) week period. The purpose of each Annual Meeting will be to address all issues arising from or pertaining to information in the Annual Report, including all monitoring and evaluation for the prior year, and to identify mutually agreeable responsive actions, if necessary, to address the issues. By way of example, and without limitation, the Annual Meeting shall be the forum in which the Parties address or resolve the following issues or occurrences:

- Modifications to conservation measures that do not achieve their objectives;
- Modifications to conservation measures that could achieve their objectives in a different manner and would be less restrictive or equally restrictive of Covered Activities;
- Modifications to monitoring and evaluation methodologies, studies, and programs that do not serve their purpose;
- Changed circumstances, if not already addressed as described in Section 7.3;
- Modifications to the Operating Conservation Program based on Watershed Analyses, Focus Watershed Studies, and Long-Term Channel Monitoring; and
- Addendums to the PTEIR.

At the Annual Meeting, any Party may propose Modifications to the Operating Conservation Program in accordance with Chapter 13.3. The Parties will consider in good faith any proposed Modification from any Party. To be accepted and incorporated into the Operating Conservation Program, a proposed Modification must be agreed to by all Parties. If the Parties cannot reach agreement regarding a proposed Modification, they may use the issue resolution process, as provided in Section 7.3.2.

If the Wildlife Agencies determine that a Modification agreed to by the Parties will require an Amendment, the Modification shall not be implemented until the Amendment is approved, as described in Section 9.

Initial HCP/NCCP Implementation Meetings

The Parties shall meet quarterly during the first year of HCP/NCCP implementation to help ensure a successful initiation of the Operating Conservation Program.

Changed Circumstances

Changed Circumstances and planned responses to those circumstances are described in Chapter 14. In the event that any Party believes that a changed circumstance as defined in Chapter 14 may exist, it shall so notify the other Parties. In the event that any Party concludes that a changed circumstance in fact exists, it shall explain the basis of its conclusion and propose appropriate responsive action(s) in accordance with Chapter 14. The Parties shall meet within twenty-one (21) days of receiving the written request to discuss the response to the changed circumstance provided for in the HCP/NCCP. If the Parties cannot reach agreement on a response, the Wildlife Agencies shall identify, and MRC shall implement, a response from the alternatives specified in the HCP/NCCP. The Wildlife Agencies and MRC agree that Chapter 14 identifies all the Changed Circumstances and all required responses to Changed Circumstances for purposes of the HCP/NCCP.

Scope of Adaptive Management Changes and Changed Circumstances Responses

The Operating Conservation Program includes both adaptive management changes provided in Chapter 13 and planned responses to Changed Circumstances provided in Chapter 14, and MRC shall implement adaptive management changes and planned responses to Changed Circumstances as described therein. The Operating Conservation Program does not require MRC to implement, and the Wildlife Agencies shall not require MRC to accept or implement, any Modifications to the Operating Conservation Program that are beyond the scope of adaptive management changes described in Chapter 13 or planned responses to changed circumstances described in Chapter 14 or are inconsistent with the regulatory assurances provided under federal and state law and described in Section 10. In addition, any proposed Modification by the Wildlife Agencies that would require an Amendment of the HCP/NCCP under Section 9.4, below, is beyond the scope of the Operating Conservation Program's adaptive management program, and MRC may, in its sole discretion, reject any such proposed Modification.

No Increase in Authorized Take

Nothing in this Section or the Adaptive Management provisions of the HCP/NCCP, nor any other provision that provides for a Modification of any measure included in the Operating Conservation Program, authorizes an increase in Authorized Take. Any Modification that would result in an increase in Authorized Take must be approved as an Amendment under Section 9.4. Take that occurs on Additional Lands that is included in the Authorized Take is not an increase in Authorized Take. For purposes of this Section only, Authorized Take includes impacts to Covered Species that are plants under the USFWS Federal permit.

Plan Interpretation and Implementation

The Parties recognize that disagreements concerning implementation or interpretation of this Agreement, the HCP/NCCP, and the Permits may arise from time to time. The Parties will work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this Section 7.4 or such other procedures which the Parties may later adopt. Any Party may seek any available remedy without regard to this section if the Party concludes that circumstances so warrant. Nothing in this Section shall be construed to limit authority of the Wildlife Agencies or CAL FIRE to enforce State or Federal law, or to limit any Party's ability to suspend, revoke, or relinquish the State and Federal Permits. However, unless the Parties agree

upon another issue resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the disagreement in federal or state court, the Parties will use the following procedures to attempt to resolve disagreements.

Meet and Confer

If any Party (“the Objecting Party”) objects to any action or inaction by any other Party on the basis that the action or inaction is inconsistent with the HCP/NCCP, the Permits, or this Agreement, it shall so notify the other Parties in writing, explaining the basis of such objection. The Party whose action or inaction is addressed in the notice (“the Responding Party”) shall respond to the notice within thirty (30) days of receiving it, stating what actions the Responding Party proposes to take to resolve the objection or, alternatively, explaining why the Responding Party thinks the objection is unfounded. If the response resolves the objection to the satisfaction of the Objecting Party, the Objecting Party shall so notify the Responding Party, and the Responding Party shall implement the actions, if any, proposed in the response to the Objecting Party. If the response does not resolve the objection to the Objecting Party’s satisfaction, the Objecting Party shall notify the Responding Party accordingly, and they shall meet and confer to attempt to resolve the disagreement. To the maximum extent practicable, the meeting shall occur within 30 (days) after the Objecting Party receives the Responding Party’s response, or at such later time as they may agree upon. MRC shall participate in the meeting and shall take notes, summarize the outcome, and distribute meeting notes to each Party for its review. All Parties shall receive the initial notification from the Objecting Party, the response from the Responding Party provided during the resolution procedure, and the final meeting notes.

Elevation of Disagreement

If the Parties do not resolve a disagreement after completing the resolution procedure in Section 7.4.1, any one of the Parties may elevate the dispute to a meeting of executives and managers of the involved Parties. For purposes of this provision, “executives and managers” shall mean the CDFG Regional Manager, the CAL FIRE Deputy Director for Resource Management, the USFWS Field Supervisor, the NMFS assistant Regional Administrator for Protected Resources, and MRC’s President. Each Party shall be represented in person by its executive or manager at the meeting, but each executive or manager may bring whomever he or she chooses. To the maximum extent practicable, the meeting shall occur within forty-five (45) days of a request by any Party following completion of the procedure described in Section 7.4.1, or as soon thereafter as practicable. At the meeting, the executive or manager for each Party shall render that Party’s final decision regarding the disputed matter for purposes of this dispute resolution procedure, and the procedure shall conclude, unless the Parties extend the procedure by mutual agreement. MRC shall participate in the meeting and shall take notes, summarize the outcome, and distribute meeting notes to all Parties.

Science Review Panel

The HCP/NCCP and this Agreement contemplate that the Parties will reach mutual agreement regarding certain scientific and technical issues. In the event that such mutual agreement cannot be reached, MRC may elect to refer the issue to a Science Review Panel for review and recommendations. The members of the Science Review Panel shall be selected by mutual agreement. All members of the Science Review Panel shall have expertise relevant to the issue submitted

to the Panel for advice. MRC shall pay for the cost of convening the Panel.

The Science Review Panel members shall review the issues presented in accordance with the terms, conditions and other criteria contained in this Agreement, the HCP/NCCP, and the Federal and State Permits, and shall make their recommendations based on the best science available at the time. The Science Review Panel shall deliver a written report reflecting the opinions of its members to MRC and the Wildlife Agencies. If recommendations of individual members of the Panel differ, the Panel shall reflect the individual views of each member in its report. The conclusions or recommendations of the Panel members shall not bind any Party.

FUNDING

Primary Funding and Demonstration of Availability

MRC warrants that it has, and shall expend, such funds as may be necessary to fulfill all of its obligations under the Federal and State Permits, as described in the HCP/NCCP and this Agreement. Before February 28 of each year, MRC shall submit to the Wildlife Agencies an annual budget approved by its Board of Directors that authorizes sufficient funds for expenditure for that year to carry out MRC's commitments under the Federal and State Permits and the HCP/NCCP. In addition, the President of MRC shall deliver to the Wildlife Agencies a letter verifying that an accounting reserve has been established or maintained in an amount adequate to implement measures included in the Operating Conservation Program that will impose costs beyond MRC's normal operating costs for that year, as further described in Chapter 7.13, together with a written confirmation from an independent auditor that MRC has established or maintained such reserve. The amount of the accounting reserve shall reflect the amount shown in the annual budget, but in no event shall the amount be less than two-million dollars (\$2,000,000) in 2012 dollars. The accounting reserve amount shall be adjusted April 15 each year based on the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, San Francisco-Oakland-San Jose, California, All Items and Major Group Figures For Urban Wage Earners and Clerical Workers, and shall be increased or decreased in proportion to the extent of lands added to or removed in accordance with Section 9 and Chapter 1.12.

Material Change in Resources

MRC shall promptly notify the Wildlife Agencies of any material change in MRC's funding resources, including any decision to use the accounting reserve created in accordance with Section 8.1. A material change in MRC's funding resources is any change in the financial condition of MRC that could impair MRC's ability to manage MRC Lands, including any additional lands, in the Plan Area according to the terms of the Federal and State Permits, this Agreement and the HCP/NCCP. In the event MRC is unable to fully implement the Operating Conservation Program using budgeted funds, MRC shall draw from the accounting reserve as necessary to ensure full implementation of the Operating Conservation Program; provided, however, that MRC shall remain obligated under Section 8.1 to replenish and establish an adequate accounting reserve by January 30 of the following year.

State and Federal Funding

The Wildlife Agencies will cooperate with MRC to identify and secure, where appropriate, federal and state funds available for implementation of habitat conservation plans and natural community conservation plans, planning and

implementation of stream restoration, water quality improvement, or other activities that would complement the HCP/NCCP, such as the acquisition of lands within the HCP/NCCP's Marbled Murrelet Habitat Recruitment Stands. MRC's commitment to expend its own funds to fulfill its obligations under the HCP/NCCP and this Agreement will not preclude MRC's eligibility, or the eligibility of any organization, to receive any federal and state funds it would otherwise be eligible to obtain to plan or implement additional conservation measures referenced in the HCP/NCCP that are not required to fulfill MRC's mitigation obligations under the HCP/NCCP. The Wildlife Agencies acknowledge that such Federal and State funds may enable MRC to accelerate the implementation of portions of the Operating Conservation Program beyond the commitments in the HCP/NCCP and this Agreement. MRC acknowledges that additional conservation measures, to the extent that they are funded by State or Federal grant funds, cannot be used to fulfill, and will not be credited toward, MRC's mitigation obligations under the HCP/NCCP, this Agreement or the Permits.

MODIFICATION AND AMENDMENT

Modification and Amendment of this Agreement and the HCP/NCCP

This Agreement may be amended only by written agreement of the Parties. The HCP/NCCP may only be modified or amended with the written consent of MRC and the Wildlife Agencies following compliance with applicable Federal and State laws and regulations. Planned responses to Changed Circumstances and adaptive management changes provided for in the HCP/NCCP are part of the Operating Conservation Program and shall not require Modifications or Amendments of the HCP/NCCP.

Minor Modifications to the HCP/NCCP

Minor Modifications are revisions to the HCP/NCCP that do not substantially modify Covered Activities or the Operating Conservation Program. Minor Modifications to the HCP/NCCP must be agreed to by MRC and the Wildlife Agencies in writing, but they do not require an amendment the Federal or State Permits. Such Modifications may include, but are not limited to, the following:

- Corrections of typographical, grammatical, and similar editing errors in the HCP/NCCP that do not change the intended meaning;
- Correction of any maps or exhibits to correct errors in mapping;
- Minor changes to survey, monitoring or reporting protocols;
- Adding or deleting land, as further described in Chapter 1 and Section 9.6;
- Correction of any maps or appendices to reflect previously approved Modifications to the HCP/NCCP or Amendments to the Federal or State Permits; and
- Any change to the HCP/NCCP that does not require supplemental environmental review under NEPA, CEQA, or Section 7 of ESA, as determined by the applicable Wildlife Agency.

Procedure for Making Minor Modifications the HCP/NCCP

Any Wildlife Agency or MRC may propose Minor Modifications to the HCP/NCCP by providing written notice to all other Parties. Such notice shall include a statement of the reason for the proposed Modification, and explanation of why the Modification is minor, and a concise analysis of its environmental effects, if any, including any effects on the Operating Conservation Program and Covered Species. For proposed additions or removals of land by MRC, this information shall be included in the Proposal for the Addition of Lands by a Minor Modification required by Section 9.6.1 or the Proposal for the Removal of Lands required by Section 9.7.4. The Parties shall use reasonable efforts to respond in writing to the proposed Minor Modification within sixty (60) days after receipt of such notice. In its written response, a Party may request additional information about the proposed Modification.

Proposed Minor Modifications to the HCP/NCCP shall become effective on the calendar day after MRC and all of the Wildlife Agencies have provided their written approval (i.e., after the last of them has provided its written approval). If MRC or any Wildlife Agency objects to a proposed Minor Modification, it shall provide a reasonable opportunity to consult with the Party(ies) proposing the Modification. If the objection is not resolved, the proposed Minor Modification must be pursued, if at all, as an Amendment of the Federal Permits or State Permit as described in Section 9.4 of this Agreement. The Parties will use all reasonable efforts to approve or disapprove any proposed Minor Modification within ninety (90) days after receipt of the written notice proposing the Modification.

Amendment of the HCP/NCCP or the Federal and State Permits

MRC may propose any change to the HCP/NCCP and the Federal and State Permits as an Amendment. The Wildlife Agencies will review, and approve or disapprove, all proposed Amendments to the HCP/NCCP or the Federal and State Permits in accordance with applicable laws and regulations, including but not limited to ESA, NEPA, NCCPA and CEQA. Any Wildlife Agency may propose changes to the HCP/NCCP or the Federal and State Permits, and may request MRC to propose an Amendment to incorporate the changes, but it shall be within MRC's sole discretion whether to propose any such Amendment.

Acquisition of New Lands

Nothing in this Agreement, the HCP/NCCP, or the Federal and State Permits limits MRC's right to acquire new lands outside the Plan Area, or partial interests in such lands, for any purpose, including timber harvesting. Nothing in this Agreement, the HCP/NCCP, or the Federal and State Permits requires MRC to include in the Plan Area any such lands it acquires after the Effective Date. Unless such lands are added to the Plan Area by a Minor Modification to the HCP/NCCP or by Amendment to the HCP/NCCP and Permits, no such lands or activities thereon will be included in the PTEIR or be covered by Authorized Take.

Adding Lands to the Plan Area

MRC may propose to add land located in the Adjustment Area to the Plan Area, and to make such lands subject to the terms of this Agreement, the HCP/NCCP, and the Federal and State Permits, through a Minor Modification of the HCP/NCCP, if appropriate, or through an Amendment of the HCP/NCCP and the Federal and State Permits. MRC may propose to add to the Plan Area any land

within the Adjustment Area in which MRC obtains legal control sufficient to implement fully the terms and conditions of the PTEIR, HCP/NCCP and the Federal and State Permits.

Adding lands to the HCP/NCCP that are similar to lands in the Plan Area and managing them in accordance with the HCP/NCCP would likely complement the HCP/NCCP because it would increase the amount of habitat protected and managed for Covered Species. Based upon the analysis in the HCP/NCCP and the EIS/PTEIR, the timberlands within the Adjustment Area are largely similar in relevant characteristics to lands in the Plan Area.

Proposal to Add Lands with a Minor Modification

Provided that the total amount of land added over the 80 year permit term does not exceed fifty three thousand, three hundred and eleven (53,311) acres, up to ten-thousand (10,000) acres within the Adjustment Area may be added to the Plan Area in any calendar year through a Minor Modification of the HCP/NCCP, if the lands are determined by the Wildlife Agencies and CAL FIRE to be timberlands that are similar in relevant characteristics to lands in the Plan Area. Lands added and removed by any mechanism will be calculated independently and will not be aggregated for purposes of determining the total number of acres added or removed from the HCP/NCCP. For example, if in any year 100 acres were added and 50 acres were removed, it would mean both that 100 acres were added and that 50 were removed for purposes of this provision; it would not mean that only 50 acres were added during that year. Only similar timberland within the Adjustment Area may be added through a Minor Modification. For purposes of this Section, "timberland" means timberland as defined in section 4526 of the CFPR that is capable of growing predominantly redwood and Douglas-fir forest. "Timberland" may also include stands of grand fir, western hemlock, sugar pine, Monterey pine, tanoak, madrone, and chinquapin.

MRC may propose to add timberland located in the Adjustment Area to Covered Lands through a Minor Modification by providing to the Wildlife Agencies a Proposal for the Addition of Lands by a Minor Modification that includes:

- A map depicting the location and boundaries of the lands to be added and
- Evidence that the lands are within the Adjustment Area and are similar in character to lands in the Plan Area;
- Suitable evidence that the lands are timberland;
- A summary of all lands added to Plan Area following the Effective Date;
- A statement that the lands have been managed by MRC in a manner consistent with the HCP/NCCP at all times since MRC first acquired the interest in such lands, excluding management actions that would result in unauthorized Take;
- Evidence acceptable to the Wildlife Agencies and CAL FIRE that MRC has legal control of the lands sufficient to fully implement applicable provisions of this Agreement, the HCP/NCCP, the PTEIR and the Federal and State Permits;

- A summary, based upon the best available information, of relevant characteristics the lands share with the existing Plan Area lands and relevant characteristics the lands do not share with the existing Plan area lands as of the date of the proposal, including but not limited to the following baseline information for the lands:
 - a map showing the location of all roads and fish-bearing streams;
 - number of acres;
 - geology and geomorphology, climate, vegetation;
 - aquatic habitat conditions, including water temperatures, channel and habitat types, and LWD inventory;
 - salmonid population estimates;
 - estimates of Covered Species occurrence and status, and the occurrence and status of any State or Federally listed species that are not Covered Species;
 - timber stand age(s) and composition;
 - presence and extent of natural communities;
 - any changes in the characteristics of the lands since their analysis in the EIS/PTEIR.
- a description of the Covered Activities that will occur on the additional lands;
- an explanation of whether or how the addition of the lands will help achieve HCP/NCCP objectives;
- an explanation of whether the addition of lands is within the scope of the EIS/PTEIR;
- a copy of the previous landowners management plan, if available; and
- the amount and timing of Authorized Take expected to occur on the additional lands.

The Wildlife Agencies and CAL FIRE shall use reasonable efforts to identify within sixty (60) days of receipt of any Proposal for the Addition of Lands by a Minor Modification any information missing from the Proposal that is required by this Section.

Each Wildlife Agency shall approve the Proposal in writing if it concludes that:

- the Proposal conforms with the terms and conditions of the HCP/NCCP

and this Agreement regarding the addition of lands;

- adding the lands to the Plan Area and managing them pursuant to the terms and conditions of this Agreement, the HCP/NCCP during the term of the Federal and State Permits will not result in adverse effects on the Covered Species or other environmental impacts that are different from or greater than those analyzed in the HCP/NCCP or the EIS/PTEIR;
- Covered Activities can be implemented on the added lands without exceeding the Authorized Take limits identified in the Permit issued by that Wildlife Agency; and
- the lands to be added are similar in character to lands in the Plan Area.

CAL FIRE shall approve the Proposal in writing if it concludes that:

- the Proposal conforms with the terms and conditions of this Agreement regarding the addition of lands;
- adding the lands to the Plan Area and managing them pursuant to the terms and conditions of this Agreement and the HCP/NCCP will not result in environmental impacts that are different from or greater than those analyzed in the PTEIR.

If the Wildlife Agencies and CAL FIRE approve the Proposal for the Addition of Lands by a Minor Modification, the lands described in the Proposal shall then be added to the Plan Area according to Section 9.6.3 of this Agreement, and MRC shall distribute to the Wildlife Agencies and CAL FIRE an updated map of the Plan Area.

Adding Lands through an Amendment

An Amendment to the HCP/NCCP and the Federal and State Permits shall be required to approve the addition of lands to the Plan Area if, upon review of all of the information required to be provided by MRC under Section 9.6.1, one or more of the Wildlife Agencies concludes that the proposed addition is likely to result in new, significant environmental effects, an increase in the severity of previously identified significant effects, or an increase in the severity of previously identified effect that brings it to the level of a significant effect, or that the implementation of Covered Activities on the additional lands would exceed the levels of Authorized Take in the Federal and State Permits. In addition, an Amendment will be required if the proposed addition of lands:

- would bring the total amount of lands added by any mechanism in any calendar year to more than ten-thousand (10,000) acres;
- would bring the overall total amount of land added by any mechanism after the Effective Date to more than fifty-three thousand three hundred and eleven (53,311) acres;
- is more than sixty (60) years after the Effective Date; or
- would add lands that have been deleted from the Plan Area within

the preceding twenty (20) years.

Effect of Adding Lands to Plan Area

Any land that MRC successfully includes for coverage under the Federal and State Permits by a Minor Modification or by an Amendment of the HCP/NCCP and Permits shall thereafter be deemed "Additional Covered Lands" and shall become a part of the Plan Area. Subsequently, all references to the Plan Area in this Agreement or the HCP/NCCP shall be deemed to include such Additional Covered Lands. All provisions of this Agreement, the HCP/NCCP, and the Federal and State Permits that apply to the Plan Area shall apply to the Additional Covered Lands. The approval of such Additional Covered Lands shall not change any provision of this Agreement, the HCP/NCCP, or the Federal and State Permits, including levels of Authorized Take; such provisions must be specifically modified or amended in writing using the Minor Modification or Amendment process under this Section 9.

Effect on Sediment Reduction Plan

Additional Covered Lands will require corresponding increases in Controllable Erosion targets. For additions within the first thirty (30) years after the Effective Date, a road inventory will be prepared, and erosion control and road upgrade will follow the same specifications as outlined in Chapter 8.3.3.2.1 for lands added outside of MRC Coho Core Areas. For additions of land in any MRC Coho Core Area within the first twenty (20) years after the Effective Date, a road inventory will be completed, and MRC will follow the timelines and prescriptions described in Chapter 8.3.3.2.1.

Aquatic Monitoring

If Additional Covered Lands increase the size of the Plan Area to two-hundred and sixty-one thousand (261,000) acres or more, MRC shall, in consultation with the Wildlife Agencies, either identify one (1) additional Focus Watershed, which shall then be subject to Chapter 13 and addressed in substantially the same manner as the initial Focus Watersheds, or augment aquatic monitoring throughout the Plan Area, as further described in Chapter 13.

Northern Spotted Owl Population Objectives

The addition of Covered Lands shall increase northern spotted owl objectives as described in Chapter 10.3.1.2.1.

Adding Lands Outside the Adjustment Area

MRC may propose to add lands located outside of the Adjustment Area to the Plan Area, but only through an Amendment of the HCP/NCCP and the Federal and State Permits.

Removal of Lands

MRC may remove lands from the Plan Area by a Minor Modification of the HCP/NCCP or by an Amendment of the HCP/NCCP, this Agreement and the State and Federal Permits, as provided in this Section. Any lands that MRC removes from the Plan Area ("**Removed Lands**") shall no longer be considered part of the Plan Area as of the date the Minor Modification or Amendment takes effect. All subsequent references to the Plan Area shall be deemed to exclude such Removed Lands and MRC shall no longer be responsible for implementing the Operating

Conservation Program on those lands. The approval of such Removed Lands shall not change any provision of this Agreement, the HCP/NCCP, or the Federal and State Permits, including levels of Authorized Take; such provisions must be specifically modified or amended in writing using the Minor Modification or Amendment process under this Section 9.

Transfer of Lands

Nothing in this Agreement, the HCP/NCCP, or the Federal and State Permits limits or restricts MRC's right as a landowner to transfer its legal title to, or other legal interests in, its lands in the Plan Area. With the exception of land transfers completed through a Minor Modification of the HCP/NCCP; an Amendment of the HCP/NCCP, this Agreement and the State and Federal Permits, under this Section 9.7; or partial permit transfer under Section 9.8., MRC shall immediately notify the Wildlife Agencies if it transfers legal ownership or control of any land within the Plan Area and Authorized Take shall not apply to the lands as of the date of transfer. If MRC transfers legal ownership or control of lands within the Plan Area, other than in accordance with Section 9.7.1 or 9.8, the transfer will be treated as a partial surrender of the Federal and State Permits under Section 11.5 with regard to the transferred lands, and MRC shall be obligated under the Permits to mitigate for all Take that occurred on the transferred lands before the transfer in accordance with 11.5. In addition, if MRC transfers legal ownership or control over any of its lands in the Plan Area without first removing the lands from the Plan Area by a Minor Modification to the HCP/NCCP, if appropriate, or an Amendment to the HCP/NCCP and Federal and State Permits, the transfer will not be in accordance with the HCP/NCCP, this Agreement, and the Permits, and the Permits will be subject to suspension or revocation, at the discretion of the Wildlife Agencies. Following any such transfer of legal ownership or control, the transferred lands will be treated as Removed Lands.

Nothing in this Agreement, the HCP/NCCP or the Federal and State Permits shall be construed as transferring any Authorized Take to the transferee, except as authorized under applicable Federal and State laws and regulations governing the transfer of FESA incidental take permits and NCCPA take authorizations.

Effect of Removal of Lands

The removal of lands in accordance with the HCP/NCCP, this Agreement and the Federal and State Permits will affect certain elements of the HCP/NCCP, as described in this Section.

Effect on Sediment Prevention Plan

Controllable Erosion targets will be reduced in proportion to the total acreage of Removed Lands as described in Chapter 8.3.

Effect on Focus Watershed Studies

If the total acreage of the Plan Area is reduced to one-hundred eighty-one thousand two-hundred fifty-eight (181,258) acres or less by the net sum of Additional Lands and Removed Lands, MRC shall, in consultation with the agencies, eliminate one (1) Focus Watershed; provided, however, that if subsequent additions of lands return the size of the Plan Area to one-hundred eighty-one thousand two-hundred fifty-eight (181,258) acres or more, MRC shall, in consultation with the agencies return one (1) Focus Watershed. As an alternative to eliminating a Focus Watershed, MRC may, with the concurrence of the Wildlife Agencies, reduce the sampling intensity within existing Focus Watersheds.

Effect on Northern Spotted Owl Population Objectives

Northern spotted owl objectives will be decreased in proportion to the total acreage of Removed Lands, as described in Chapter 10.3.1.2.1.

Conditions for Removing Lands Through a Minor Modification

MRC may remove lands within the Plan Area through a Minor Modification of the HCP/NCCP only if the total amount of land removed by any mechanism in any calendar year is less than ten-thousand (10,000) acres and, after giving effect to such transfer, the total remaining acreage of the original Plan Area as of the Effective Date, including any previous additions or removals by any mechanism, would not fall below one-hundred eighty-one thousand two-hundred fifty-eight (181,258) acres. Lands removed by any mechanism will be calculated independently and will not be aggregated with lands added to the Plan Area for purposes of determining the total number of acres removed from the HCP/NCCP. In addition to the acreage limitation described in this paragraph, MRC may remove lands through a Minor Modification only under one of the following three conditions:

- The lands are transferred to any entity, including private or public, if, prior to the transfer, each Wildlife Agency, in its sole discretion and based on any factors it thinks relevant, concludes that the transfer will not compromise the effectiveness of the HCP/NCCP or result in any reduction in required mitigation based on legally assured commitments (e.g., a conservation easement approved as to form and enforceable by the Wildlife Agencies) by the transferee, and the Wildlife Agencies determine that management of such lands will be sufficiently beneficial to the Covered Species; or
- The lands are transferred to a nongovernmental organization with a conservation easement that is enforceable by the Wildlife Agencies, which the Wildlife Agencies conclude ensures that the management of the lands will not compromise the effectiveness of the HCP/NCCP or result in any reduction in required mitigation, or the organization has entered into an agreement with one or more of the Wildlife Agencies that includes legally assured commitments acceptable to the Wildlife Agencies that management of the lands will not compromise the effectiveness of the HCP/NCCP or result in any reduction in required mitigation; or
- The Federal and State Permits, or pertinent portions thereof, are also transferred to the transferee in accordance with Federal and State laws and regulations, as described in Section 9.8, below.

Process for Removing Land under a Minor Modification

To transfer lands from the Plan Area under a Modification, MRC must provide to the Wildlife Agencies a Proposal for the Removal of Lands that includes:

- a map of the lands proposed to be removed from the Plan Area and an area map showing the location of the lands within the Plan Area;

- estimates of Covered Species status and occurrence on the lands;
- a summary of all lands removed from the Plan Area since the Effective Date; and
- information necessary to fulfill one of the three conditions identified in Section 9.7.3.

The Wildlife Agencies shall use reasonable efforts to identify within sixty (60) days of receipt of any Proposal for the Removal of Lands any required information missing from the Proposal, and any additional information reasonably required to review the Proposal. Each Wildlife Agency shall approve the Proposal in writing if it concludes that the Proposal conforms with terms and conditions of the HCP/NCCP and this Agreement regarding the removal of lands through a Minor Modification, including but not limited to Section 9.7.3, 9.7.4 and Chapter 1, and that removal of the lands from the Plan Area will not compromise the effectiveness of the HCP, including mitigation required for past Take, and does not require an Amendment as provided in Section 9.7.5. If the Wildlife Agencies approve the Proposal, the lands described in the Proposal will then be removed from the Plan Area, and MRC shall promptly distribute to the Wildlife Agencies and CAL FIRE an updated map of the Plan Area. If the Wildlife Agencies do not approve the Proposal, MRC may propose the removal as an Amendment.

Amendment

An Amendment to the HCP/NCCP and one or more of the Federal and State Permits shall be required to finally approve the removal of lands from the Plan Area if the removal of lands does not meet the criteria established in Sections 9.7.3 and 9.7.4 and Chapter 1 or one or more of the Wildlife Agencies reasonably concludes:

- that a proposed removal will result in new, significant environmental effects, an increase in the severity of a significant effect previously identified in the HCP/NCCP or EIS/PTEIR, or an increase in the severity of a previously identified effect that brings it to the level of a significant effect;
- that, as a result of a proposed removal of lands, the implementation of Covered Activities would exceed the levels of Authorized Take in the Federal or State Permits;
- that a proposed removal would prevent MRC from achieving one or more of the conservation objectives identified in the HCP/NCCP;
- that a proposed removal would result in a reduced level of protection any portion of the LACMA; or
- that a proposed removal would compromise the effectiveness of the HCP, including mitigation required for past take.

Transfer of Incidental Take Permits as Part of Land Transfer

MRC may request a transfer of the Federal and State Permits in pertinent part in connection with the sale or other transfer of MRC land within the Plan Area through a joint submission by MRC and the proposed transferee. The Wildlife Agencies shall review, and approve or deny, the requested transfer in accordance with applicable Federal and State laws and regulations

REGULATORY ASSURANCES

Purpose

MRC's main purpose in preparing the HCP/NCCP, executing this Agreement, and obtaining the State and Federal Permits is to provide for the long-term reconciliation of profitable timber harvesting within the Plan Area with the conservation and protection of the Covered Species and natural communities. Upon issuance of the State and Federal Permits, MRC will receive the regulatory assurances provided under State and Federal law, which are described in this Section 10.

Federal "No Surprises" Assurances

All of the regulatory assurances provided in the Federal No Surprises rule, currently codified at 50 C.F.R. 17.3, 17.22(b)(5), 17.32(b)(5), and 222.307(g) shall be extended to MRC upon issuance of the Federal Permits in accordance with those regulations.

In the event there are changes to the Federal No Surprises Rule after the Effective Date that render the Federal assurances provided under such rule substantially weaker, MRC may elect to surrender the Federal Permits, and to terminate this Agreement with regard to the Federal Permits, in accordance with 50 C.F.R. 17.22(b)(7) and 17.32.(b)(7) and Section 11.5 or 11.6, as appropriate.

State Assurances

Except as otherwise provided in this subsection or required by law, CDFG shall not require MRC during the term of the State Permit to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Covered Species with respect to Covered Activities in the event of unforeseen circumstances, provided MRC is properly implementing this Agreement, the HCP/NCCP, and the State Permit. Measures required for Adaptive Management or changed circumstances in accordance with Chapter 13 are provided for under the HCP/NCCP and therefore are not limited by this Section.

Unforeseen Circumstances Finding

In the event that any Party believes that unforeseen circumstances may exist in accordance with the Federal or State definitions, it shall immediately notify the other Parties. If any Wildlife Agency believes unforeseen circumstances exist, it shall prepare a proposed finding, and clearly document the basis for the finding, regarding the existence of unforeseen circumstances. With regard to any potential unforeseen circumstances finding, USFWS shall adhere to 50 C.F.R. 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C) and NMFS shall adhere to 50 C.F.R. 222.307(g)(3).

Within thirty (30) days of receiving such notice, the Wildlife Agencies and MRC shall make a reasonable effort to meet and confer to consider the potential unforeseen circumstance, share relevant information, and discuss any potential changes to the Operating Conservation Program, subject to the Federal and State Assurances described in Sections 10.2.1 and 10.2.2

of this Agreement. For purposes of the NCCPA, CDFG shall make any unforeseen circumstances finding based on the best scientific evidence available, after considering any responses submitted by MRC. It shall be CDFG's responsibility to demonstrate that unforeseen circumstances exist.

Effect of Unforeseen Circumstances Finding

Pursuant to the Federal No Surprises rule and Fish and Game Code section 2820(f)(2) and for as long as MRC properly implements the HCP/NCCP, this Agreement, and the State and Federal Permits, if any Wildlife Agency makes a finding of unforeseen circumstances and additional conservation and mitigation measures are deemed necessary to respond to such unforeseen circumstances, the Wildlife Agency may require additional conservation measures from MRC only under certain conditions. Such measures must be limited to Modifications to the Operating Conservation Program for Covered Species that maintain the original terms of the HCP/NCCP to the maximum extent possible. In addition, pursuant to the Federal No Surprises rule and Fish and Game Code section 2820(f)(2), additional conservation and mitigation measures must 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 HCP/NCCP, without the consent of MRC. By way of example and not limitation, seasonal timber harvest restrictions more stringent than those provided for in the HCP/NCCP would be considered to be an additional restriction on the use of land.

Interim Obligations Upon a Finding of Unforeseen Circumstances

If any Wildlife Agency makes a finding of unforeseen circumstances, during the period necessary to determine what actions, if any, are available to address such circumstances, MRC shall consult with that Wildlife Agency and will avoid implementing any Covered Activity within the Plan Area that the Wildlife Agency determines, in consultation with MRC, would appreciably reduce the likelihood of the survival and recovery of a Covered Species.

Wildlife Agencies' Response to a Finding of Unforeseen Circumstances

Neither the Federal No Surprises rule nor the NCCPA limits or constrain USFWS, NMFS, or any State, local or Tribal government agency, or a private entity, from taking additional actions at its own expense to protect or conserve a Covered Species.

New Listings of Covered Species

Subject to compliance with all other terms of this Agreement, the HCP/NCCP, and the Federal Permits, the Federal Permits shall become effective as to each Covered Species that is not a Federal Listed Species concurrent with the listing of such species under ESA. The State Permit shall be effective as to each Covered Species regardless of listing status.

An Amendment is required to add species, listed or non-listed, to the list of Covered Species. The Federal and State Permits do not authorize Take of listed species that are not Covered Species.

Migratory Bird Treaty Act

The Federal Permit issued by the USFWS shall constitute a Special Purpose Permit under 50 CFR § 21.27 for the incidental Take of all Covered Species

identified at 50 CFR § 10.13 which are also listed under the ESA as of the Effective Date (and for the incidental Take of unlisted Covered Species identified at 50 CFR § 10.13, when the Federal Permit becomes effective as to such species as provided in Section 10.3) in the amount and/or number and subject to the terms and conditions specified in the Federal Permit. Any such incidental Take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (916 U.S.C.A. sections 703-12). The Special Purpose Permit shall be valid for a period of three years from its effective date, provided the Federal Permit remains in effect for such period. The Special Purpose Permit shall be renewed provided that MRC remains in compliance with the terms of the Federal Permit and this Agreement. Each such renewal shall be valid for the maximum period allowable under the applicable regulations at the time of the renewal (which, as of the Effective Date, is three years), provided that the Federal Permit remains in effect for such period. [Include corvid and barred owl special use or depredation permit and appropriate FG code sections here, if applicable.]

Federal Consultations

Nothing in this Agreement will limit the right or obligation of any Federal agency to engage in consultation, as required under Section 7 of ESA (16 U.S.C. Section 1536(a)). However, in any consultation with regard to a Covered Activity with respect to a Covered Species involving MRC that may be required pursuant to Section 7 after the Effective Date, USFWS and NMFS shall, to the maximum extent consistent with the requirements of Section 7, rely upon, and utilize their respective Section 7 biological opinions issued during the approval of the HCP/NCCP, provided that the Covered Activity as proposed in the consultation is consistent, and will be implemented in accordance with, the NCCP/HCP, this Agreement and the Permits. Any reasonable and prudent measures and terms and conditions in the biological opinion, shall, to the maximum extent consistent with the requirements of Section 7, be consistent with and not in excess of the measures included in the NCCP/HCP, this Agreement and the Permit.

Critical Habitat

USFWS and NMFS will consider the HCP/NCCP in their preparation of any proposed determination of new critical habitat or revision of existing critical habitat for any Covered Species under their respective jurisdictions. If critical habitat is designated for any Covered species within the Plan Area and MRC is properly implementing the terms of the HCP/NCCP, USFWS and NMFS will not require MRC to commit new, additional or different conservation or mitigation beyond that allowed by the Federal No Surprises Rule except as and only to the extent required by law.

ISSUANCE AND ENFORCEMENT OF STATE AND FEDERAL PERMITS

Authorized Take

As of the Effective Date, MRC may Take the Covered Species while carrying out Covered Activities in the Plan Area, as authorized by and subject to the conditions of the Federal and State Permits, this Agreement and the HCP/NCCP. The Covered Activities include all Covered Activities identified in Chapter 1. The Authorized Take issued to MRC applies to all third persons under MRC's direct control, including MRC's officers, directors, employees, agents, subsidiaries, contractors, and subcontractors, and their officers, directors, employees and agents who engage in any Covered Activity on

behalf of MRC. MRC shall inform all such third persons about the applicable requirements of the HCP/NCCP, this Agreement, and the Permits, and shall fully enforce the HCP/NCCP, this Agreement, and the Permits as to itself and all such third persons. All contracts between MRC and such persons regarding the implementation of Covered Activities shall require their compliance with the Federal and State Permits. Any violation of the State or Federal Permits by MRC or third parties under MRC's direct control may be attributed to MRC.

Fully Protected Species

Nothing in this Agreement, the HCP/NCCP, or the State Permit is intended to or will be construed to allow the Take of any species identified in California Fish and Game Code sections 3511, 4700, 4800, 5050 or 5515.

Original Term

Each of the Federal and State Permits will take effect on the Effective Date and be effective for eighty (80) years, unless it is terminated or revoked.

Remedies In General

Except as set forth below each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Federal and State Permits, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement;

Suspension or Revocation

USFWS and NMFS may suspend or revoke the Federal Permit(s), in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. As of the Effective Date, these regulations are codified at 50 C.F.R. 13.27 through 13.29, 17.22, 17.32, and 222.306, and 15 C.F.R. Part 904 .

CDFG may suspend or revoke the State Permit, in whole or in part, for a material violation of the State Permit, including a material failure to comply with the HCP/NCCP, or material breach of this Agreement by the MRC, if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species or to fulfill a legal obligation of the CDFG under CESA and/or NCCPA. Possible grounds for suspension or revocation of the State Permit include, but are not limited to:

- Failure to adhere to Section 8;
- Failure to maintain rough proportionality between impacts on habitat or Covered Species and conservation measures in accordance with Fish and Game Code section 2820(c), as provided in Section 5.1;

- Implementation of a PTHP that conflicts with the requirements of the HCP/NCCP;
- Continued implementation of a Covered Activity after CDFG has made a finding of Unforeseen Circumstances and notified MRC in writing that continuation of the Covered Activity would likely jeopardize the continued existence of a species listed under CESA;
- Implementation of the Covered Activities in a way that results in Take that exceeds that authorized in the State Permit;
- Patterns and practices of repeated substantive violations of the State Permit;
- Willful or knowing violation of substantive requirements of the State Permit; and
- Falsification of data or reports required by the HCP/NCCP, this Agreement or the State Permits.

Opportunity to Cure

Except where a Wildlife Agency determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend or revoke the Federal or State Permit(s) without first (1) specifying appropriate remedial actions, if any are available, and providing reasonable time for MRC to implement them, (2) providing MRC with written notice of the facts or conduct which may warrant the suspension or revocation, and (3) providing MRC a reasonable opportunity to demonstrate why suspension or revocation is not warranted.

Non-Substantive Instances of Non-Compliance

So long as MRC cures, or commences to cure as set forth below in this section, any non-substantive instance of non-compliance (e.g., a temporary delay in providing required information), the Wildlife Agencies will not use the occurrence of such non-compliance as a basis for revoking or suspending the Federal and/or State Permit(s) or for suspending the regulatory assurances described in Section 10. Before commencing any proceeding to revoke or suspend a Federal Permit or State Permit for a non-substantive non-compliance, and before asserting based on a non-substantive non-compliance that MRC is not “fully implementing” or “fully enforcing” the terms of this Agreement, the HCP/NCCP or the Permit with regard to such regulatory assurances, a Wildlife Agency shall provide MRC written notice of the non-substantive non-compliance with supporting documentation adequate to allow MRC to determine the nature and extent of the non-compliance. So long as MRC cures, or commences to cure, the non-substantive non-compliance within thirty (30) days of receipt of the notice, and for those non-compliances which cannot be cured within such thirty-day period completes curing the non-substantive non-compliance within sixty (60) days, the Wildlife Agency shall accept the cure as an adequate resolution of the non-compliance.

By way of example and without limitation, failure to provide any report on the date the HCP/NCCP requires delivery of the report to the Wildlife Agencies

would be a non-substantive instance of non-compliance for the purposes of this section.

Period of Suspension

A suspension may apply to the entire Federal and/or State Permit(s), or may apply only to specified Covered Species, lands within the Plan Area, or Covered Activities. Any notice or order suspending the Federal and/or State Permit(s) shall specify either a date or the fulfillment of a condition or conditions on which the suspension will terminate. If the Wildlife Agency determines that there are no conditions under which the suspension may be lifted, it shall take action to revoke the Permit. The Parties agree that in the event of any total or partial suspension of the Federal or State Permit(s), all Parties shall cooperate to reinstate the Federal or State Permit(s), to the extent consistent with governing law and the terms of the HCP/NCCP. In the event a suspension has not terminated within six (6) months of its effective date, at MRC's request the applicable agency shall within thirty (30) days either terminate the suspension or commence a proceeding to revoke the permit. During the period of suspension, MRC shall remain obligated to perform its obligations under the Operating Conservation Program.

Surrender of Permits

MRC may, at its discretion, surrender any or all of the Federal and State Permits. Such surrender shall be in accordance with the regulations of the applicable Wildlife Agency in force, if any, on the date of such surrender. If no such regulations exist, prior to surrender, MRC shall provide ninety (90) days written notice to the Wildlife Agencies of its intent to surrender any Federal or State Permit that has not been suspended and shall provide thirty (30) days written notice of its intent to surrender any Federal or State Permit that has been suspended. Notwithstanding its surrender of the Federal or State Permits, MRC shall remain obligated to fully mitigate, as determined pursuant to Section 11.6, for the impacts of all Take that occurred under the Federal and/or State Permit(s) prior to surrender, in accordance with this Agreement and the HCP/NCCP. The State Permit and the Federal Permits shall each be deemed canceled only upon a determination by the Wildlife Agency that issued the Permit that such outstanding mitigation obligations have been implemented. Upon surrender of the Permit(s), no additional Take shall be allowed under the surrendered Permit(s), except as necessary to carry out any outstanding mitigation obligations under the surrendered Permit(s). In determining the amount of any outstanding mitigation obligations for Take that occurred prior to surrender, the Wildlife Agencies will consider impacts on Covered Species that are plants as Take.

Post-Termination Mitigation Obligation

Upon any early termination of the Federal and/or State Permits, whether through revocation or surrender, and provided MRC has properly implemented the HCP/NCCP and complied with the Permits up to the date of revocation or surrender, MRC's post-termination mitigation obligations shall be limited to implementation of the post-termination measures described in Appendix Y of the HCP/NCCP.

MISCELLANEOUS

Temporary Prevention of Performance

In the event that MRC is wholly or partially prevented from performing

obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of MRC, including but not limited to third party actions, sudden actions of the elements (e.g., earthquakes, forest fires, or tsunamis) or actions of federal or state agencies or other local jurisdictions, MRC shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required and in no event extends beyond one timber harvest operating season;
- Within thirty (30) days after becoming aware of the condition wholly or partially preventing performance, MRC gives the Wildlife Agencies written notice describing the condition, an estimate of how long MRC expects it to persist, and how MRC plans to remedy the effects of the suspension of performance;
- MRC uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any legal action on terms which in the sole judgment of MRC are contrary to its interest);
- When MRC is able to resume performance of its obligations, MRC shall do so immediately and give the Wildlife Agencies written notice to that effect; and
- This Section 12.1 does not apply to occurrences or events identified as changed circumstances in the HCP/NCCP.

Notices

All notices, demands, or communications from one Party to another may be personally delivered, or sent by facsimile, electronic mail, U.S. Mail, or recognized overnight delivery service, to the addresses provided in this section and shall be deemed received by the receiving Party at the time of receipt of the personal delivery, or the receipt of the facsimile, electronic mail, or overnight delivery, or five days after deposit in the U.S. Mail; provided, however, that any communication described in this Agreement that requires a response within a limited period of time must be sent by certified mail to initiate that time period.

MRC:	President
USFWS:	[Names & Addresses]
NMFS:	[Names & Addresses]
CDFG:	[Names & Addresses]
CAL FIRE:	[Names & Addresses]

Any Party may change the address to which such notices, demands, or other communications may be sent by giving the other Parties written notice of such change.

When signed documents are necessary, with the exception of this Agreement and any Amendments hereto, or any agreement resulting in the transfer of one or more of the State or Federal Permits, the Parties will accept signed documents transmitted by facsimile, portable document format (e.g., "document.pdf"), or other similar reprographic technology, and to rely upon such documents as if they bore original signatures. The Parties will provide, within fourteen (14) days after transmission of such documents, the original signed documents to each of the other Parties among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other party that is not embodied herein.

Entire Agreement

This Agreement, including the HCP/NCCP and the State and Federal Permits which are incorporated by reference, constitutes the entire agreement among the Parties. This Agreement, the HCP/NCCP, and the State and Federal Permits supersede any and all prior agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other party that is not embodied herein.

Attorneys' Fees

If any action at law or equity, including any action for declaratory relief, is brought by a Party to this Agreement to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs. If any action at law or equity, including any action for declaratory relief, is brought by a third party to enforce or interpret the provisions of this Agreement, MRC, CDFG, and CAL FIRE shall negotiate a joint defense and/or cost-sharing agreement at the time the litigation is filed.

Duplicate Originals

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

Federal and State Appropriations

The duty of the USFWS and NMFS to carry out each of their obligations under this Agreement and the HCP/NCCP is subject to the federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that USFWS and NMFS are not required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

The duties of CDFG and CAL FIRE to carry out each of their obligations under this Agreement and the HCP/NCCP is subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG or CAL FIRE are not required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such

expenditures as evidenced in writing.

Governing Law

The terms of this Agreement shall be governed by and construed in accordance with the statutory and regulatory authority of the USFWS and NMFS under the ESA, its implementing regulations and other applicable federal laws, of the CDFG under the CESA, the NCCPA and other applicable state laws and regulations, and of the CAL FIRE under the CFPA and CFPR. In particular, nothing in this Agreement is intended to nor shall be construed to limit or compromise the authority of the USFWS or NMFS to seek civil or criminal penalties for violations of federal law or otherwise fulfill their enforcement and other responsibilities under the ESA or other applicable law; CDFG to fulfill its responsibilities under CESA, the NCCPA, or other applicable law; or CAL FIRE to fulfill its responsibilities under the CFPA, CFPR or other applicable law. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS or NMFS as agencies of the United States government. Nothing in this Agreement shall limit the right or obligation of any federal agency to engage in consultation required under Section 7 of ESA or other federal law; however, the USFWS and NMFS shall consider the rights and obligations of MRC under the HCP/NCCP and this Agreement, and the avoidance, minimization, and mitigation measures in the HCP/NCCP itself, in any consultation concerning MRC's use of the Plan Area.

No Third-Party Beneficiaries

This Agreement is solely for the benefit of the State of California by and through CDFG and CAL FIRE, the people of the United States of America by and through USFWS and NMFS, and MRC. This Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary, nor shall it authorize anyone not a Party to this Agreement to maintain a lawsuit or claim for personal or other injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

Counterparts

This Agreement may be executed in counterparts. This Agreement shall become operative as of the Effective Date.

References to Regulations

Unless otherwise specified, any reference in this Agreement, the HCP/NCCP or the Federal and State Permits to any regulation or rule of USFWS, NMFS or CDFG shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

Due Authorization

Each Party warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

Successors, Assigns and Permit Transfers

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the Federal Permits shall be governed by the Services' regulations in effect at the time of transfer. Assignment or transfer of the State Permit shall be governed by applicable law or regulations in effect at the time of transfer or assignment; provided, however, that if neither CDFG nor the Fish and Game Commission has adopted regulations governing the assignment or transfer of take permits under the NCCPA, assignment or transfer of the State

Permit may be effectuated under substantially the same terms and conditions as govern the transfer of the Federal Permits. As of the Effective Date, CDFG has not adopted regulations governing the assignment or transfer of NCCPA Take permits.

Cooperation in Defense of Legal Challenge

Subject to the responsibility of the U.S. Department of Justice for the conduct of litigation, the Parties agree to cooperate as appropriate in defending against any lawsuit to which a Party to this Agreement is a litigant whether filed in federal or state court, challenging the validity of the HCP/NCCP, this Agreement, or the State or Federal Permits. As applied to the USFWS and NMFS, this Section shall apply solely to actions challenging the validity of the NCCP/HCP, the Section 7 biological opinions associated with the NCCP/HCP, or the Federal Permits, or the validity of the EIS/PTEIR under NEPA.

Applicable Laws

All actions by any Party pursuant to the terms of this Agreement shall be in compliance with applicable federal and State law and regulation.

No Partnership, etc.

This Agreement does not make the Parties partners or joint venturers with each other, nor does it create any principal and agent or trustee and beneficiary relationship or other association between any of the Parties. No action taken by any Party pursuant to this Agreement shall create any such relationship.

Timeframes and Schedules

Timeframes and schedules contained in this Agreement and the HCP/NCCP may be modified by mutual agreement of the affected Parties, as long as the subject of the timeframe or schedule will be completed in a timely way under the modification. References to a "year" or "years" in this Agreement are to calendar years.

Effective Date

This Agreement shall take effect on the calendar day after this Agreement has been executed by all Parties and all of the Federal and State Permits have been issued.

No Federal Contract

Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the Federal Agencies and MRC under Federal law with regard to the Federal permit. The sole purposes of this Agreement as between the Federal Agencies and MRC are to clarify the provisions of the HCP/NCCP and the processes the Parties intend to follow to ensure the successful implementation of the HCP/NCCP in accordance with the Federal Permits and applicable Federal law.

Injunctive Relief

The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving non-compliance or violation of the Federal or State Permits.

EXHIBITS

Exhibit A: MRC Plan Area and Adjustment Area