

Appendix B
Implementing Agreement

IMPLEMENTING AGREEMENT
FOR THE
WESTERN PLACER COUNTY
HABITAT CONSERVATION PLAN AND
NATURAL COMMUNITY CONSERVATION PLAN

DRAFT
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AGREEMENT

1. PARTIES

This Implementing Agreement (“**Agreement**”), made and entered into by and among the United States Fish and Wildlife Service (“**USFWS**”) of the United States Department of the Interior, the National Marine Fisheries Service (“**NMFS**”) of the United States Department of Commerce, the California Department of Fish and Wildlife (“**CDFW**”) of the State of California Natural Resources Agency, the Placer Conservation Authority, a joint exercise of powers agency, (“**PCA**”), the County of Placer (“**County**”), the City of Lincoln (“**City**”), the Placer County Water Agency (“**PCWA**”), and the South Placer Regional Transportation Authority (“**SPRTA**”), governs the implementation of the joint habitat conservation plan and natural community conservation plan for western Placer County (the “**Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan**,” the “**Plan**,” or the “**HCP/NCCP**”) as of the Effective Date.

These entities may be referred to collectively as the “**Parties**” and individually as a “**Party**.” The USFWS, NMFS and CDFW may be referred to collectively as the “**Wildlife Agencies**.” The PCA, County, City, PCWA, and SPRTA, may be referred to collectively as the “**Permittees**” and each individually as a “**Permittee**.”

2. RECITALS

The Parties have entered into this Agreement in consideration of the following:

- 2.1. In 2001, the County, USFWS, NMFS and CDFW entered into a natural community conservation planning agreement pursuant to the California Natural Community Conservation Planning Act (the “**Planning Agreement**”). The Planning Agreement identified guidelines, criteria and procedures for the preparation of a comprehensive joint habitat conservation plan and natural community conservation plan that would provide for the management and conservation of numerous fish and wildlife species. The HCP/NCCP has been prepared according to the process described in the Planning Agreement.
- 2.2. The HCP/NCCP is a plan to protect and enhance ecological diversity and function in western Placer County, while allowing appropriate and compatible growth and development to occur in accordance with certain environmental laws. The Plan includes measures that provide for the conservation and management of certain “covered” species, and that avoid, minimize, and mitigate impacts on the “covered” species and their habitat resulting from various public and private activities, including urban, suburban, and rural residential growth and a variety of highway, road, water, sewer, and other needed infrastructure construction and maintenance activities. A primary goal of the Plan

is to fulfill the requirements of the federal Endangered Species Act and the California Natural Community Conservation Planning Act in order to obtain authorizations for the incidental take of certain covered species that may result from these activities.

- 2.3.** The federal Endangered Species Act (“**FESA**”) prohibits the “take” of species listed as endangered or threatened under FESA, as take is defined under federal law. Under Section 10 of FESA, USFWS and NMFS may issue a permit authorizing the incidental take of endangered or threatened species during otherwise lawful activities if certain statutory requirements are met by the applicant and such 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.” The Permittees submitted the HCP/NCCP to USFWS and NMFS and applied for federal permits for incidental take of certain “covered” species within the area encompassed by the Plan. The incidental take permits issued by USFWS and NMFS will be issued concurrently with each agency’s execution of this Agreement.
- 2.4.** Like FESA, the California Endangered Species Act (“**CESA**”) prohibits the take of species listed as endangered, threatened or candidate species under CESA. The Natural Community Conservation Planning Act (“**NCCPA**”) allows CDFW to authorize, by permit, the take of any species, whether or not it is listed as an endangered, threatened or candidate species under CESA, where the conservation and management of the species is provided for in a natural community conservation plan approved by CDFW. Because the HCP/NCCP was developed to meet the standards of the NCCPA, it will do more than minimize and mitigate the impacts of the activities covered in the Plan. The Plan will also contribute to the recovery of listed species and help prevent other species from becoming threatened or endangered. The Permittees submitted the HCP/NCCP to CDFW for approval and permitting for take pursuant to NCCPA. CDFW will issue an incidental take permit based on the HCP/NCCP concurrently with its execution of this Agreement.
- 2.5.** All of the Permittees intend to receive coverage under the federal incidental take permits, and the state permit issued pursuant to the NCCPA, for certain “covered” activities that they will implement, including infrastructure projects and operations and maintenance activities. In addition, the County and the City intend to allow land developers, infrastructure project proponents and landowners to receive coverage under the permits for certain development and other activities, subject to the conditions in this Agreement, the HCP/NCCP and the permits. The PCA may also negotiate agreements with other entities to allow certain activities of such entities to be covered by the permits, subject to the conditions in this Agreement, the HCP/NCCP and the permits.
- 2.6.** The Permittees are agreeing to substantial commitments of land, natural resources, financial resources, human resources and other assets to conserve and manage the

"covered" species, their habitats and other natural communities, in exchange for the assurances provided by the Wildlife Agencies in this Agreement.

3. DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in FESA, CESA or NCCPA or the regulations adopted by USFWS, NMFS and CDFW under those statutes will have the same meaning when used in this Agreement. Definitions used in this Agreement may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

- 3.1. **"Agreement"** means this Implementing Agreement, which incorporates the HCP/NCCP and the Permits by reference.
- 3.2. **"Annual Report"** means the Annual Report prepared by the PCA about implementation of the HCP/NCCP, as provided in Section 13 and further described in Chapter 8.11.
- 3.3. **"Authorized Take"** means the extent of incidental Take of Covered Species authorized by USFWS and NMFS in the Federal Permits issued to the Permittees pursuant to Section 10(a)(1)(B) of FESA, and the extent of Take of Covered Species authorized by CDFW in the State Permit issued to the Permittees pursuant to California Fish and Game Code section 2835.
- 3.4. **"CDFW"** means the California Department of Fish and Wildlife, a department of the California Natural Resources Agency.
- 3.5. **"CEQA"** means the California Environmental Quality Act (Pub. Resources Code §21000 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.6. **"CESA"** means the California Endangered Species Act (Fish & G. Code, §2050 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.7. **"Changed Circumstances"** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP/NCCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP/NCCP. Changed Circumstances and planned responses to Changed Circumstances are more particularly defined in Section 11.4 and Chapter 10. Changed Circumstances do not include Unforeseen Circumstances.
- 3.8. **"Chapter"** means a chapter or section of the HCP/NCCP.
- 3.9. **"Conditions"** or **"Conditions on Covered Activities"** means the avoidance and minimization measures described in Chapter 6, and the requirement to pay certain fees,

or to provide land in lieu of such fees, described in Chapter 9, which will be incorporated in Covered Activities, as provided in Section 9.

- 3.10. **“Conserve,” “Conserving,” or “Conservation”** means to use, and the use of, methods and procedures within the HCP/NCCP Plan Area that are necessary to bring the federally and state-listed Covered Species to the point at which the measures provided pursuant to FESA and CESA are not necessary, and to maintain or enhance the condition of the non-listed Covered Species so that listing pursuant to FESA and CESA will not become necessary.
- 3.11. **“Conservation Measure”** means each action described in Chapter 5 of the HCP/NCCP that is a component of the HCP/NCCP conservation strategy described in Chapter 5.
- 3.12. **“Covered Activities”** means the otherwise lawful activities and projects described in Chapter 2 of the HCP/NCCP that the Permittees or Third Party Participants may implement in the Plan Area for which incidental Take is authorized by the Wildlife Agencies pursuant to the Permits.
- 3.13. **“Covered Species”** means the species, listed and non-listed, whose conservation and management are provided for in the HCP/NCCP and for which incidental Take is authorized by the Wildlife Agencies pursuant to the Permits. Covered Species are listed in **Exhibit A** to this Agreement.
- 3.14. **“Development Fees”** means the Land Conversion Fee, the Special Habitat Fees, and the Temporary Effect Fee.
- 3.15. **“Effective Date”** means the date after execution of this Agreement by all Parties, issuance of all three of the Permits, and adoption of HCP/NCCP implementation ordinances by the City and the County, as provided in Section 16.1.
- 3.16. **“Evaluation Checklist”** means the checklist prepared by the PCA to guide the County’s and the City’s review of HCP/NCCP participation packages submitted by project proponents.
- 3.17. **“Federal Listed Species”** means the Covered Species that are listed as threatened or endangered species under FESA as of the Effective Date, and the Covered Species that are listed as threatened or endangered pursuant to FESA during the term of the HCP/NCCP as of the date of such listing.
- 3.18. **“Federal Permits”** means the federal incidental take permits issued by USFWS and NMFS to the Permittees pursuant to Section 10(a)(1)(B) of FESA.
- 3.19. **“FESA”** means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.

- 3.20. **“PCA”** means the Placer Conservation Authority, a joint exercise of powers agency pursuant to California Government Code section 6500 et seq., formed by the "**Joint Exercise of Powers Agreement**" between the County and the City.
- 3.21. **“Land Conversion Fee”** means the Land Conversion Fee as provided in Section 9.2 and further described in Chapter 9.4.1.
- 3.22. **“Listed Species”** means a species (including a subspecies, or a distinct population segment of a species) that is listed as an endangered or threatened species under FESA or as an endangered, threatened or candidate species under CESA.
- 3.23. **“NCCPA”** means the California Natural Community Conservation Planning Act (Fish & G. Code, §2800 et seq.), as amended on January 1, 2003, and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.24. **“NEPA”** means the National Environmental Policy Act (42 U.S.C. §4321 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.
- 3.25. **“NMFS”** means the National Marine Fisheries Service, an agency of the Department of Commerce.
- 3.26. **“Non-listed Species”** means a species (including a subspecies, or a distinct population segment of a species) that is not listed as endangered or threatened under FESA or CESA.
- 3.27. **“Permanently Protect”** means to record a perpetual conservation easement or agricultural conservation easement, in a form approved by the Wildlife Agencies, that prevents development, prohibits inconsistent uses, and ensures that habitat for Covered Species is protected and maintained.
- 3.28. **“Participating Special Entity”** means an entity that is not subject to the City’s or the County’s land use or other regulatory authority that has entered into a Participating Special Entity Agreement with the PCA pursuant to Section 10.8 to receive Authorized Take coverage for a project or activity within the Plan Area.
- 3.29. **“Party”** and **“Parties”** mean the signatories to this Agreement, individually and collectively.
- 3.30. **“Plan Area”** means the area within which the Permittees are seeking authorization from the Wildlife Agencies for the Take of Covered Species resulting from Covered Activities. The Plan Area is further described in Chapter 1 and is depicted in Figure 1-2 of the HCP/NCCP.
- 3.31. **“Permits”** means the Federal Permits and the State Permit.
- 3.32. **“Permittees”** means the County, the City, the PCA, the PCWA, and SPRTA.

- 3.33. **“Planning Agreement”** means the "Natural Community Conservation Planning Agreement" executed in 2001, by the County, USFWS, NMFS and CDFW pursuant to the NCCPA to guide the preparation of the HCP/NCCP.
- 3.34. **“Private Project Participant”** means a private person or entity that has received Take Authorization coverage from the County or the City pursuant to Section 10.7 for a project or activity within the Plan Area that is subject to the land use or other regulatory authority of the County or the City.
- 3.35. **“Reserve Management Plan”** means a Reserve Management Plan as provided in Section 8.2 and as further described in Chapter 5.
- 3.36. **“Reserve System”** means the land acquired and dedicated in perpetuity through either a fee interest or conservation easement intended to meet the preservation, conservation, enhancement and restoration objectives of the HCP/NCCP.
- 3.37. **“HCP/NCCP”** and **“Plan”** mean the joint habitat conservation plan and natural community conservation plan prepared by the Permittees and approved by the Wildlife Agencies under Section 10 of FESA and Section 2835 of the California Fish and Game Code.
- 3.38. **“Section”** means a section or subsection of this Agreement.
- 3.39. **“Special Habitat Fees”** means the Special Habitat Fees as provided in Section 9.2 and further described in Chapter 9.4.1, which include a Vernal Pool Direct Effects Fee, a Vernal Pool Immediate Watershed Effects Fee, an Aquatic/Wetland Fee, Riverine/Riparian Fee, a Riverine/Riparian Buffer Fee, a Stream System Encroachment Fee, and a Salmonid Stream Channel Fee.
- 3.40. **“State Listed Species”** means the Covered Species that are listed as threatened or endangered species, or a candidate for such status, under CESA, as of the Effective Date, and the Covered Species that are listed as threatened or endangered, or a candidate for such status pursuant to CESA during the term of the HCP/NCCP, as of the date of such listing.
- 3.41. **“State Permit”** means the state Take permit issued to the Permittees pursuant to Section 2835 of the California Fish and Game Code.
- 3.42. **“Take”** and **“Taking”** have the same meaning provided by FESA and its implementing regulations with regard to activities subject to FESA, and also have the same meaning provided in section 86 of the California Fish and Game Code with regard to activities subject to CESA and NCCPA.
- 3.43. **“Temporary Effect Fee”** means the Temporary Effect Fee provided in Section 9.2 and further described in Chapter 9.4.1.

- 3.44. **“Third Party Participants”** means Private Project Participants and Participating Special Entities.
- 3.45. **“Unforeseen Circumstances”** under the Federal Permits means changes in circumstances affecting a Covered Species or geographic area covered by the HCP/NCCP that could not reasonably have been anticipated by the Permittees, USFWS and NMFS at the time of the HCP/NCCP’s negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species. **“Unforeseen Circumstances”** under the State Permit means changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more Covered Species.
- 3.46. **“USFWS”** means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.
- 3.47. **“Wetlands”** means the wetlands types described in Chapter 3.
- 3.48. **“Wildlife Agencies”** means USFWS, NMFS and CDFW.

4. PURPOSES OF THIS AGREEMENT

This Agreement defines the Parties’ roles and responsibilities and provides a common understanding of actions that will be undertaken to avoid, minimize and mitigate the effects on the Covered Species caused by the Covered Activities within the Plan Area, and to provide for the conservation of the Covered Species within the Plan Area. The purposes of this Agreement are:

- To ensure implementation of each of the terms and conditions of the HCP/NCCP, this Agreement, and the Permits;
- To provide long term assurances to the Permittees that, pursuant to the federal “No Surprises” provisions of 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), and California Fish and Game Code section 2820, subdivision (f), as long as the terms and conditions of this Agreement, the HCP/NCCP, and the Permits are fully satisfied, the Wildlife Agencies will not require the Permittees to commit additional land, water or financial compensation or to accept additional restrictions on the use of land, water, or other natural resources, either to minimize and mitigate the impacts of Authorized Take, or to provide for the conservation and management of the Covered Species in the Plan Area, except as provided in this Agreement and the HCP/NCCP; and
- To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement.

5. INCORPORATION OF THE PLAN

The HCP/NCCP and each of its provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the HCP/NCCP, recognizing that the HCP/NCCP is a conservation plan and was not drafted as a contract. In the event of any direct contradiction, conflict or inconsistency between this Agreement and the HCP/NCCP, the terms of this Agreement will control. In all other cases, the provisions of this Agreement and the HCP/NCCP will be interpreted to be consistent with and complementary to each other. The Implementing Agreement does not alter the terms of the Permits.

6. PLACER COUNTY CONSERVATION PROGRAM

As further described in Chapter 8.1, the Placer County Conservation Program is a comprehensive local natural resource planning effort for western Placer County that addresses native species of fish and wildlife, aquatic resources, and water quality. The HCP/NCCP, along with the Western Placer County Aquatic Resource Program (“**CARP**”) and the In-Lieu Fee Program, is a component of the PCCP. The state and federal legal requirements that apply to the CARP and the In-Lieu Fee Program are different than those that apply to the HCP/NCCP. The CARP and In-Lieu Fee Program are intended to meet permit issuance criteria under Sections 404 and 401 of the federal Clean Water Act and the standards of the California Porter-Cologne Water Quality Act, as well as local aquatic resource protection requirements and standards. As a consequence, the state and federal agencies involved with implementation of the HCP/NCCP are different than those involved with implementation of the CARP and In-Lieu Fee Program.

The HCP/NCCP, the CARP, and the In-Lieu Fee Program, are each independently viable and designed to meet relevant state and federal permit issuance criteria fully. However, many, if not most, procedures and conservation measures implemented under the HCP/NCCP will serve to implement all three programs. For example, a measure to restore vernal pools would serve to implement and meet the objectives of the HCP/NCCP (i.e., for vernal pool species and habitat), the CARP, and the In-Lieu Fee Program (i.e., for wetland functions and services and water quality). This overlap of the HCP/NCCP, CARP and In-Lieu Fee Program makes it necessary to coordinate their implementation among Parties, as well as the United States Army Corps of Engineers and the United States Environmental Protection Agency.

The Parties agree to coordinate implementation of the HCP/NCCP with the implementation of the CARP and the In-Lieu Fee Program, and agree that successful implementation of the HCP/NCCP, CARP, and In-Lieu Fee Program will require coordination among all participating local, state and federal agencies. As further described in Chapter 8.1.4, this coordination will be required in several key areas, including the following:

- Funding;
- Avoidance and minimization requirements;
- Land acquisitions;
- Land management and enhancement; and

- Wetland creation and restoration.

7. IMPLEMENTATION STRUCTURE

The governance or implementation structure for the HCP/NCCP is set forth in Chapter 8.2. The general roles and responsibilities of the Parties for the implementation of the HCP/NCCP are as follows.

7.1. Permittees' Responsibilities

The Permittees will fully and faithfully perform all obligations assigned to them collectively, and to each of them individually, under this Agreement, the HCP/NCCP, and the Permits.

7.2. Wildlife Agency Responsibilities

The Wildlife Agencies will provide guidance to the PCA and other Permittees about the requirements of the Permits. The Wildlife Agencies will monitor Plan compliance and will notify the PCA as soon as possible if the Plan is not being implemented as required in the Permits. The Wildlife Agencies will review and approve proposed Reserve System land acquisitions, draft Reserve Management Plans, monitoring plans and other aspects of Plan implementation, as described in the Plan. The Wildlife Agencies will also assist the PCA in attempting to secure state and federal funding for Plan implementation, such as reviewing grant proposals.

7.3. Responsibilities of the Placer Conservation Authority

The Permittees collectively are ultimately responsible for compliance with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits. However, the PCA will have primary responsibility for implementing the HCP/NCCP on behalf of the Permittees. The PCA may delegate the implementation of specific actions to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, scientists, and contractors, but the PCA itself will remain responsible for ensuring overall implementation of the HCP/NCCP on behalf of the Permittees in accordance with this Agreement, the HCP/NCCP and the Permits. The PCA's responsibilities are set forth in Chapter 8.3 and generally include, but are not necessarily limited to, implementation and management of all of the following elements of the HCP/NCCP:

- implementation of conservation measures;
- administration of the HCP/NCCP, including staffing, and providing necessary scientific, legal, and financial expertise and consulting services;
- monitoring, adaptive management and scientific oversight;
- real estate activities;
- grant administration;
- budget preparation;
- GIS/database maintenance;
- annual reporting;

- coordination among the Permittees; and
- public outreach and education.

8. CONSERVATION PROGRAM IMPLEMENTATION

The PCA is primarily responsible for overall and day-to-day implementation of the Plan, including Plan conservation measures (Chapter 5, Section 5.4), the Monitoring and Adaptive Management Plan (Chapter 7), and the Plan funding strategy (Chapter 9). The PCA will receive advice from a variety of sources, including the Wildlife Agencies, science advisors, and the public, and will take the advice into consideration to implement the Plan effectively and cost-efficiently.

The Wildlife Agencies will have review and approval authority over certain aspects of implementation, such as Reserve System land acquisitions, restoration project designs, Reserve Management Plans, and substantial changes in the Monitoring and Adaptive Management Program. However, the PCA will ultimately decide how to implement the Plan and how to comply with the Permits, the Implementing Agreement and the HCP/NCCP.

8.1. Establishing the Reserve System

The PCA will establish the Reserve System on behalf of the Permittees as set forth in Chapter 8.4 and Chapter 5.4.1. The Reserve System will be created by permanently protecting land containing certain terrestrial and aquatic land cover types and managing and monitoring them in perpetuity. Lands will be added to the Reserve System at a pace that is roughly proportional to the rate at which Covered Activities are implemented and Authorized Take occurs, as provided in Section 8.1.3 and further described in Chapter 8.4.3.

8.1.1. Permanent Protection of Reserve System Lands

Reserve System lands will be permanently protected. For purposes of this Agreement, the HCP/NCCP and the Permits, Reserve System lands will be regarded as permanently protected if the biological functions and values on the lands that contribute to meeting the goals and objectives of the HCP/NCCP are protected by a permanent, recorded conservation easement that meets the requirements of this Section and Chapter 8.4.9.

8.1.1.1. Conservation Easements

As further described in Chapter 8.4.9, the PCA will negotiate the specific terms and conditions of conservation easements used to permanently protect Reserve System lands with each landowner on a case-by-case basis, based on site conditions, land uses, and Covered Species and habitat needs. However, the PCA will use either the “Conservation Easement” template in **Exhibit B** or, for certain agricultural lands, as further described in Chapter 8.4.9.3.2, the “Agricultural Conservation Easement” in **Exhibit C**, as a model for Reserve System lands. Alternatively, for agricultural lands added to the Reserve System as described in Chapter 8.4.9.3.2, where the use of other forms of agricultural conservation easements are required by state or federal agencies, such as conservation

easement forms approved by the Department of Conservation for use with its grant programs, the PCA may use such other forms of conservation easements with the concurrence of the Wildlife Agencies. The PCA and the Wildlife Agencies must review and approve any variations from the conservation easement templates, including, but not limited to, the use of other state- or federally-approved forms of agricultural conservation easements.

8.1.2. Wildlife Agency Concurrence

As described in Chapter 8.4.2.4, the concurrence of CDFW and USFWS must be obtained for all land acquisitions counted toward Plan land acquisition commitments for terrestrial Covered Species. The concurrence of NMFS will be required for land acquisitions that support habitat for covered anadromous fish species. The PCA will discuss potential land acquisitions with the Wildlife Agencies early in the land acquisition process and will provide an opportunity for input during site selection when practicable.

As described in Chapter 8.2.6.5, the Wildlife Agencies will have thirty (30) days to respond to requests for approval once all relevant and available information has been provided to them. If a Wildlife Agency does not, within thirty (30) days, provide either comments or a written request for a maximum of thirty (30) days of additional review time (for a total maximum of sixty (60) days), and the acquisition meets the requirements of Chapter 8.4 and Chapter 5.4.1, the PCA may proceed with the acquisition, and the acquisition will be credited toward Plan land acquisition commitments.

8.1.3. Stay-Ahead Requirement

As further described in Chapter 8.4.3, the PCA will ensure that lands are added to the Reserve System, and habitat is restored or created, at or faster than the pace at which Covered Activities impact Covered Species and natural communities, which will fulfill the NCCPA's requirement to ensure that implementation of mitigation and conservation measures on a plan basis is roughly proportional in time and extent to the impact on habitat or covered species. (Cal. Fish & G. Code section 2820(b)(3)(D)(9).) This requirement is referred to in the HCP/NCCP as the "stay-ahead" requirement.

8.1.3.1. Stay-Ahead Reporting and Process for Addressing Non-Compliance

As further described in Chapter 8.4.3.6, the PCA will monitor compliance with the stay-ahead requirement and will report the compliance status in each annual report, as provided in Section 13.1, beginning with the third annual report. In addition, the PCA will provide quarterly updates regarding compliance on the PCCP Internet website. The Wildlife Agencies will evaluate compliance with the stay-ahead requirement annually. If the Wildlife Agencies determine that the requirements of Chapter 8.4.3 have not been fulfilled, they will so notify the PCA in writing, and the PCA and Wildlife Agencies will meet to develop a mutually agreeable plan of action that will fulfill such requirements, as further described in Chapter 8.4.3.6. The mutually agreeable plan of action may include, but is not limited to, the examples provided in Chapter 8.4.3.6. If the Wildlife Agencies and the PCA cannot develop such a mutually agreeable plan of action, or if the PCA disagrees with a Wildlife Agency

determination that the requirements of Chapter 8.4.3 have not been met, the PCA or any Wildlife Agency may initiate the dispute resolution process in Section 17.2.

The Parties acknowledge that failure to fulfill the requirements of Chapter 8.4.3 would constitute a violation of the Federal and State Permits and that the Wildlife Agencies will take appropriate responsive actions to address any such violation in accordance with FESA and the NCCPA, which could include suspension or revocation of the Permits, in whole or in part.

8.1.3.2. NCCPA Procedure for Addressing Failure to Maintain Rough Proportionality

In addition to the response described in Section 8.1.3.1 and Chapter 8.4.3.6, the NCCPA requires a specific procedure for responding to a failure to ensure that the implementation of mitigation and conservation measures is “roughly proportional in time and extent to the impact on habitat or Covered Species authorized under the plan” (Cal. Fish & G. Code section 2820(b)(9)). This Section fulfills that requirement. If CDFW determines that the requirements of this Section or Chapter 8.4.3 have not been fulfilled, with or without the concurrence of USFWS or NMFS, the PCA will either regain rough proportionality within forty-five (45) days or will enter into an agreement with CDFW within forty-five (45) days, which will set a course of action to expeditiously regain rough proportionality. The agreement may include any of a variety of commitments or adjustments to the PCCP designed to regain rough proportionality, including but not limited to, a plan to acquire, restore, or enhance lands of the appropriate land cover type expeditiously. However, if USFWS and NMFS concur with CDFW’s determination, and the PCA and the Wildlife Agencies meet to develop a plan of action, as described above, the agreement will be based on that plan of action. The PCA will provide written notice of the agreement to the other Permittees. Each Permittee will implement all actions set forth in the agreement that apply to the Permittee.

If the PCA does not regain rough proportionality within forty-five (45) days or enter into an agreement with CDFW within forty-five (45) days setting a course of action to regain rough proportionality, CDFW will suspend or revoke the State Permit, in whole or in part, pursuant to California Fish and Game Code section 2820, subdivision (c). The Parties agree that partial suspension or revocation may include removal of one or more Covered Species for purposes of the State Permit or reducing the geographic scope of Authorized Take under the State Permit. Before suspending or revoking the State Permit *in whole* due to a failure to maintain rough proportionality, CDFW will meet with the Permittees to determine whether mutually agreeable modifications to the HCP/NCCP would obviate a suspension or revocation *in whole*. The Parties agree that if CDFW suspends or revokes the State Permit, the Permittees may, based on the HCP/NCCP, apply for one or more CESA incidental take permits under section 2081, subdivision (b), of the California Fish and Game Code to replace the State Permit, in which case CDFW will expeditiously review the application in accordance with CESA.

If the NCCPA procedure for addressing a failure to maintain rough proportionality in California Fish and Game Code section 2820 is amended, the new procedure shall supersede the procedure in this Section 8.1.3.2 to the extent they are inconsistent.

8.1.3.3. Dedication of Land in Lieu of Development Fee to Maintain Rough Proportionality

As further described in Chapter 8.4.3.7, if at any time the HCP/NCCP fails to comply with the stay-ahead requirement, or if the PCA concludes there is a reasonable likelihood that the HCP/NCCP will fall out of compliance within one (1) year, the PCA may recommend that the Permittees provide land or implement conservation actions in Chapter 5, and that the County and City encourage Third Party Participants to provide land or implement such conservation actions, in lieu of all or a portion of Development Fees, in accordance with Section 9.2.3 and Section 9.2.4.

The PCA will provide written notice of such recommendation to the other Permittees and the Wildlife Agencies. The PCA's notice will recommend a scope of the land or conservation action in lieu of fee requirement, for example, applying the requirement to Covered Activities that will impact ten (10) acres or more. All Permittees will thereafter apply the recommended requirement to Covered Activities that they implement; the PCA will apply the requirement to Participating Special Entities; and the County and City will consider applying the requirement to Private Party Participants.

The County and City acknowledge that failure to apply the land in lieu of fee requirement to private project proponents when needed to meet the Stay Ahead requirement may result in suspension or revocation of the Permits.

The PCA will terminate the requirement for land dedications or implementation of conservation actions (i.e., it will revert back to a voluntary alternative) as soon as the PCA determines, and the Wildlife Agencies concur, that HCP/NCCP implementation is in compliance with the stay-ahead requirement. Upon making such a determination, the PCA will so notify the other Permittees in writing, and the Permittees may thereafter terminate the requirement with regard to their own Covered Activities and to Private Party Participants.

8.1.4. Mitigation for Activities Not Covered by the PCCP

Land acquired, preserved in perpetuity, and managed for natural resource purposes to mitigate the impacts of projects not covered by the HCP/NCCP may complement and augment conservation achieved by the Plan, if the location and management of the land is consistent with HCP/NCCP goals and objectives. For example, compensatory mitigation for projects in non-participating cities (Roseville, Rocklin, and Auburn) could preserve land in the Plan Area that would not have been preserved under the Plan. Alternatively, mitigation for non-covered projects could help to accomplish conservation objectives of the Plan.

8.1.4.1. Proposals from Proponents of Non-Covered Projects

Proponents of projects in or near the Plan Area that are not covered by the Plan but that affect Covered Species may be interested in using the Plan as a vehicle to implement actions to mitigate the impacts of their projects. These non-covered projects may be required to conduct mitigation or conservation actions under a variety of state and federal laws, including but not limited to ESA, CESA, Clean Water Act, Porter-Cologne Water Quality Act, the National Environmental Policy Act (NEPA), or CEQA. In many cases, using the Plan's conservation strategy to guide the actions will ensure compatibility with the Plan and potentially achieve greater conservation benefits by lowering costs (i.e., accomplishing more with mitigation funds). Costs to mitigate non-covered projects through the Plan are expected to be lower than the project-by-project approach because of the economies of scale realized by the Plan in conducting land acquisition, habitat restoration, land management, and monitoring. The PCA and the Wildlife Agencies will consider proposals from proponents of non-covered projects to use the Plan as a vehicle for project mitigation on a case-by-case basis to determine whether they would contribute to the successful implementation of the HCP/NCCP and whether and how the HCP/NCCP could appropriately be used to fulfill mitigation requirements pertaining to the proposed project.

If the PCA and Wildlife Agencies agree that the HCP/NCCP could appropriately be used to fulfill such mitigation requirements, the PCA will work with the project proponent as agreed to add lands to the Reserve System. Such lands may be added to the Reserve System and counted toward the conservation component (but not the mitigation component) of the Plan's land acquisition commitments [See Chapter 9.4.3.3] if:

- The lands meet the criteria for Reserve System lands;
- A conservation easement in a form substantially similar to the Plan conservation easement template is recorded on the land;
- A Reserve Management Plan is prepared for the lands in accordance with Chapter 5; and
- The project proponent provides the PCA with sufficient funds to manage the lands in perpetuity in accordance with the Habitat Management Plan.

8.1.4.2. Mitigation Proposals that would Impede Plan Implementation

Regardless of whether a proponent of a non-covered project proposes to use the Plan as a vehicle for project mitigation, if a land acquisition intended to fulfill mitigation requirements under ESA, CESA, section 1602 of the Fish & Game Code, or CEQA for a non-covered project is proposed in the Reserve Acquisition Area, the Wildlife Agencies will confer with the PCA to ensure that the acquisition will not conflict with the Plan or impede the Permittees' ability to meet Plan requirements. If the land acquisition will conflict with the Plan or impede the Permittee's ability to meet Plan requirements, the applicable Wildlife Agency(ies) will require alternative mitigation measures that will avoid such conflict or impediment. For example, if a land acquisition within the Reserve Acquisition Area is proposed to fulfill mitigation requirements for a non-covered activity, and the land proposed for acquisition is needed to fulfill compensatory mitigation requirements for Covered Activities, the

applicable Wildlife Agency(ies) will require alternative mitigation measures. Such alternative mitigation measures may include, but are not limited to:

- Use of Wildlife Agency approved mitigation banks and conservation banks outside the Plan Area that have a service area boundary that includes the site of the non-covered activity;
- Compensatory mitigation on lands outside the Plan Area (including lands within the non-participating city limits);
- Additional onsite avoidance; and
- Onsite restoration.

8.2. Management and Enhancement of the Reserve System

The PCA, on behalf of the Permittees, will ensure that Reserve System lands are managed as provided in this Section and further described in Chapter 5.4.2. The PCA may delegate management responsibility to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, scientists, and contractors. However, the PCA will be responsible for ensuring that the Reserve System lands are managed in perpetuity.

The PCA will coordinate with managers of other protected areas to help form a biologically cohesive network of protected lands in the Plan Area. The PCA will be responsible for directing landscape-level management and enhancement actions (Chapter 5.4.2.4), natural community-level management and enhancement actions (Chapter 5.4.2.5), and species-level management and enhancement actions (Chapter 5.4.2.6). Management measures will include such things as regular patrol, trash removal, fence and gate installation and repair, road maintenance, and other necessary activities.

8.3. Restoration and Creation of Natural Communities and Covered Species Habitat

The PCA, on behalf of the Permittees, will ensure that natural communities and Covered Species habitat is restored and created within the Reserve System, as provided in this Section and further described in Chapter 5.4.3. The PCA will be responsible for natural community-level restoration and creation actions (Chapter 5.4.3.4), and species-specific restoration actions (Chapter 5.4.3.5). Restoration and creation actions will restore degraded and lost natural communities and habitat for Covered Species to conserve the species, to improve landscape-level ecosystem function, and to mitigate for the direct and indirect effects of Covered Activities.

The PCA may delegate creation and restoration responsibilities to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, scientists, and contractors. However, the PCA will be responsible for ensuring that restoration and creation actions are carried out in accordance with the Permits, the Plan, and this Agreement.

8.4. Monitoring and Adaptive Management

The PCA, on behalf of the Permittees, will implement the HCP/NCCP monitoring and adaptive management program as set forth in this Section and further described in Chapter 8.8. The PCA may delegate monitoring responsibilities to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, scientists, and contractors. However, the PCA will ultimately determine what actions are appropriate based on input and recommendations provided in the adaptive management program. Decisions made in the adaptive management program will be based primarily on which course of action is most likely to meet the biological goals and objectives of the Plan within budget constraints and while avoiding or minimizing conflicts with other biological goals and objectives. However, the PCA will collect and consider all feedback from the Wildlife Agencies in determining management and monitoring practices, and the Wildlife Agencies' approval will be required for any major changes in management plans.

8.4.1. Role of the Wildlife Agencies

The primary role of the Wildlife Agencies in the adaptive management program will be to provide feedback to the PCA regarding recommended changes to Plan implementation based on the results of research and monitoring and on the recommendations of the science advisors. The Wildlife Agencies will also provide expertise in the biology and conservation of Covered Species and natural communities.

9. CONDITIONS ON COVERED ACTIVITIES

The impacts to Covered Species and natural communities resulting from Covered Activities will be minimized and mitigated by the implementation of the conservation strategy described in Chapter 5, by avoidance and minimization measures for Covered Activities and related application and survey requirements described in Chapter 6, and by the payment of certain fees that will be used to fund implementation of the HCP/NCCP described in Chapter 9. The measures described in Chapter 6 and the fee requirements described in Chapter 9 are referred to herein and in the HCP/NCCP as “**Conditions on Covered Activities**” or “**Conditions.**” Most of these Conditions apply to specific types of Covered Activities; no individual Covered Activity will be required to comply with all Conditions. Instead, each Covered Activity will comply with specific applicable Conditions. The Permittees will ensure that all applicable Conditions are incorporated in Covered Activities, as provided in this Section.

9.1. Avoidance and Minimization of Impacts

As further described in Chapter 6, the HCP/NCCP includes Conditions to avoid or minimize the Take of Covered Species resulting from Covered Activities. These Conditions are designed to form a regional program that will be implemented systematically to: prevent Take of individuals of certain Covered Species; avoid impacts to Covered Species to the maximum extent practicable; minimize adverse effects on Covered Species and natural communities to the maximum extent practicable; and

avoid and minimize direct and indirect impacts on aquatic resources. Each Permittee will incorporate all applicable Conditions within all Covered Activities that it implements. In addition, the County and the City will require all applicable Conditions as conditions of approval for all Private Project Participant Covered Activities, and the PCA will ensure that the Conditions are incorporated in all Participating Special Entity Covered Activities.

9.2. HCP/NCCP Development Fees

As provided in this Section and further described in Chapter 9, the PCA will use revenues generated from certain fees placed on Covered Activities to fund implementation of actions that will provide compensatory mitigation for the impacts of Covered Activities on Covered Species. Such actions include, but are not limited to, administrative costs, creation of the HCP/NCCP Reserve System, management of Reserve Lands, monitoring of and reporting on HCP/NCCP implementation, adaptive management, and responses to Changed Circumstances. These actions, together with the avoidance and minimization measures provided for in Section 9.1, will fulfill all requirements under FESA and the NCCPA to minimize and mitigate for the impacts of Covered Activities on Covered Species and natural communities.

Fee revenues and related mitigation sources of funding (see Table 9-4 in Chapter 9.4) will fully offset the portion of overall HCP/NCCP costs incurred to provide compensatory mitigation for the impacts of Covered Activities, including, but not limited to, endowment contributions to fund management and monitoring of the Reserve System in perpetuity and reimbursement of a portion of Plan preparation costs.

The HCP/NCCP includes three types of fees: the “**Land Conversion Fee**,” the “**Special Habitat Fees**,” and the “**Temporary Effect Fee**,” collectively, the “**Development Fees**.” The City and the County will collect fee payments from Private Project Participants and provide the fee revenues to the PCA as soon as reasonably practicable, but in no event later than thirty (30) days after the end of the quarter within which the fee was collected. The PCA will collect all fee revenues, including fee revenues from Private Project Participants provided by the City and the County, fee payments from Participating Special Entities, and, for Covered Activities implemented by the Permittees, fee payments from the Permittees. The PCA will comply with all applicable provisions of the Mitigation Fee Act (Gov. Code §66000, et seq.) as to the deposit, accounting, expenditure and reporting of such fee revenues.

9.2.1. Requirement to Pay Development Fees

The County and the City will make payment of the applicable Development Fees a condition of approval for Private Project Participant Covered Activities; the PCA will require payment of the Development Fees for Participating Special Entity Covered Activities; and the Permittees will each pay the applicable Development Fees for Covered Activities that they implement.

9.2.2. Timing of Development Fee Payment

As further described in Chapter 9.4.1.8, the Special Habitat Fee obligation for a Covered Activity, including any Special Habitat Temporary Effect Fee, will be paid prior to issuance of a land conversion authorization that allows ground disturbance of a special habitat. Applicable Land Conversion and Land Conversion Temporary Effect Fees for each Covered Activity will be paid at the first of the following steps to occur:

- Issuance of a grading permit or plan;
- Approval of an improvement plan;
- Issuance of a building permit; or
- Any other final permit action for a Covered Activity that authorizes ground disturbance.

If a Covered Activity requires a grading permit, grading plan, or improvement plan and, in addition, requires a building permit, then a Private Project Proponent may elect to pay portion of the applicable Development Fees at the grading permit, grading plan, or improvement plan step and the remainder at building permit issuance. In this circumstance, the total fee amount due at grading permit, grading plan, or improvement plan approval, and the total remaining fee amount required, will be determined by the County or City, as applicable, in accordance with Chapter 9.4.1.8. The County or City will also allocate the remaining fee amount required by parcel, and the remaining fee obligation for each parcel will be due when the first building permit is issued for that parcel.

9.2.3. Credit for Land Conversion Fee in Exchange for Dedication of Land

As further described in Chapter 8.4.13 and Chapter 9.4.1.10, the PCA can approve credit for a portion of the Land Conversion Fee in exchange for a dedication of land to be added to the Reserve System. The PCA may allow fee credits for lands provided in lieu of the Land Conversion Fee so long as the PCA has sufficient available or committed funds to manage and monitor the dedicated land during the Permit Term, which may include funds provided by the Permittee, Private Project Participant, or Participating Special Entity seeking the fee credit. The Permittee, Private Project Participant, or Participating Special Entity seeking the fee credit must enter into a land dedication agreement with the PCA in accordance with Chapter 9.4.1.10.1, which must be fully executed before commencement of the Covered Activity to which the credit will be applied.

9.2.3.1. Land Dedication Incentive

If land proposed for dedication is of exceptional conservation value to the Reserve System, the PCA may offer an incentive to the Permittee, Private Project Participant, or Participating Special Entity for the land dedication in accordance with Chapter 9.4.1.10.2. The PCA will determine the conservation value of lands proposed for dedication based on the PCA's analysis of lands needed to fulfill the Plan's land acquisition commitments and the role that the proposed lands will play in meeting those commitments. As further described in Chapter 9.4.1.10.2, the land dedication incentive may include one or both of the following components.

- The PCA may approve a higher amount of credit for the Land Conversion Fee than the minimum credit described in Chapter 9.4.1.10.1.
- The PCA may allow the transfer of credit so that it can be used for Covered Activities other than those specified in the land dedication agreement.

9.2.4. Credit for Special Habitat Fees in Exchange for Restoration or Creation

As further described in Chapter 8.7.2 and Chapter 9.4.1.4.2, the PCA can approve credit for all or a portion of the Special Habitat Fees in exchange for the restoration or creation, management, and monitoring of wetlands, streams, or riparian areas that meets all applicable requirements of Chapter 6 and Chapter 8.4.1 or the purchase of appropriate wetland restoration or creation credits in a conservation bank or mitigation bank approved by the PCA in accordance with Chapter 8.4.7.

The PCA will prepare a written determination of whether a restoration or creation proposal, or a proposal to purchase credits at a conservation bank or wetland mitigation bank, conforms to the HCP/NCCP and is therefore approved by the PCA. The written determination will include the amount of any approved credit for the Special Habitat Fees.

9.2.5. Payment of Fees with a Special Tax or Special Assessment District

As further described in Chapter 9.4.1.9, the PCA, and the County or City, as applicable, may approve the use of special tax or assessment adopted through formation of a financing district, such as a Community Facilities District or a special assessment district, to the extent allowed by the applicable California law, to fulfill in part the requirement to pay Development Fees. The County or City, as applicable, in cooperation with the PCA, will determine whether to allow the use of a financing district for that purpose during the local entitlement process for the Covered Activity. For the County, any use of a financing district would require the approval by the Board of Supervisors in accordance with the Placer County Bond Screening Committee's adopted rules and procedures.

9.3. Exemptions from Development Fees

Certain Covered Activities will not disturb the ground or will have little measurable impact on Covered Species or natural communities and are exempt from the requirement to pay Development Fees. These Covered Activities will receive Authorized Take coverage under the Permits. The Permittee responsible for implementing or approving the Covered Activity will determine whether it is exempt from the requirement to pay Development Fees in accordance with this Section 9.3 and Chapter 9.4.1.2.

9.4. Adjustment of Fees

As further described in Chapter 9.4.1.7, the Development Fees will be adjusted in two ways to account for increases or decreases in the cost of implementing the HCP/NCCP: by annual adjustments and by periodic assessments and adjustments. The PCA will adjust the Development Fees annually, by March

15 of each year, according to the indices and procedures described in Table 9-8 of the HCP/NCCP, beginning the calendar year following the Effective Date.

In addition, periodically, the PCA will assess the actual accrued costs of implementing the Plan, the assumptions underlying Plan funding, and estimated costs to complete Plan implementation, to evaluate whether fee revenues are likely to be adequate to cover implementation costs, as described in Chapter 9.4.1.7. The PCA will also compare the actual accrued costs of implementing the Plan, including managing and monitoring the Reserve System, to the estimates of those costs from the prior periodic assessment specifically to determine the actual change in all costs, including but not limited to land acquisitions. The PCA will initiate this periodic assessment based on cost data through the end of the PCA's fifth fiscal year following the Effective Date. Thereafter, the periodic assessment will occur at least once every five (5) years.

Based on each periodic assessment, the PCA will determine whether adjustments to the Development Fee amounts are necessary to ensure full funding of the mitigation share of remaining HCP/NCCP implementation costs, including endowment contribution costs and plan preparation costs, as described in Chapter 9.4.1. The Permittees will not be required to increase Development Fees to address shortfalls in other sources of funding or to decrease Development Fees in response to windfalls in other sources of funding. Automatic annual fee adjustments will resume after the periodic fee assessment and will continue until the next periodic assessment.

10. TAKE AUTHORIZATION

As of the Effective Date, the Permittees may Take the Covered Species, provided the Take is incidental to the implementation of Covered Activities in the Plan Area, as authorized by and subject to the conditions of this Agreement, the HCP/NCCP, and the Permits. The Covered Activities are described in Chapter 2.5 of the HCP/NCCP.

The Permittees' Take authority covers all of their respective elected officials, officers, directors, employees, agents, subsidiaries, and contractors who engage in any Covered Activity. Each Permittee will be responsible for supervising compliance with the relevant terms and conditions of the Permits by its own elected officials, officers, etc., and all contracts between a Permittee and any such person or entity regarding the implementation of a Covered Activity will require compliance with the Permits.

10.1. Issuance of the Permits

Concurrent with its execution of this Agreement, and after satisfaction of all other applicable legal requirements, USFWS and NMFS will each issue the Permittees a permit under Section 10(a)(1)(B) of FESA (the "**Federal Permits**"). The Federal Permits will authorize incidental take of all Federal Listed Covered Species resulting from Covered Activities in the Plan Area. Subject to compliance with

all other terms of this Agreement, the Federal Permits will take effect for all Non-listed Covered Species, upon the listing of such species under FESA.

Concurrent with its execution of this Agreement, and after satisfaction of all other applicable legal requirements, CDFW will issue the Permittees a permit under Section 2835 of the California Fish and Game Code authorizing Take by the Permittees of each Listed and Non-listed Covered Species resulting from Covered Activities in the Plan Area (the “**State Permit**”).

10.2. Permittee Responsibilities

Each Permittee will be responsible for ensuring that Covered Activities that it implements comply with the requirements of the Plan, this Agreement, and the Permits, following the evaluation process described in Chapter 6.2.1. The Permits will authorize the County and the City to extend Authorized Take coverage to Third Party Participants for Covered Activities that are subject to the County’s or City’s land use authority and comply with the requirements of the Plan. The County and the City will each review Participation Packages submitted by project applicants within their jurisdictions and determine whether to extend Authorized Take coverage following the process described in Chapter 6.2.2. The County and the City will develop a checklist for evaluating the completeness of Participation Packages within the first six (6) months after the Effective Date.

10.3. PCA Responsibilities

The PCA will have limited responsibilities with regard to the Permittee’s use of Authorized Take and extension of Authorized Take to Private Party Participants. The PCA will provide support to the Permittees’ for their decisions regarding the use and extension of Authorized Take, such as draft checklists, template planning survey reports, and a fee calculator. The PCA will also provide advice, upon request, to the City and the County regarding their review of Participation Packages and will promote coordination among the Permittees to ensure that Conditions on Covered Activities are implemented and enforced consistently and effectively.

In addition, the PCA will have the following specific responsibilities and authorities related to the Permittees’ use of Authorized Take and the extension of Authorized take to Third Party Participants:

- Reviewing applications from Participating Special Entities as provided in Section 10.8 and further described in Chapter 8.9.4, and extending Authorized Take as appropriate;
- Reviewing proposals for credit for the Land Conversion Fee in exchange for the dedication of land as provided in Chapter 9.4.1.10 and further described in Chapter 8.4.13.3, and for credit for the Special Habitat Fees in exchange for restoration or creation of jurisdictional wetlands or riparian habitat as provided in Section 9.4.1.4.2 and further described in Chapter 8.7.2. The Permittees will refer any such proposals to the PCA for review, approval, and calculation of the required Development Fees. The PCA will review proposals on a case-by-case basis. If the PCA approves a proposal, the terms of the land offer, habitat restoration or creation, and any remaining Development Fee amounts will be forwarded to the appropriate Permittee for incorporation into the Covered Activity’s conditions of approval;

- Verifying that proposals to defer fee payment through ongoing assessments, special taxes, or other mechanisms conform to Plan requirements (see Chapter 9). The PCA will review these proposals prior to adoption by the County or the City;
- Approving fee waivers when dedications of land within the Stream System are offered (see Chapter 6.3.3). The PCA must approve these proposals prior to adoption by the County or City;
- Suspending the option for early payment of fees and extension of Authorized Take under certain circumstances, as described in Chapter 9. The PCA will notify all Permittees of any such suspension;
- Recalculating the fees annually and providing the new fee amounts to the Permittees, as described in Chapter 9. The PCA will notify each Permittee of the new fees; and
- Determining mitigation requirements and fees to be paid by Participating Special Entities.

10.4. Wildlife Agency Responsibilities

As of the Effective Date, the Permittees may implement Covered Activities and extend Authorized Take coverage to Third Party Participants in accordance with this Agreement, the HCP/NCCP and the Permits without the prior approval of the Wildlife Agencies, except as specifically identified in Chapter 8.9.3. As provided in Section 11.6 below, the Parties acknowledge that some Covered Activities may be the subject of federal Section 7 consultations even though they are covered under the Permits (e.g., Covered Activities that require a Clean Water Act Section 404 permit or are funded wholly or in part by the Federal Highway Administration).

As further described in Chapter 8.9.3, the Wildlife Agencies' will monitor implementation of the HCP/NCCP to ensure overall compliance with this Agreement, the HCP/NCCP and the Permits. To ensure that the Wildlife Agencies are adequately informed about the Permittees' use and extension of Authorized Take coverage, the Permittees will provide copies of any application and supporting information required in Chapter 6 for any Covered Activity upon the request of any Wildlife Agency.

10.5. Authorized Take for Projects and Activities Implemented by Permittees

Each Permittee will ensure that all Covered Activities it implements comply with this Agreement, the HCP/NCCP and the Permits. As further described in Chapter 6, each Permittee will document such compliance and provide a copy of that documentation to the PCA, which will maintain a record of compliance documentation for all Covered Activities implemented by Permittees.

The Permittees will develop a template within six (6) months of the Effective Date to standardize the form in which they document their compliance with this Agreement, the HCP/NCCP and the Permits. The template will be substantively similar to the "Participation Package" used for Private Project Participants, as described in Section 10.7 and Chapter 6. However, the Permittees may adapt the form of the Participation Package for their use as they deem appropriate.

When one or more Development Fees are required for a Covered Activity implemented by a Permittee, the PCA will calculate the required fee amount, and the Permittee will transfer that

amount to the PCA before initiating the Covered Activity. As further described in Chapter 9, Permittees may use any applicable alternative to fee payment allowed in the HCP/NCCP, including, but not limited to, purchasing credits at approved mitigation or conservation banks, obtaining a credit for the Land Conversion Fee as provided in Section 9.2.3, and obtaining credit for Special Habitat Fees as provided in Section 9.2.4. The PCA will prepare a written determination of whether any such credit proposed by a Permittee conforms to the HCP/NCCP and is therefore approved. The written determination will be prepared within forty-five (45) days of receiving a complete written proposal from a Permittee and will include the amount of any approved credit, as described in Chapter 9.

Take Authorization coverage for any Covered Activity implemented by a Permittee will take effect upon the Permittee's delivery to the PCA of its documentation of compliance with this Agreement, the HCP/NCCP, and the Permits, along with any required Development Fee amount, and implementation of any actions supporting a Development Fee credit.

10.6. Extension of Take Authorization to Third Party Participants

As further provided by this Agreement, the HCP/NCCP and the Permits, Authorized Take coverage may be extended to "**Third Party Participants,**" which include "**Private Project Participants,**" and "**Participating Special Entities.**" The PCA may extend Authorized Take coverage to Participating Special Entities and will be responsible for determining whether applications or requests from potential Participating Special Entities and comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits. The County and City may extend Authorized Take coverage to Private Project Participants, will be responsible for determining whether Participation Packages from potential Private Project Participants comply with all such terms and conditions, and will make findings supporting such determination before extending Authorized Take coverage.

10.7. Private Project Participants

The County and the City will each require proponents of private projects that are subject to their land use or other regulatory authority and fall within the categories of projects and activities described in Chapter 2.5, to comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits, and may extend Authorized Take coverage to such projects, as provided in this Section 10.

10.7.1. HCP/NCCP Application Process

As further described in Chapter 6, the County and the City will require proponents of private projects that are subject to their land use or other regulatory authority and fall within the categories of projects and activities described in Chapter 2.5, to submit a Participation Package as described in Chapter 6.2 and will review the Participation Package based on an "**Evaluation Checklist**" that will be prepared by the PCA within six (6) months of the Effective Date. The County's and City's review

of the application package will occur concurrently with the environmental review of the project pursuant to CEQA, for projects subject to CEQA.

Based on its review of each Participation Package, the County or the City will prepare a written determination regarding whether the private project, as proposed in the Participation Package, includes all applicable terms and conditions in this Agreement, the HCP/NCCP, and the Permits and is therefore consistent with the HCP/NCCP. If the County or City concludes that the project as proposed does not include all applicable terms and conditions, it will explain the deficiency or omission in writing to the private project proponent and will place the Participation Package on hold. If the County or City concludes that the project as proposed includes all applicable terms and conditions, it will prepare a written determination to that effect (a “**Compliance Determination**”).

The County and the City will provide to the PCA a copy of all HCP/NCCP Participation Packages for which they have prepared a Compliance Determination.

Nothing in this Section shall be construed to affect the ability of the County or a City to determine that an application for a private project is incomplete or to deny a private project application for any reason unrelated to the HCP/NCCP or the Permits.

10.7.2. Extension of Authorized Take Coverage to Private Project Participants

If the County or the City prepares a Compliance Determination for a private project following completion of the HCP/NCCP application process, the private project proponent will be eligible for Authorized Take coverage as a Private Project Participant. The County or the City will require the private project proponent to comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits. The County or the City may enter into an agreement in which the project’s proponent assumes the obligation to comply with such terms and conditions or may require such compliance as a condition of project approval. Once the agreement is entered into or the conditions of approval are imposed, all applicable Development Fees have been paid, as provided in Section 9.2 and further described in Chapter 9, any actions supporting a Development Fee credit as provided in Section 9.2.3 and Section 9.2.4 have been implemented, and the County or the City has otherwise finally approved the project, the County or the City will extend Authorized Take coverage to the project proponent. The project proponent thereafter will have Authorized Take coverage as a Private Project Participant.

Once Authorized Take coverage has been extended to a Private Project Participant, it will remain in effect with regard to the project for as long as the Private Project Participant fully complies with the applicable terms and conditions of this Agreement, the HCP/NCCP, the Permits, and any additional conditions required by the County or City, as applicable; provided, however, that if any of the Permits is suspended or revoked, the Wildlife Agency that has suspended or revoked the Permit may also suspend or revoke the Private Project Participant’s Authorized Take coverage if the Wildlife Agency determines that continued implementation of the Private Project Participant’s project would likely jeopardize the continued existence of a Covered Species. Before making such a determination, the

Wildlife Agency will meet and confer with the Private Project Participant and the County or the City, as applicable, to discuss the threat of jeopardy and possible ways to avoid it short of suspending or revoking Authorized Take coverage for the project. In addition, if the County or the City suspends or revokes its final approval of the project, then the County or the City will also suspend or revoke the Authorized Take coverage for the project.

10.7.3. HCP/NCCP Implementation Ordinances

Within one hundred and twenty (120) days after the issuance of all of the Permits, the County and the City will each consider the adoption of an HCP/NCCP implementation ordinance substantively similar to the model ordinance attached to this Agreement as **Exhibit D**. The implementation ordinance will, among other things, provide for the imposition of Development Fees, as provided in Section 9.2 and further described in Chapter 9, and establish the jurisdiction's requirements for extending Authorized Take coverage to Private Project Participants, as provided in this Section 10.7. The County and the City may extend Authorized Take coverage to Private Project Participants only after adopting an HCP/NCCP implementation ordinance in accordance with this Section.

The model ordinance in Exhibit D is intended to exemplify the necessary substantive terms of a HCP/NCCP implementation ordinance; it is not intended to dictate the precise terms of each such ordinance. The County and the City may each adapt the model ordinance to reflect its independent findings, to maximize administrative efficiency, or for other reasons, provided the substance of the operative terms in the model ordinance is reflected in each implementation ordinance.

10.8. Participating Special Entities

The PCA may extend Authorized Take coverage to public and private entities that are not Permittees, including, but not limited to, school, water, irrigation, transportation, park and other districts and utilities, pursuant to an enforceable agreement that defines all planning, implementation, management, enforcement and funding responsibilities necessary for the entity to comply with this Agreement, the HCP/NCCP, and the Permits (a "**Participating Special Entity Agreement**"). Such entities thereafter will have Authorized Take coverage as Participating Special Entities.

As further described in Chapter 8.9.4, the PCA may at its discretion, and with the Wildlife Agencies' concurrence, enter into a Participating Special Entity Agreement with an entity if certain requirements are met and the entity explains how it will comply with all applicable terms and conditions of this Agreement, the HCP/NCCP and the Permits in an application satisfying the criteria set forth in Chapter 8.9.4.1. Among other things, the Participating Special Entity Agreement must adequately address the legal and equitable remedies available to the PCA if the public entity fails to perform its contractual obligations. As described in Chapter 8.9.4.1, after execution of a Participating Special Entity Agreement and payment of all fees specified by the PCA, the PCA will issue a "**Certificate of Inclusion**" to the entity that describes the scope of its Authorized Take coverage and sets forth the conservation measures it is required to implement. The entity will thereafter be a Participating Special Entity subject to the terms of the Participating Special Entity Agreement and the

Certificate of Inclusion, and the Authorized Take will be deducted from the take limits set forth in the Permits. A Certificate of Inclusion template is attached as **Exhibit E**. The PCA will enforce the terms of this Agreement, the HCP/NCCP, and the Permits with regard to any such Participating Special Entity and will withdraw the Certificate of Inclusion and terminate any Authorized Take coverage extended to the Participating Special Entity if the Participating Special Entity fails to comply with such terms.

10.8.1. Potential Roseville Annexation Area

Covered Activities within a potential Roseville annexation area (“**Potential Annexation Area**”) are eligible for coverage in a Participating Special Entity Agreement in the event the Area is annexed by the City of Roseville, as further described in Chapter 8.9.4.2. Covered Activities within the Potential Annexation Area have been evaluated as part of the potential future growth in the Plan Area and are included as part of the potential Authorized Take under the Permits; and the Projects do not conflict with the HCP/NCCP conservation or the ability of the PCA to meet Plan goals and objectives. The City of Roseville is currently evaluating the possibility of annexing the lands comprising the Potential Annexation Area. Any such annexation would not affect the boundaries of the HCP/NCCP’s Potential Future Growth area or Reserve Acquisition Area. In the event the Potential Annexation Area is annexed to the City of Roseville, which is a non-participating city, then the proponent of Covered Activities within the Area will be eligible to secure incidental take coverage as a Participating Special Entity, if the PCA determines that the Covered Activity meets the conditions specified in Chapter 8.9.4.2.

10.9. Placer Vineyards Specific Plan

The Placer County Board of Supervisors approved the Placer Vineyards Specific Plan (“**PVSP**”) in 2007 and approved amendments to the PVSP in 2015. PVSP infrastructure includes both on-site and off-site components. The PVSP is the largest planned development in western Placer County.

Implementation of the PVSP within Placer County is a Covered Activity. Portions of some off-site infrastructure facilities related to the PVSP are not within the Plan Area because they are outside of Placer County and are, therefore, not covered by the Plan. With the exception of these out-of-county infrastructure facilities, the Plan included in its analysis the PVSP’s projected effects and take of Covered Species. There may be future amendments to the PVSP, which will be covered under the Plan, provided they would not cause the take limits under the permits to be exceeded, the amendment does not result in effects on Covered Species beyond those analyzed for the Plan, and conditions are applied to the PVSP consistent with Appendix N of the Plan.

All PVSP development is required to comply with the “Placer Vineyards Mitigation Strategy” adopted by Placer County in connection with the PVSP (the “**PVSP Mitigation Strategy**”). The PVSP Mitigation Strategy, which was developed in consultations between the Placer Vineyards owners group, the County, the Sacramento Area Council Of Governments, various environmental groups and state and federal resource agencies, identifies, among other things, wetland and species-related

mitigation standards for development within the PVSP. The PVSP Mitigation Strategy is an integral component of, and was designed to be consistent with, the Plan's conservation strategy.

Because the land plan for the PVSP was finalized while the Plan was still in development, some of the avoidance and minimization measures and conservation requirements in the PVSP Mitigation Strategy differ slightly from the Conditions on Covered Activities in Chapter 6, as described in Appendix N of the Plan. However, all PVSP projects that receive incidental take coverage under the Plan and permits will be subject to Plan fees, as described in Chapter 9.

Some projects within the PVSP were built before the Effective Date. To comply with the ESA, these interim PVSP projects obtained incidental take authorization in accordance with the Programmatic Biological Opinion issued for the entire PVSP (USFWS, April 1, 2016, *Programmatic Biological Opinion for the Placer Vineyards Specific Plan Project*, Placer County, California [Corps File Number SPK-1999-00737] [Service File Number: 81420-2008-F-0983-3])(the "**Programmatic BO**"), which incorporates the PVSP Mitigation Strategy. In the Programmatic BO, the USFWS analyzed the PVSP as a whole to ensure that projects receiving incidental take authorization through project-specific biological opinions prior to approval of the Plan are in alignment with the regional conservation strategy for western Placer County. Prior to the issuance of each USACE permit for an interim project, the USFWS reviewed that project's final mitigation plan and appended to the Programmatic BO an incidental take statement for that project.

The projects in the PVSP that did not receive incidental take authorization as described above will obtain take authorization through the Plan under the same terms and conditions as other Covered Activities, except as otherwise provided in Appendix N of the Plan, and will receive the regulatory assurances provided for Covered Activities. The PVSP projects that received incidental take authorization under the Programmatic BO as described above will not receive such regulatory assurances. Any differences between the PVSP-specific conditions described in Appendix N of the Plan and the conditions described in Chapter 6 will only apply to PVSP projects (including covered off-site infrastructure), and will not apply to other, non-PVSP Covered Activities.

As described in Chapter 8.9.5, certain special requirements apply to the PVSP to incorporate lands used for compensatory mitigation for PVSP projects built before the Effective Date into the Reserve System and to account for PVSP effects.

10.10. Coverage Option for Certain Minor Activities

Chapter 2.7 defines "minor activities" not subject to the requirements of the Plan, including activities on parcels existing at the time of Plan adoption equal to or less than 20,000 square feet (0.46 acre), and small additions of less than 5,000 square feet to existing improved properties. Existing lots of this small size and small additions to existing structures are not subject to Plan requirements and are not covered by the Plan or the permits because they are not expected to have adverse effects on Covered Species. However, if a property owner were to find a Covered Species on such a site, he or she may wish to receive Take authorization under the Plan.

The types of activities and projects that may occur on these small sites are the same as those activities and projects already covered by the Plan, so the effects analysis in Chapter 4 has considered relevant potential impacts. Because impacts on such sites would be very small, and this opt-in allowance would be granted very rarely, any resulting Take can be accommodated within the Take limits established under the State and Federal Permits. Therefore, with the advance approval of the PCA, proponents of such minor projects and activities may apply for Take authorization under the Permits in accordance with Chapter 6.2. To receive Take authorization under the Permits, such projects and activities must meet all applicable criteria for Covered Activities in Chapter 2, Covered Activities, and must fulfill all applicable Conditions in Chapter 6. (*See also*, Chapter 8.9.6.)

10.11. Two-Year Take Limit for Advance Acquisition of Vernal Pool Complex Lands

As further described in Chapter 8.4.6, within two (2) years of adopting the implementation ordinances, the PCA will protect vernal pool complex lands containing a minimum of one-hundred sixty (160) acres of vernal pool constituent habitat (23% percent of the total vernal pool constituent habitat commitment), of which at least fifty-three (53) acres will be delineated as vernal pools. No more than 1,800 acres of vernal pool complex and eighty (80) wetted acres of vernal pool-type wetlands (15% of the total Authorized Take) will be authorized for Take under the Plan until the one-hundred sixty (160) acres are protected.

The 3,000 acres of advance acquisition lands are in addition to the Jump Start lands identified in Chapter 8.4.4. This advanced acquisition and Take limit are designed to ensure that more high-quality vernal pools and vernal pool complexes are protected than Taken, ensuring that the PCA exceeds the Stay Ahead requirement early in the term of the Permits.

10.12. Activities Not Covered

Projects and activities that are not Covered Activities will not receive Authorized Take Coverage and are not subject to the terms and conditions of this Agreement, the HCP/NCCP, or the Permits, except as provided in Section 10.10 and Chapter 8.9.6. As further described in Chapter 2.7, projects and activities not covered include, but are not limited to, the following:

- Projects and activities within the current boundaries of non-participating cities that are not undertaken by a Permittee;
- Pesticide and rodenticide application;
- Routine and ongoing agricultural activities;
- Expansion of cultivated agriculture into natural lands;
- Timber harvest operations;
- Quarries and other mining;
- Municipal power generation;
- Projects with their own FESA and CESA permits;
- Rezoning, general plan amendments, or other legislative acts that intensify land use in the Valley or Foothills Conservation and Rural Development components of Plan Area A;

- Private development that the Wildlife Agencies determine does not require coverage under the Plan; and
- Certain minor activities:
 - Activities that do not require a construction permit;
 - Activities on existing non-natural lands;
 - Activities on existing small (20,000 square feet or less) parcels; and
 - Small (less than 5,000 square feet) additions to existing improved properties.

10.13. National Historic Preservation Act Compliance

A federal agency's issuance of a permit must comply with Section 106 of the National Historic Preservation Act of 1966, as amended. Section 106 requires the federal agency issuing the permit to take into account the effects of permit issuance on historic properties and to, among other things, consult with federally-recognized tribes and the State Historic Preservation Officer. CEQA includes similar requirements to consider impacts to historical resources, as well as a mandatory tribal consultation process established by Assembly Bill 52.

The Parties have developed a set of standards and procedures to ensure that the extension of Authorized Take to Covered Activities complies with relevant federal, state, and local requirements relating to cultural resources. These standards are set forth in a Cultural Resources Management Plan **[add citation to approved plan]** that will be implemented by the Permittees in consultation with the Wildlife Agencies. The Parties agree to cooperate in the timely implementation of the Cultural Resources Management Plan.

11. REGULATORY ASSURANCES

The Wildlife Agencies acknowledge that the Permittees have agreed to take on the substantial responsibility of developing and implementing the HCP/NCCP in large part to obtain regulatory assurances, as provided in FESA and the NCCPA and further described in this Section and Chapter 10.

11.1. FESA Regulatory Assurances

Provided that the Permittees have complied with their obligations under this Agreement, the HCP/NCCP and the Federal Permit, USFWS and NMFS can require a Permittee or Third Party Participant to provide additional mitigation beyond that provided for in the HCP/NCCP only with its consent and only under Unforeseen Circumstances, in accordance with the "No Surprises" regulations at 50 Code of Federal Regulations section 17.22(b)(5) and section 17.32(b)(5).

11.2. NCCPA Regulatory Assurances

CDFW will not require any Permittee or Third Party Participant to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, in connection with any Covered Activity for the purpose of conserving Covered Species, even in the event of Unforeseen Circumstances, provided the Permittees are

properly implementing this Agreement, the HCP/NCCP and the terms and conditions of the State Permit. The provisions of this Agreement and the HCP/NCCP that address Changed Circumstances are not Unforeseen Circumstances and therefore are not subject to these assurances. However, CDFW acknowledges that the Changed Circumstances provisions of the HCP/NCCP are not intended to require modifications to the HCP/NCCP that would require additional funding or to impose significant additional burdens on Permittees or Third Party Participants.

11.3. Interim Obligations upon a Finding of Unforeseen Circumstances

If a Wildlife Agency finds that an Unforeseen Circumstance has occurred with regard to a Covered Species and that additional mitigation measures are required for the Covered Species as a result, during the period necessary to determine the nature and location of the additional or modified mitigation, the Permittees will avoid causing an appreciable reduction in the likelihood of the survival and recovery of the affected species. The Wildlife Agencies will be responsible for implementing any additional mitigation measures or modifications, unless the Permittees consent to do so.

11.4. Changed Circumstances

The PCA will implement responses to Changed Circumstances as provided in this Section and further described in Chapter 10. Changed Circumstances identified and planned for in the HCP/NCCP are contained in Chapter 10.2.1. In the event a Changed Circumstance identified in Chapter 10.2.1 occurs, the PCA will implement the responsive action(s) prescribed in Chapter 10.2.1 for that Changed Circumstance. Neither the PCA nor any other Permittee or Third Party Participant will be required to take any additional action to respond to a Changed Circumstance (i.e., any action not otherwise required by this Agreement, the HCP/NCCP or the Permits), except as described in Chapter 10.2.1. Changed Circumstances are provided for in the HCP/NCCP and therefore are not Unforeseen Circumstances. The Permittees' responses to Changed Circumstances, as well as the funding to assure that the responses are implemented, are described in the HCP/NCCP. Therefore, Changed Circumstances do not require an Amendment of the HCP/NCCP or the Permits. The Parties agree that Chapter 10.2.1 identifies all Changed Circumstances and describes appropriate and adequate responses for them. Other changes not identified as Changed Circumstances will be treated as Unforeseen Circumstances.

11.5. Initiating Responses to Changed Circumstances

The PCA will notify the Wildlife Agencies within seven (7) days after learning that any of the Changed Circumstances listed in Chapter 10.2.1 has occurred. As soon as practicable after learning of the Changed Circumstances, the PCA will initiate responsive actions in the manner described in Chapter 10.2.1.

If a Wildlife Agency determines that a Changed Circumstance has occurred and that the PCA has not responded as described in Chapter 10.2.1, the Wildlife Agency will so notify the PCA, specifically identifying the Changed Circumstance. As soon as practicable after receiving the Wildlife Agency's notice, the PCA will initiate responsive actions in the manner described in Chapter 10.2.1.

After it has initiated responsive actions to a Changed Circumstance as provided in this Section, the PCA will promptly inform the Wildlife Agencies of its actions. The PCA will continue implementation of any such responsive actions to completion and will describe in its Annual Report for that year the Changed Circumstance and the responsive actions implemented. Subsequent Annual Reports will track the response of the Reserve System and the Covered Species to evaluate whether responsive actions implemented as a result of Changed Circumstances have been effective.

11.6. Section 7 Consultations regarding Covered Activities

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with USFWS or NMFS pursuant to Section 7 of FESA (16 U.S.C. §1536(a)) (e.g., for Clean Water Act Section 404 permits or Covered Activities funded wholly or in part by the Federal Highways Administration). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittees or an existing or prospective Third Party Participant and a proposed public or private project in the Plan Area that may adversely affect one or more Covered Species that are Federal Listed Species, USFWS and NMFS will ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP/NCCP and the Federal Permits, provided that the proposed project itself is consistent with the HCP/NCCP and the Federal Permits. Unless otherwise required by law or regulation, USFWS and NMFS will not impose measures on a Permittee or an existing or prospective Third Party Participant in excess of those that have been or will be required by this Agreement, the HCP/NCCP, and the Permits. Before completing a Section 7 consultation for a Covered Activity in which USFWS or NMFS proposes to require a measure in excess of, or in conflict with, the requirements of this Agreement, the HCP/NCCP, or the Permits, USFWS or NMFS, as applicable, and the Federal action agency will meet and confer with the affected Permittee and, if there is one, the existing or prospective Third Party Participant, to discuss alternative ways to meet the applicable legal or regulatory requirements without the imposition of additional measures. If USFWS, NMFS, Permittee and (if there is one) Third Party Participant cannot agree on an alternative, the Permittee may initiate the dispute resolution procedure in Section 17.2.

11.7. Consultations by CDFW

Except as otherwise required by law, CDFW will not recommend or otherwise seek to impose in correspondence or consultation with other public agencies, or through permit or agreement terms and conditions, any mitigation, compensation or habitat enhancement requirements regarding impacts of Covered Activities on Covered Species within the Plan Area that are in excess of those that have been or will be required by this Agreement, the HCP/NCCP, and the Permits.

11.8. Assurances for Third Party Participants

Pursuant to the “No Surprises” regulations described in Section 11.1, in the event of a finding of Unforeseen Circumstances, USFWS and NMFS cannot require the commitment of additional land, water or financial compensation without the consent of the affected Permittee or Third Party Participant. Likewise, as provided in Section 11.2, CDFW will not require any Permittee or Third

Party Participant to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, with respect to any Covered Activity, even in the event of Unforeseen Circumstances, provided the Permittees are properly implementing this Agreement, the HCP/NCCP and the terms and conditions of the State Permit.

Nothing in this Agreement will preclude the Permittees from imposing on Third Party Participants any mitigation, compensation, or other requirements in excess of those required by this Agreement, the HCP/NCCP and the Permits for impacts other than impacts of Covered Activities on Covered Species. Such other impacts may include, but are not limited to, impacts on parks, recreational facilities, and agriculture.

12. FUNDING SOURCES AND ASSURANCES

The PCA, County, City, PCWA, and SPRTA will ensure that all required mitigation, conservation, monitoring, and reporting measures are adequately funded throughout the term of this Agreement, and that certain monitoring, reporting and adaptive management measures are adequately funded in perpetuity. The Permittees do not intend to use funds from their respective general funds to implement the HCP/NCCP; rather they intend to obtain sufficient funds through a comprehensive strategy further described in Chapter 9 that includes: development fees, dedications, special taxes, and ongoing assessments; federal and state grants; private grants; and ongoing conservation efforts by local and state agencies that have a demonstrated record of acquiring and managing lands for recreational and conservation purposes in the Plan Area. The Permittees may use or establish other local funding measures, including, but not limited to, utility surcharges, special taxes or assessments, or bonds, to the extent allowed by law. The Permittees are responsible to seek feasible increases in revenues as necessary to keep pace with rising costs, as described in Chapter 9. Each Permittee will promptly notify the Wildlife Agencies of any material change in the Permittee's financial ability to fulfill its obligations under this Agreement. In addition, the PCA will include in its Annual Report reasonably available financial information to demonstrate the Permittees' collective ability to fulfill their obligations under this Agreement in light of a material change in a Permittee's finances, if any.

12.1. State and Federal Funding

As further described in Chapter 9.4.3, through the HCP/NCCP and this Agreement, USFWS, NMFS, and CDFW will use their best efforts to contribute not less than 13,905 acres of land and restore 82 acres of vernal pool, aquatic/wetland, and riverine/riparian constituent habitat, which will be administered, managed, and monitored by the PCA, to the Reserve System. The funds provided to acquire the 13,905 acres and restore the 82 acres of land reflect existing restrictions on the use of state and federal funds and could come from a variety of sources, including funds administered directly by USFWS, NMFS, and CDFW, such as the Section 6 Cooperative Endangered Species Conservation Fund, as well as funds administered by the Wildlife Conservation Board, the California Department of Conservation, and the California Department of Parks and Recreation. If, after the exercise of all available authority and use of all available resources, USFWS, NMFS, and CDFW are

unable to contribute 13,905 acres to the Reserve System and/or restore 82 acres, the PCA, the Permittees, CDFW, USFWS, and NMFS will reevaluate the HCP/NCCP and work together to develop a mutually acceptable solution.

The PCA will track USFWS', NMFS', and CDFW's progress toward the goal of contributing 13,905 acres and restoring 82 acres, measured by the number of acres added or restored to the HCP/NCCP Reserve System, and will include a summary of the progress in each report it prepares under Section 13.1. State and federal funds will be counted only toward that portion of the Reserve System that exceeds mitigation requirements and contributes to the recovery of Covered Species ; state and federal funds will not be used to mitigate the impacts of Covered Activities. If, for any acquisition of lands that are added to the Reserve System, state or federal funding is used to pay a portion of the overall acquisition costs, the number of acres counted toward USFWS', NMFS', and CDFW's goal will be the portion of the total acres acquired that reflects the proportion of total acquisition costs paid with state or federal funds. If a state or federal agency manages, or funds the management of, lands acquired with state or federal funds, the number of acres that USFWS, NMFS, and CDFW contribute to the Reserve System will not be reduced from 13,905 acres.

12.2. Funding for Post-Permit Management and Monitoring

The PCA will be solely responsible for funding long-term management and monitoring after the Permits expire. As described in Chapter 9.3.8, funding provided by Development Fee contributions and interest earnings on endowment fund balances during the term of the Permits will increase the endowment sufficiently to fully fund in perpetuity Plan implementation costs after the Permits expire. The periodic assessment and adjustment of fees during the term of the Permits described in Chapter 9.4.1.7 will prevent shortfalls in the endowment. If the endowment does not increase at a sufficient rate to reach its target amount, and revenue from special taxes and ongoing assessments does not make up for the shortfall, the Land Conversion Fee can be increased to make up the shortfall subject to the requirements of the Mitigation Fee Act (Gov. Code §66000, et seq.). With these safeguards, the Parties expect post-permit funding to be adequate to fully offset post-Permit management and monitoring costs.

12.3. Effect of Inadequate Funding

As described in Chapter 9.4.5, the HCP/NCCP includes conservative assumptions and safeguards intended to ensure adequate funding for implementation, as well as a range of actions that the Permittees can take in the event of a temporary funding shortfall. In the event there is inadequate funding to implement the HCP/NCCP despite these assumptions, safeguards, and actions, the Wildlife Agencies will assess the impact of the funding deficiency on the scope and validity of the Permits. Unless the Permittees exercise the authority to withdraw, as provided in Section 16.5, or the Wildlife Agencies revoke the Permits, in whole or in part, as provided in Section 15, the Parties agree that they will meet and confer to develop a strategy to address the funding shortfall and to undertake all practicable efforts to maintain the level of conservation and Authorized Take coverage afforded by the Permits until the funding deficiency can be remedied.

12.4. Endowment for Post Permit Management and Monitoring

As described in Chapter 9.4.6, the PCA will create an endowment account to generate revenue to cover the costs of managing and monitoring the Reserve System following expiration of the Permits. The PCA may manage and invest funds in the endowment account directly or under contract to either a community foundation or a congressionally chartered foundation as defined in section 65965 of the California Government Code. The Parties agree that, as a public agency formed to implement the HCP/NCCP on behalf of the Permittees, including but limited to implementation of the funding strategy described in Chapter 9, the PCA is qualified to manage the endowment account.

The PCA shall ensure that the endowment is managed, invested, and disbursed in furtherance of the long-term stewardship of the Reserve System by:

- Managing endowment funds efficiently;
- Achieving a reasonable long-term rate of return on investment of endowment funds similar to those of other prudent investors for endowment funds;
- Achieving a long-term rate of return that at a minimum is equal to the capitalization rate of 3.25 percent annually assumed in the Plan, after deducting inflation and fees, and as adjusted by the periodic assessment and adjustment of fees;
- Fully funding the endowment by the end of the term of the Permits based on a schedule that allocates a fixed percentage of each land conversion fee payment to the endowment as adjusted by the periodic assessment and adjustment of fees;
- Managing and investing endowment funds in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code);
- Utilizing generally accepted accounting practices as promulgated by either the Financial Accounting Standards Board or any successor entity for nonprofit organizations or the Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any other requirements of law; and
- Disbursing endowment funds on a timely basis and only for the long-term stewardship of the Reserve System.

13. REPORTING AND INFORMATION MANAGEMENT

The PCA, on behalf of the Permittees, will report on and manage information regarding HCP/NCCP implementation as provided in this Section and further described in Chapter 8.10 and Chapter 8.11. The PCA may delegate reporting and information management tasks in this Section and the HCP/NCCP to other Parties or qualified third parties, including universities, scientists and other contractors. However, the PCA will remain solely responsible for ensuring implementation of such tasks on behalf of the Permittees.

13.1. Annual Report

The PCA will prepare an annual report on implementation of the HCP/NCCP (the “**Annual Report**”), as further described in Chapter 8.11. The Annual Report will summarize actions taken to implement the HCP/NCCP during each calendar year and will be submitted to the Wildlife Agencies by March 1 of the following calendar year, beginning the calendar year after the first full calendar year of implementation. The PCA will provide a copy of the Annual Report to all Parties. The PCA will also create and maintain an Internet website for the public distribution of information regarding HCP/NCCP implementation and will post each Annual Report on the website.

13.2. Compliance Tracking

As further described in Chapter 8.10.1, the PCA will be responsible for tracking compliance with the Permits. To track compliance, the PCA will maintain baseline data for the purpose of tracking the amount of Take that has been authorized, the amount of Authorized Take that has occurred, and the PCA’s progress toward achieving the HCP/NCCP’s goals and objectives for Covered Species.

13.3. HCP/NCCP Data Repository

Within one (1) year after the adoption of the first implementation ordinance as provided in Section 10.7.3, the PCA will develop and maintain a comprehensive HCP/NCCP data repository for information regarding Permit compliance and all other information regarding HCP/NCCP implementation for which reporting is required, as further described in Chapter 8.10.2.

13.4. Information Sharing

The PCA will make the HCP/NCCP data repository accessible to the Parties. The Parties will keep confidential sensitive species information to the extent permitted by the Freedom of Information Act and the California Public Records Act. The PCA will oversee and control access to the HCP/NCCP data repository as necessary to ensure the integrity of the repository and data therein. Subject to the California Public Records Act, the PCA may determine in its sole discretion whether, and under what conditions, to grant access to the data repository to third parties, including Third Party Participants.

Within the time periods prescribed in the California Public Records Act, the PCA will respond to a written request from any Party and will, in its sole discretion, determine whether documents that are responsive to the request exist, are within its possession and control, and are subject to disclosure, including the following:

- Non-confidential and non-proprietary databases that track Covered Activities or Reserve System land acquisitions;
- GIS data relevant to HCP/NCCP implementation in the format in which it is stored, including land cover data, the location of Covered Activities, and the boundaries of the Reserve System; and
- Non-confidential and non-proprietary financial data regarding the PCA, in the format in which it is stored.

14. MODIFICATIONS AND AMENDMENTS

The Parties may from time to time modify or amend the HCP/NCCP, this Agreement, or the Permits, in accordance with this Section and the requirements of FESA, the NCCPA, NEPA and CEQA.

14.1. Ordinary HCP/NCCP Administration

The Parties understand that ordinary administration and implementation of the HCP/NCCP will require minor variations or administrative changes in the way certain conservation actions are implemented. Such administrative changes will not require modification or amendment of this Agreement, the HCP/NCCP, or the Permits, and will not require the prior approval of the Wildlife Agencies. The PCA will summarize any such administrative changes in its Annual Report. Such administrative changes may include, but are not limited to, the examples provided in Chapter 10.5.1.

14.2. Minor Modifications of the HCP/NCCP

The PCA may propose minor modifications to the HCP/NCCP, as defined in Chapter 10.5.2, by providing written notice to all of the other Parties. Such notice will include a statement of the reason for the proposed modification and an analysis of its environmental effects, if any, including any effects on Covered Species. The Wildlife Agencies will each approve or disapprove proposed modifications within sixty (60) days of receipt of such notice or will explain in writing to the PCA why such approval or disapproval cannot be provided within sixty (60) days and will specify when such approval or disapproval will be provided. Proposed modifications will become effective upon the Wildlife Agencies' written approval. The Wildlife Agencies will not approve minor modifications to the HCP/NCCP if they determine that such modifications would result in adverse effects on Covered Species or natural communities under the HCP/NCCP that are significantly different from those analyzed in the HCP/NCCP or would result in additional Take of Covered Species not analyzed in the HCP/NCCP. If any Wildlife Agency disapproves a proposed modification, it may be proposed as an amendment of that Wildlife Agency's Permit as provided in Section 14.4.

Minor modifications of the HCP/NCCP that may be approved pursuant to this Section include, but are not limited to, the examples of minor modifications described in Chapter 10.5.2.

14.3. Amendment of this Agreement

This Agreement may be amended only with the written agreement of all Parties; provided, however, that any amendment or portion thereof pertaining to Private Project Participants, implementing ordinances under Section 10.7 or any other provision of this Agreement pertaining to the land use or other regulatory decisions of the City or County will not require the consent of the PCWA, SPRTA, or OSA.

14.4. Amendment of the HCP/NCCP and the Permits

The Permittees may substantially revise the HCP/NCCP or the Permits by obtaining the applicable Wildlife Agency's approval of an amendment to one or more of the Permits as provided in this Section and in accordance with all applicable laws and regulations, including but not limited to FESA, NEPA, NCCPA and CEQA. The PCA will provide written notice to all of the other Parties of any proposed Permit amendment. Such notice will include a copy of any required application for the proposed amendment, a statement of the reason for the amendment and an analysis of its environmental effects, if any, including any effects on Covered Species. The Wildlife Agency will review and approve or disapprove the proposed Permit amendment in an expeditious manner, commensurate with the level of environmental review appropriate to the magnitude of the proposed amendment. However, the Wildlife Agency will use its best efforts to approve or disapprove any proposed Permit amendment within one hundred eighty (180) days after receipt of the written notice, except where a longer period of time is required by law. Unless and until CDFW adopts regulations that set forth specific requirements for the amendment of NCCPA take authorizations, for purposes of proposed amendments to the State Permit, CDFW will accept an application for a Permit amendment that meets the requirements of this Section and FESA requirements for an application for an amendment of an incidental take permit; provided, however, that CDFW's approval or disapproval of the proposed Permit amendment will be based on the requirements of the NCCPA and CEQA and not on the requirements of FESA.

Revisions of the HCP/NCCP that would require an amendment of one or more of the Permits include, but are not limited to, the examples described in Chapter 10.5.3.

14.5. General Land Use and Regulatory Authority of the County and City

The Parties acknowledge that the adoption and amendment of general plans, specific plans, community plans, area plans, zoning ordinances and other land use and regulatory ordinances, and the granting of land use entitlements, ministerial permits, or other regulatory permits by the County or City are matters within the sole discretion of the County or City and will not require amendments to this Agreement, the HCP/NCCP, or the Permits, or the approval of other Parties to this Agreement. However, no such action by the County or City will alter or diminish their obligations under this Agreement, the HCP/NCCP or the Permits.

15. REMEDIES AND ENFORCEMENT

Each Party will have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, the HCP/NCCP and the Permits, and to seek redress for any breach or violation thereof; except that none of the Parties will be liable in damages to any other Party 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. 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 a breach of this Agreement. Nothing in this Agreement is intended to limit the authority of the Federal and State

governments to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under FESA, CESA or other applicable law.

15.1. Suspension of Federal Permit

USFWS or NMFS may suspend the Federal Permit it issued, in whole or in part, for cause in accordance with 50 Code of Federal Regulations section 13.27 and other applicable laws and regulations in force at the time of such suspension. Except where USFWS or NMFS, as applicable, determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend the Federal Permit without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the HCP/NCCP or this Agreement in accordance with Section 17.2, (2) requesting the Permittees to take appropriate remedial actions, and (3) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted.

15.2. Reinstatement of Suspended Federal Permit

In the event USFWS or NMFS suspends a Federal Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, USFWS or NMFS, as applicable, will meet and confer with the Permittees concerning how the suspension can be ended. At the conclusion of any such conference, USFWS/NMFS will identify reasonable, specific actions, if any, necessary to effectively redress the suspension. In making this determination, USFWS/NMFS will consider the requirements of FESA and its regulations, the conservation needs of the Covered Species, the terms of the Federal Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, USFWS/NMFS will send the Permittees written notice of any available, reasonable actions necessary to effectively redress the deficiencies giving rise to the suspension. Upon performance or completion, as appropriate, of such actions, USFWS/NMFS will immediately reinstate the Federal Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Federal Permit, all Parties will act expeditiously and cooperatively to reinstate the Federal Permit.

15.3. Suspension of the State Permit

In the event of any material violation of the State Permit or material breach of this Agreement by the Permittees, CDFW may suspend the State Permit in whole or in part; provided, however, that it will not suspend the State Permit without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the HCP/NCCP or this Agreement in accordance with Section 17.2, (2) requesting the Permittees to take appropriate remedial actions when such remedial actions are reasonable and available, and (3) providing the Permittees with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the Permittees to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

15.4. Failure to Maintain Rough Proportionality

As provided in Section 8.1.3.2, in the event that CDFW has determined that the Permittees have failed to meet the stay-ahead requirement as provided in Section 8.1.3, and if the Permittees have failed to cure the default or entered into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFW will suspend the State Permit in whole or in part in accordance with California Fish and Game Code section 2820.

15.5. Reinstatement of Suspended State Permit

In the event CDFW suspends the State Permit, as soon as possible but no later than ten (10) days after such suspension, CDFW will confer with the Permittees concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, CDFW will identify reasonable, specific actions necessary to effectively redress the violation or breach. In making this determination, CDFW will consider the requirements of NCCPA, the conservation needs of the Covered Species, the terms of the State Permit and this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, CDFW will send the Permittees written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon performance of such actions, CDFW will immediately reinstate the State Permit. It is the intent of the Parties that in the event of any suspension of the State Permit, all Parties will act expeditiously and cooperatively to reinstate the State Permit.

15.6. Revocation of Federal Permit

USFWS and NMFS each agrees that it will revoke or terminate the Federal Permit issued, in whole or in part, pursuant to 50 Code of Federal Regulations sections 13.28-13.29 and 50 Code of Federal Regulations sections 17.22(b)(8) and 17.32(b)(8) only after completing the meet and confer process set forth in Section 17.2.1, unless immediate revocation is necessary to avoid the likelihood of jeopardy to a listed species. USFWS and NMFS each agrees that it will not revoke or terminate the Federal Permit, in whole or in part, to avoid the likelihood of jeopardy to a listed species, without first notifying the Permittees of those measures, if any, that the Permittees may undertake to prevent jeopardy to the listed species and maintain the Federal Permit and giving Permittees a reasonable opportunity to implement such measures.

15.7. Revocation of State Permit

CDFW may revoke or terminate the State Permit for a material violation of the State Permit or material breach of this Agreement by the Permittees if the CDFW determines in writing that (1) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (2) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFW under the NCCPA.

CDFW agrees that it will not revoke or terminate the State Permit without first (1) attempting to resolve any disagreements regarding the implementation or interpretation of the HCP/NCCP or this Agreement in accordance with Section 17.2, (2) requesting that the Permittees take appropriate remedial action, and (3) providing the Permittees with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (not less than forty-five (45) days) to demonstrate or achieve compliance with NCCPA, the State Permit and this Agreement.

However, in the event that CDFW has determined that the Permittees have failed to meet the rough proportionality standard provided in Section 8.1.3, and if the Permittees have failed to cure the default or to enter into an agreement to do so within forty-five (45) days of the written notice of such determination, CDFW will revoke the State Permit in whole or in part in accordance with California Fish and Game Code section 2820.

15.8. Obligations in the Event of Suspension or Revocation

In the event of revocation or termination of a Permit, or of suspension of a Permit, consistent with the requirements of 50 Code of Federal Regulations sections 17.32(b)(7) and 17.22(b)(7), the Permittees will remain obligated to fulfill any existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permit for any Take that occurs prior to such revocation, termination, or suspension, until all Take of Covered Species that occurred under the Permit has been mitigated to the maximum extent practicable in accordance with the HCP/NCCP. Regardless of whether the Permit is terminated, suspended, or revoked, the Permittees acknowledge that lands added to the Reserve System must be protected, managed and monitored in perpetuity.

15.9. Emergency Suspension of Permits to Avoid Jeopardy

If new circumstances arise in which continued implementation of the Covered Activities would appreciably reduce the likelihood of survival and recovery of a Federal or State Listed Species in the wild, USFWS, NMFS or CDFW may suspend its Permit on an emergency basis, in whole or in part, without resorting to the procedures specified in this Section. The period of such emergency suspension will be no longer than ninety (90) days. Before extending the suspension beyond ninety (90) days, USFWS, NMFS and CDFW will comply with the requirements of Section 15 pertaining to non-emergency Permit suspensions or revocations. During such 90-day period, USFWS and NMFS will comply with 50 Code of Federal Regulations section 13.27.

15.10. Force Majeure

In the event that the Permittees are 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 the Permittees (“**Force Majeure**”), including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of non-participating federal or state agencies or local jurisdictions, the Permittees will be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and

such failure to perform will not be considered a material violation or breach, provided that nothing in this section will be deemed to authorize any Party to violate FESA, CESA or NCCPA, and provided further that:

- The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;
- Within fifteen (15) days after the occurrence of the Force Majeure, affected Permittees will give the Wildlife Agencies written notice describing the particulars of the occurrence;
- Permittees will use their best efforts to remedy their inability to perform (however, this paragraph will not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest); and
- When Permittees are able to resume performance of their obligations, the affected Permittees will give the Wildlife Agencies written notice to that effect.

15.11. Inspections by Wildlife Agencies

The Wildlife Agencies may conduct inspections and monitoring of the site of any Covered Activity, and may inspect any data or records required by this Agreement, the HCP/NCCP or the Permits, in accordance with applicable law and regulations. The PCA will also provide the Wildlife Agencies reasonable access to conduct inspections of the Reserve System.

16. TERM OF AGREEMENT

16.1. Effective Date

This Agreement will be effective on the date after all of the following have occurred:

- execution by all Parties;
- issuance of all three of the Permits; and
- adoption of an HCP/NCCP implementation ordinance by each of the City and the County.

16.2. Term of the Agreement

This Agreement will run for a term of fifty (50) years from the Effective Date, unless extended pursuant to Section 16.4, or unless all of the Permits are permanently terminated pursuant to Section 15, in which case this Agreement will automatically terminate. This Agreement may also be terminated by mutual written agreement of the Parties.

16.3. Term of the Permits

The Permits will have a term of fifty (50) years from the Effective Date unless terminated as provided in this Agreement.

16.4. Extension of the Permits

Upon agreement of the Parties and in compliance with all applicable laws and regulations in force at the time, the Wildlife Agencies may, with respect to the Permits under their respective jurisdictions, extend the Permits beyond their initial terms. If the Permittees desire to extend the Permits, they will so notify the Wildlife Agencies at least six (6) months before the then-current term is scheduled to expire. Extension of the Permits constitutes extension of this Agreement and the HCP/NCCP for the same amount of time, subject to any modifications agreed to by the Parties at the time of extension.

16.5. Withdrawal by a Permittee

Upon ninety (90) days written notice to the Wildlife Agencies, the PCA and all other Permittees, any Permittee except for the PCA may unilaterally withdraw from this Agreement. As a condition of withdrawal, the Permittee will remain obligated to ensure implementation of all existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permits for any Authorized Take that the Permittee itself caused and any Authorized Take by Private Project Participants for which the Permittee extended Authorized Take coverage prior to withdrawal. If a Permittee withdraws before causing or extending any Authorized Take coverage under the Permits, the Permittee will have no obligation to ensure implementation of any minimization or mitigation measures. Such withdrawal of a Permittee from this Agreement will be deemed to constitute a surrender of the Permittee's Authorized Take coverage under the Permits.

Withdrawal by a Permittee will not diminish or otherwise affect the obligations of the remaining Permittees under this Agreement, the HCP/NCCP, or the Permits. The Permittees acknowledge that if one or more Permittees withdraws from this Agreement and, as a result of the withdrawal, it is no longer feasible or practicable to implement the HCP/NCCP successfully, it may be necessary to modify the HCP/NCCP or to amend the Permits, or both, in response to the withdrawal. However, the withdrawal of a Permittee will not, by itself, be sufficient cause for the Wildlife Agencies to revoke or suspend the Permits or take any other enforcement action.

Within forty-five (45) days after receiving written notice of withdrawal from a Permittee, the Wildlife Agencies, the PCA and all Permittees will meet to discuss and evaluate whether the HCP/NCCP can be successfully implemented without the participation of the withdrawing Permittee. Relevant factors in this evaluation include but are not limited to whether, without the participation of the withdrawing Permittee, HCP/NCCP implementation will continue to be adequately funded, whether the Permittees can continue to comply with the stay-ahead requirement, whether all required conservation actions can be implemented, and whether the overall HCP/NCCP conservation strategy can be implemented consistent with the HCP/NCCP. Based on this meeting or meetings, and based on any other relevant information provided by the PCA or the remaining Permittees, the Parties will determine whether it is necessary to modify the HCP/NCCP or amend the Permits, or both, in response to the withdrawal.

Upon ninety (90) days written notice to USFWS, NMFS and CDFW, the Permittees collectively may withdraw from this Agreement. As a condition of such withdrawal, the Permittees will be obligated to ensure implementation of all existing and outstanding minimization and mitigation measures required under this Agreement, the HCP/NCCP and the Permits for any Authorized Take that occurred prior to such withdrawal until the Wildlife Agencies reasonably determine that all Authorized Take of Covered Species that occurred under the Permits has been mitigated to the maximum extent practicable in accordance with the HCP/NCCP, which determination the Wildlife Agencies will make as soon as reasonably possible.

If the Permittees collectively notify USFWS or NMFS in writing that they plan to withdraw from this Agreement or to discontinue the Covered Activities, they will surrender the Federal Permit issued by that agency pursuant to the requirements of 50 Code of Federal Regulations Part 13.26.

Regardless of withdrawal and surrender of the Permits, the Permittees acknowledge that lands dedicated to the Reserve System must be protected, managed and monitored in perpetuity.

17. MISCELLANEOUS PROVISIONS

17.1. Collaboration among the Parties

The Parties agree that successful collaboration among them is important to the success of the HCP/NCCP. Notwithstanding any other Section of this Agreement or Chapter of the HCP/NCCP, each Party will make a reasonable effort to: meet and confer with any other Party upon the request of that Party to address matters pertaining to the HCP/NCCP, the Permits, or this Agreement; provide relevant, non-proprietary, non-confidential information pertaining to the HCP/NCCP upon the request of any Party; and provide timely responses to requests from any Party for advice, concurrence, or review and comment on reports, surveys or other documents, regarding matters pertaining to the HCP/NCCP, the Permits, or this Agreement.

17.2. Dispute Resolution

The Parties recognize that disputes concerning implementation or interpretation of this Agreement, the HCP/NCCP, and the Permits may arise from time to time. The Parties intend to resolve most disputes at the staff or field personnel level. However, the Parties recognize that some disputes might not be resolved at the staff or field personnel level. The Parties agree to work together in good faith to resolve such disputes using the informal dispute resolution procedure set forth in this Section. No Party shall be required to use the informal dispute resolution procedure before seeking any other remedy available at law or in equity if the Party concludes, in its discretion, that circumstances so warrant. However, unless the Parties agree upon another dispute resolution process, or unless a Party has initiated administrative proceedings or litigation related to the subject of the dispute in federal or state court, the Parties agree to use the following procedures to attempt to resolve disputes.

17.2.1. Notice of Dispute; Meet and Confer

If a 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 will provide a written notice explaining the basis of the objection to such other Party, the PCA, and any other Parties whose involvement is necessary to resolve the dispute. The Party that is the subject of the written notice will respond to the notice in writing within thirty (30) days of receiving it, stating what actions it proposes to take to resolve the objection or, alternatively, explaining why the objection is unfounded. If the response resolves the objection to the satisfaction of the objecting Party, the objecting Party will so notify all involved Parties, and the responding Party will ensure implementation of the actions, if any, proposed in the response. If the response does not resolve the objection to the satisfaction of the objecting Party, the objecting Party will so notify all involved Parties and request that all involved Parties meet and confer to attempt to resolve the dispute. The meeting will occur within thirty (30) days after the involved Parties receive the notice and meeting request from the objecting Party, or at such later time as the objecting Party may agree to. A representative of the PCA will take notes at the meeting, summarize the outcome, and distribute meeting notes to each Party in attendance.

17.2.2. Elevation of Dispute

If the Parties do not resolve a dispute after completing the dispute resolution procedure in Section 17.2.1, any one of the Parties may elevate the dispute to a meeting of the chief executives of the involved Parties. For purposes of this provision, “chief executive” means the County Executive of the County, the City Manager of the City, the Chief Executive Officer of the PCWA, the Executive Director of the SPRTA, the executive director of the PCA, the CDFW Regional Manager, the USFWS Field Supervisor, and NMFS' Assistant Regional Administrator for Protected Resources, Southwest Region. Each Party will be represented by its chief executive in person or by telephone at the meeting, and the meeting will occur within forty-five (45) days of a request by any Party following completion of the dispute resolution procedure.

17.3. Calendar Days

Throughout this Agreement and the HCP/NCCP, the use of the term “day” or “days” means calendar days, unless otherwise specified

17.4. Response Times

Except as otherwise set forth herein or as statutorily required by CEQA, NEPA, CESA, FESA, NCCPA or any other laws or regulations, the Wildlife Agencies and the Permittees will use reasonable efforts to respond to written requests from a Party within a forty-five (45) day time period. The Parties acknowledge that the City and the County are subject to the Permit Streamlining Act and that nothing in this Agreement will be construed to require them to violate that Act. In addition, the Wildlife Agencies will provide timely review of proposals for Covered Activities to be implemented directly by the Permittees, where such review is required by this Agreement, the HCP/NCCP, or the Permits Review of Third Party Participant Applications.

17.5. Notices

The PCA will maintain a list of individuals responsible for ensuring HCP/NCCP compliance for each of the Parties, along with addresses at which those individuals may be notified (“**Notice List**”). The Notice List as of the Effective Date is provided below. Each Party will report any changes of names or addresses to the PCA and the other Parties in writing.

Any notice permitted or required by this Agreement will be in writing, and delivered personally, by overnight mail, or by United States mail, postage prepaid. Notices may be delivered by facsimile or electronic mail, provided they are also delivered by one of the means listed above. Delivery will be to the name and address of the individual responsible for each of the Parties, as stated on the most current Notice List.

Notices will be transmitted so that they are received within deadlines specified in this Agreement, where any such deadlines are specified. Notices delivered personally will be deemed received on the date they are delivered. Notices delivered via overnight delivery will be deemed received on the next business day after deposit with the overnight mail delivery service. Notices delivered via non-certified mail will be deemed received seven (7) days after deposit in the United States mail. Notices delivered by facsimile or other electronic means will be deemed received on the date they are received.

The following Notice List contains the names and notification addresses for the individuals currently responsible for overseeing and coordinating HCP/NCCP compliance:

[Names]	[Addresses]
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17.6. Entire Agreement

This Agreement, together with the HCP/NCCP and the Permits, constitutes the entire agreement among the Parties. This Agreement supersedes any and all other 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 of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

17.7. Defense

Upon request, CDFW will, to the extent authorized by California law, cooperate with the Permittees in defending, consistent with the terms of the HCP/NCCP, lawsuits arising out of the Permittees’ adoption of this Agreement and the HCP/NCCP.

17.8. Attorneys' Fees

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation will bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States will be governed by applicable federal law.

17.9. Elected Officials Not to Benefit

No member of, or delegate to, the California State Legislature, the United States Congress, the County Board of Supervisors, the City Council of the City, or the governing boards of the other Permittees will be entitled to any share or part of this Agreement or to any benefit that may arise from it.

17.10. Availability of Funds

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

Implementation of this Agreement and the HCP/NCCP by CDFW is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that CDFW will not be required under this Agreement to expend any state appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

Implementation of this Agreement and the HCP/NCCP by the Permittees is subject to the availability of their respective appropriated funds, including but not limited to the special purpose revenues dedicated to implement the HCP/NCCP. Nothing in this Agreement will be construed to require the obligation, appropriation, or expenditure of any money without express authorization by the County Board of Supervisors, the City Council of the City, and/or governing boards of the PCA, PCWA, and SPRTA. Notwithstanding these requirements and limitations, the Permittees are required to fund their respective obligations under this Agreement, the HCP/NCCP and the Permits as provided in Section 13. The Parties acknowledge that if the Permittees fail to provide adequate funding for their respective obligations under this Agreement, the HCP/NCCP and the Permits, the Permits may be suspended or revoked as provided in Section 16.

17.11. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

17.12. Duplicate Originals

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

17.13. Relationship to the FESA, CESA, NCCPA and Other Authorities

The terms of this Agreement are consistent with and will be governed by and construed in accordance with FESA, CESA, NCCPA and other applicable state and federal laws. In particular, nothing in this Agreement is intended to limit the authority of USFWS, NMFS or CDFW to seek penalties or otherwise fulfill its responsibilities under FESA, CESA and NCCPA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of USFWS or NMFS as agencies of the federal government or CDFW as an agency of the State of California.

17.14. No Third Party Beneficiaries

This Agreement does not create any right or interest in the public, or any member thereof, as a third party beneficiary thereof, nor will it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries will remain as imposed under existing state and federal law.

17.15. References to Regulations

Any reference in this Agreement, the HCP/NCCP, or the Permits to any regulation or rule of the Wildlife Agencies will be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

17.16. Applicable Laws

All activities undertaken pursuant to this Agreement, the HCP/NCCP, or the Permits must be in compliance with all applicable local, state and federal laws and regulations.

17.17. Severability

In the event one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement. The Permits are severable such that revocation of one of the Federal or State Permits does not automatically cause

revocation of the other. For example, if CDFW revokes the State Permit, it does not automatically cause revocation of a Federal Permit.

17.18. Due Authorization

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into and comply with the terms of this Agreement, and (3) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

17.19. Assignment

Except as otherwise provided herein, the Parties will not assign their rights or obligations under this Agreement, the Permits, or the HCP/NCCP to any other individual or entity.

17.20. Headings

Headings are used in this Agreement for convenience only and do not affect or define the Agreement's terms and conditions.

17.21. Legal Authority of USFWS and NMFS

USFWS and NMFS enter into this Agreement pursuant to FESA, the Fish and Wildlife Coordination Act, and the Fish and Wildlife Act of 1956. Section 10(a)(2)(B) of FESA expressly authorizes USFWS and NMFS to issue Section 10(a) Permits to allow the incidental Take of species listed as threatened or endangered under FESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that USFWS and NMFS would approve habitat conservation plans that protect non-listed species as if they were listed under FESA, and that in doing so, USFWS and NMFS would provide assurances for such non-listed species.

17.22. Legal Authority of CDFW

CDFW enters into this Agreement pursuant to the NCCPA.

17.23. No Limitation on the Police Power of the City or the County

Nothing in this Agreement, the HCP/NCCP or Permits limits the exercise of or in any way surrenders the police power of the City or the County.

Exhibit A – List of Covered Species

Exhibit B – Conservation Easement Template

Exhibit C – Agricultural Conservation Easement Template

Exhibit D – Model Implementing Ordinance

Exhibit E – Certificate of Inclusion Template