

INCIDENTAL TAKE PERMIT TERMS AND CONDITIONS

[THERE ARE 4 STANDARD PERMIT T&Cs on the first page of a SPITS permit (parts A-D)]

E. EXTENT OF INCIDENTAL TAKE PERMITTED; ADHERENCE TO IMPACT ANALYSIS MODEL TO DETERMINE COMPLIANCE

E.1 The Permittee is authorized to “take” (harm, harass) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) to the extent described and specified in E.2 below and in the Sky ranch HCP, incidental to the Sky ranch Project, as described in the Permittee’s application and supporting documents, as conditioned herein.

E.2 Take of pygmy-owls. During the life of this Permit, as long as the Sky ranch HCP is being properly implemented, the Permittee may, in carrying out the Permitted Activity, incidentally take within the Permit Area in the form of non-lethal harm or harassment, 4 non-breeding pygmy-owls as follows:

- Two (2) non breeding pygmy-owls the first year of construction
- One (1) non-breeding pygmy-owl the second year of construction
- One (1) non-breeding pygmy-owl the last 2 years of construction and for the remainder of the permit.

The above-anticipated take is not cumulative, but instead, what is likely to occur in the specific year or years identified above. Thus, for example, if two dispersing owls are not detected on the Property the first year, the Permittee will not be covered for any additional take other than what is stated above for subsequent years.

F. INCORPORATION OF SKYRANCH HCP AND IMPLEMENTING AGREEMENT; GOVERNING LAW

F.1. The Sky ranch HCP, the Implementing Agreement (IA), and each of their provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction among the terms of the IA, the Sky ranch HCP, and this Permit, the terms of this Permit shall control. In all other cases, the terms of the IA, the Sky ranch HCP, and this Permit shall be interpreted to be supplementary to each other.

F.2. This Permit, the Sky ranch HCP, and the IA, and the Parties’ compliance therewith, shall be governed by the Endangered Species Act of 1973, as amended (Act), and implementing regulations as the same exist on the Effective Date. Any reference in this Permit, the Sky ranch HCP, or the IA to any provision of the Act or to any regulation or rule of the U.S. Fish and Wildlife Service (FWS) shall be deemed to be a reference to such statute, regulation, or rule in existence as of the Effective Date. If Federal statutes are enacted or rules or regulations are issued by the FWS after the Effective Date that

conflict with any provision of this Permit, the Sky ranch HCP, or the IA, the provisions of this Permit, the Sky ranch HCP, and the IA shall control and continue to govern the rights and obligations of Exeter and the FWS.

F.3. Acceptance of this Permit serves as evidence that the Permittee understands and agrees to abide by the terms of this Permit and all sections of title 50 Code of Federal Regulations (CFR), Parts 13 and 17, pertinent to issued permits. Section 11 of the Act provides for civil and criminal penalties for failure to comply with permit conditions.

G. **PROPER IMPLEMENTATION OF THE SKYRANCH HCP**

G.1. The Sky ranch HCP will be deemed properly implemented if the commitments and provisions of the Sky ranch HCP, IA, and this Permit have been or are being implemented in accordance with their terms. The Permittee shall completely and in a timely manner comply with and perform their obligations under the Sky ranch HCP and IA.

G.2. Transfer of a mitigation property to a third party management entity acceptable to the FWS, shall in no way impair the Permittee's responsibility to fully implement management and monitoring of the transferred or any other such property as described in the Sky ranch HCP. The management obligations will be incorporated into conservation easements placed on the mitigation property in question.

G.3. The Permittee shall submit an annual report detailing implementation of the Sky ranch HCP, as described in Section 7.3 of the Sky ranch HCP. Annual reports shall be submitted by January 1 of each year (detailing accomplishments in the previous calendar year) to the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021, and to the U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, New Mexico 87103.

H. **ACCESS TO MITIGATION PROPERTY**

Upon reasonable notification to the Permittee (50 CFR 13.47), the FWS will be allowed access to mitigation properties and sites (Reserve) to inspect the condition of the mitigation property and to ensure that the Sky ranch HCP is being implemented according to its terms for the benefit of the pygmy-owl. In the event that the FWS finds that the Sky ranch HCP is not being implemented according to its terms, the FWS has the option of terminating and revoking this Permit in accordance with applicable regulations.

I. **TERM**

This Permit shall have a duration beginning on the Effective Date, and continuing in full force and effect for a period of 5 years thereafter, or until revocation or surrender and cancellation of this Permit as provided for in Subparagraphs M.2. and M.3. hereof, whichever occurs earlier.

J. **PERMIT EFFECTIVE DATE**

This Permit will take effect for the pygmy-owl at the time this Permit is issued. Should the pygmy-owl be delisted or its listing otherwise vacated, and subject to the Permittee's compliance with all other terms of this Permit, the Skyranch HCP, and the IA, should the pygmy-owl be relisted in the future, this Permit will take effect upon the listing.

K. **DISPOSITION OF DEAD, INJURED, OR SICK INDIVIDUALS OF LISTED SPECIES**

Upon locating an individual of a dead, injured, or sick pygmy-owl, within the Property, the Permittee is required to contact the FWS Law Enforcement Office, 2450 West Broadway Road, #113, Mesa, AZ 85202, (480) 967-7900, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, the Permittee and its contractor/subcontractor have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

L. **SATISFACTION OF PERMITTING REQUIREMENTS UNDER MIGRATORY BIRD TREATY ACT**

Special Purpose Permit for pygmy-owls

This Permit shall constitute a Special Purpose Permit under 50 CFR 21.27 for take of the pygmy-owl in the amount and subject to the terms and conditions specified in this Permit, the IA, and the Skyranch HCP. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712).

M. **PERMIT SUSPENSION, REVOCATION AND SURRENDER**

M.1. **Permit Suspension**

(a) The FWS may suspend this Permit if the Permittee is not in compliance with the conditions of this Permit, or with any applicable Federal laws or regulations governing the conduct of the Permitted activity, as such laws and regulations exist on the Effective Date. The suspension shall remain in effect until the FWS determines that the Permittee has corrected the deficiencies. Notwithstanding the foregoing, the FWS shall not suspend this Permit without first: (1) notifying the Permittee in writing that this Permit may be subject to suspension pursuant to this Subparagraph M.1.(a), including a statement of the deficiencies that must be corrected by the Permittee; and (2) providing the Permittee with a period of 30 days after the date that the notice of the deficiencies is given in which to correct the deficiencies.

(b) A partial suspension of this Permit may apply only to a portion of the Permit Area or Permitted Activity. In the event of a partial suspension, the portion of this Permit not subject to the suspension shall remain in full force and effect.

M.2. Permit Revocation

(a) The FWS shall not revoke this Permit for any reason except those listed in 50 CFR 13.28(a)(1)-(4) (as amended June 17, 1999) and applicable regulations, or unless the Permitted Activity would be inconsistent with the criteria set forth in 16 U.S.C § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied in a timely fashion. Notwithstanding the foregoing, this Permit will only be revoked if the FWS and its cooperators have not been successful in remedying any such inconsistency through other means.

(b) A partial revocation of this Permit may apply only to a portion of the Permit Area or Permitted Activity. In the event of a partial revocation, the portion of this Permit not subject to the revocation shall remain in full force and effect.

M.3. Surrender and Cancellation of Permit

In the event that the Permittee, or any successor in interest to the Permittee, permanently discontinues the Permitted Activity, the Permittee or successor in interest shall return this Permit to FWS within 30 calendar days of the discontinuance with a written statement surrendering this Permit for cancellation. This Permit will be deemed cancelled only upon a determination by FWS, in collaboration with the Permittee, that sufficient measures have been implemented by the Permittee to mitigate for take of the pygmy-owl that occurred pursuant to the terms of this Permit, before its surrender. Upon surrender of this Permit, no further take of the pygmy-owl by the Permittee shall be authorized.

N. LIMITATION ON IMPOSITION OF ADDITIONAL CONSERVATION MEASURES

N.1 Changed circumstances, Notice of Same, and Implementation of Response

(a) Changed Circumstances

The following are Changed Circumstances, and corresponding conservation and mitigation measures, if any, that the Permittee shall implement in response to such Changed Circumstances, should they occur during the life of this Permit:

1. Newly Listed Species -

Species not currently listed as threatened or endangered under the Act could be added to the list during the five (5) year life of the Permit and addressed in this HCP by a major amendment.

2. Vandalism

The risk of vandalism to the Reserve will be mitigated by the installation and maintenance of a fence around the Reserve that will restrict vehicle and unauthorized pedestrian access. Any vandalism that occurs on the Property during the life of the Permit will be reported to the appropriate law enforcement agency by the Permittee or the Reserve management entity.

3. Fire

During the life of the Permit, if a fire occurs on the Property, it will be immediately reported to the appropriate fire control agency by the Permittee or the Reserve management entity. A report will also be made to the FWS; and the Permittee or Reserve manager will provide the FWS with a fire impact assessment.

4. Exotic Plants and Animals

During the life of the Permit, any exotic plants and animals encountered on the Reserve will be reported to the FWS by the Permittee or the Reserve management entity, and the appropriate control measures implemented. Management of exotic plants and animals shall be included in the Reserve Management Plan.

5. Drought

Drought is a regular occurrence in the arid southwest and is beyond the control of the Permittee.

6. Flood

Flooding is an infrequent occurrence in the arid southwest and is beyond the control of the Permittee.

7. Disturbance of Resident Pygmy-owls

Any deliberate human disturbance of pygmy-owls not authorized by this HCP and the Permit, or by the FWS or Arizona Game and Fish Department, that may occur on the Property during the life of the Permit may violate section 9 of the Act. Any observed or reported interaction with pygmy-owls on the Property will be immediately reported to FWS law enforcement officials by the Permittee or the Reserve management entity, and the appropriate course of action, if any, determined.

8. Disease

Any outbreak of disease afflicting pygmy-owls or other wildlife species observed or suspected will be immediately reported to the FWS by the Permittee or the Reserve management entity, and the appropriate course of action, if any, determined.

9. Delisting or Vacature

Actions by and coverage of the Permittee should the pygmy-owl be delisted or its listing otherwise vacated are discussed in Section J of this Permit.

10. Activities of Adjacent Landowners

If adjacent landowners to the Property undertake actions that affect the pygmy-owl, the Reserve, or other conservation actions identified in the HCP, the IA, or this Permit, the Permittee will immediately notify the FWS and the adjacent landowners, and an appropriate course of action, if appropriate, will be taken.

11. If a Pygmy-owl Shows Up

In the event that a pygmy-owl enters the Project area during construction and establishes a territory or nest site, qualified biologists retained by Exeter will work with FWS to assess the situation. If the FWS determines, in consultation with Exeter's biologist, that the arriving pygmy-owl has established a territory, Exeter will temporarily avoid activities in the vicinity of the nest or activity center and consult the FWS. A dispersing pygmy-owl that has been determined to occupy an area for 2 weeks or more shall be considered to have established a territory. The level of development activity in the vicinity of a new pygmy-owl territory or activity center will vary depending on the distance between the pygmy-owl site and the planned development. The presumed territory has been divided into four zones based upon the degree of proximity to the pygmy-owl site (HCP 7.2.1.1; EA 6.2.1.1).

Zone 1 – 0-100 meters from the pygmy-owl activity center

- There shall be no removal of active nest sites and no land clearing activity within a 100-meter (330 foot) radius of a currently occupied pygmy-owl nest or activity center at any time.
- Construction-related activities may continue on lands that have already been cleared of vegetation provided that they do not exceed the levels/intensity of activity that was occurring during the period of time that the pygmy-owl territory was established.
- Activities that would be more intense or cause greater levels of noise disturbance than were occurring during the period of time that the territory was established cannot proceed during the pygmy-owl breeding season (February 1 through July 31).

Zone 2 – 100-400 meters from the pygmy-owl activity center

- No additional clearing of vegetation will be permitted during the pygmy-owl breeding season (February 1 through July 30).
- No restrictions on the nature or type of construction activity outside of the pygmy-owl breeding season (August 1 through January 31) provided it is consistent with the approved HCP and IA.
- Construction activities during the pygmy-owl breeding season (February 1 to July 31) cannot exceed the levels or intensity of activity that occurred at the time the pygmy-owl territory was established.

Zone 3 – 400 to 600 meters from the pygmy-owl activity center

- No additional clearing of vegetation will be permitted during the pygmy-owl breeding season (February 1 through July 31) without FWS approval.
- No restrictions on the levels or intensity of construction activity (excluding the clearing of vegetation) at any time of the year provided it is consistent with the approved HCP and IA.

Zone 4 – Greater than 600 meters from the pygmy-owl activity center

- No restrictions. Any activity consistent with the Project description provided in the HCP and the approved IA is allowed.

The FWS, in coordination with AGFD and Exeter’s Environmental Consultant, will determine whether a pygmy-owl activity center or nest site exists and whether a change in status (i.e., abandonment) is appropriate, using the best available information, including survey detection and telemetry data (if available), and other monitoring information (HCP 7.2.1.1; EA 6.2.1.1).

In addition to the above, in the event that a pair of pygmy-owls establishes a breeding territory within 100 meters of an area on the Property scheduled for construction, a 280-acre breeding territory will be designated. This 280-acre territory will be circular with the centroid being the nest or activity center. Because construction may need to be redesigned to accommodate a breeding pair of owls, Exeter will be allowed to increase construction by one and one-half acres for every one-acre that needs to be adjusted. Development within the Project boundary may not exceed 22 % (HCP 7.2.1.1; EA 6.2.1.1).

As long as the terms of the HCP, IA, and Permit are being properly implemented, the FWS shall not require the implementation of any conservation and mitigation measures by the Permittee in response to Changed Circumstances, other than those measures specified in Subparagraph N.1.(a).

(b) Notice of Changed Circumstances and Implementation of Response

1) Permittee-initiated response to Changed Circumstances. The Permittee shall give written notice to the FWS within 30 days after learning that any Changed Circumstances listed in the HCP and Subparagraph N.1.(a) hereof has occurred. As soon

as is practicable thereafter, but no later than 90 days after learning of the Changed Circumstances, the Permittee shall modify its activities in the manner and to the extent required by the HCP and Subparagraph N.1.(a) hereof, and report to the FWS on its actions. The Permittee shall make any required modifications without awaiting notice from the FWS.

2) FWS-initiated response to Changed Circumstances. If the FWS determines that Changed Circumstances have occurred and that the Permittee has not responded in accordance with the HCP and Subparagraph N.1.(a) hereof, the FWS shall so notify the Permittee in writing and direct the Permittee to make the required changes. Within 90 days after receiving such notice, the Permittee shall make the required changes and report to the FWS on its actions.

(c) Effect of Changed Circumstances on Permit and HCP

1) In General. Changed Circumstances are provided for in the HCP and , hence, do not constitute Unforeseen Circumstances or require amendment of this Permit, the HCP, or the IA. Changed Circumstances do not constitute "new information" under 50 CFR §402.16(b), and, hence, the occurrence of Changed Circumstances does not require the reinitiation of formal consultation by the FWS under section 7 of the Act on its action of issuing this Permit.

2) Critical Habitat. The FWS shall consider the HCP in its preparation of any final designation of critical habitat concerning the pygmy-owl. Consistent with 50 CFR §424.12, the HCP incorporates special management considerations necessary to conservation of the pygmy-owl. If critical habitat is designated for the pygmy-owl, as long as the HCP is being properly implemented, the FWS shall not require, through the formal consultation process of section 7 of the Act or otherwise, the commitment by the Permittee of additional land, water, financial compensation, or other measures beyond those already provided in the HCP.

N.2. Unforeseen Circumstances

(a) No Surprises Assurances

The pygmy-owl is considered adequately addressed under the HCP and is, therefore, covered by the No Surprises Rule assurances. In the event that it is demonstrated by the FWS that Unforeseen Circumstances exist during the life of this Permit, and additional conservation and mitigation measures are deemed necessary to respond to the Unforeseen Circumstances, the FWS may require additional measures of the Permittee where the HCP is being properly implemented, but only if such measures are limited to modifications pursuant to terms of the HCP, or to the HCP's operating conservation program for the pygmy-owl, and maintain the original terms of the HCP to the maximum extent practicable. Notwithstanding the foregoing, the FWS shall not:

1) Require the commitment of additional land, water, or financial compensation by the Permittee without the consent of the Permittee; or

2) Impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Permittee under the original terms of the HCP, including additional restrictions on the Permitted Activity.

(b) Effect of Unforeseen Circumstances on Permit

Except as provided in Subparagraph M.2 hereof, notwithstanding the occurrence of Unforeseen Circumstances, as long as the Permittee continues to properly implement the provisions of the HCP and any additional measures required by the FWS in accordance with Subparagraph N.2.(a) hereof, this Permit will remain in full force and effect.

(c) Notice of Unforeseen Circumstances

The FWS shall notify the Permittee in writing of any Unforeseen Circumstances of which the FWS becomes aware that may affect the obligations of the Permittee under this Permit, the HCP, or the IA.

O. AMENDMENT OF THE PERMIT

O.1. This Permit may be amended in accordance with the provisions of 50 CFR § 13.23. The proponent of the amendment shall provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects, including its effects on the Project, the Reserve, and the pygmy-owl.

O.2. Conditions of this Permit shall be binding and for the benefit of the Permittee and its respective successors and assigns. If this Permit requires an amendment because of change of ownership, the FWS will process that amendment without the requirement of the Permittee preparing any new documents or providing any mitigation over and above that required in the original permit. The activities proposed or in progress under an original permit may not be interrupted provided the required conditions of an issued permit are being followed.

O.3. If during the tenure of this Permit, the Permitted Activity and/or the extent of the habitat impact described in the HCP is altered, such that there may be an increase in the anticipated take of the pygmy-owl, the Permittee is required to contact the FWS and obtain authorization and/or amendment of this Permit before commencing any construction or other activities that might result in take beyond those described in the IA and the Sky ranch HCP.

P. RENEWAL OF PERMIT

The Permittee may apply for the renewal of the Permit prior to its expiration date in accordance with the provisions of 50 CFR § 13.22.

Q. SUCCESSORS AND ASSIGNS

The terms and conditions of this Permit shall be binding on and for the benefit of the Permittee its respective successors and assigns, as provided in 50 CFR §§ 13.24 and 13.25.

R. **SEVERABILITY**

In the event that any judicial decision or determination, including without limitation the decision from the District Court for the District of Columbia in *Spirit of the Sage, et al. v. Norton et al.*, 98-CV-1873 (D.D.C. 2003), may hold that the Department of Interior's "No Surprises" assurances rule (or similar successive rule) is vacated, unenforceable or enjoined for any reason to any extent, the HCP and this permit shall be enforceable only to the degree allowed by any such decision or determination; provided that the remainder of the HCP and this permit shall remain in full force and effect to the maximum extent permitted by law. In the event that the "No Surprises" assurances rule may be vacated, unenforceable or enjoined by such decision or determined but is later reinstated, this section of the HCP and this permit likewise be automatically reinstated and apply to the entire term of this HCP and permit. If, in response to any such judicial decision or determination, the "No Surprises" assurances rule is revised, the HCP and this permit shall be automatically amended in a manner consistent with the revised rule so as to afford the maximum protection to the Applicant consistent with the revised rule.

The terms and conditions of this Permit shall be deemed severable, and if any term or condition of this Permit shall be held invalid, illegal, or unenforceable by a Federal court, after exhaustion of all available appeals, the remainder shall continue to be effective and binding upon FWS and the Permittee. Notwithstanding the foregoing, in the event that any portion of this Permit shall be held invalid, the FWS and the Permittee shall use their best efforts to agree upon amendments to this Permit, consistent with paragraph O above.

S. **DEFINITIONS**

The following terms used in this Permit shall have the meanings set forth below:

S.1. The terms "activity" or "activities" that are "subject to this Permit" shall mean any activity or activities that are described in the HCP as covered by the HCP, with the restrictions applied thereto in the HCP

S.2. The term "Agreement or IA" shall mean the Implementing Agreement by and between the Permittee and the FWS. Terms identified and utilized in the IA shall have the same meaning when utilized in the Permit, except as specifically noted herein.

S.3. The term "Changed Circumstances" shall mean the changes in circumstances affecting a species or geographic area covered by the HCP and identified in Subparagraph N.1. hereof that can reasonably be anticipated by plan developers and the FWS and can be planned for.

S.4. The term "Covered Species" means the pygmy-owl, and any other species determined to be an endangered species or a threatened species under the Act §4 (16 U.S.C §1533) that is included in the coverage of the HCP and Permit by amendment thereto.

S.5. The term "Effective Date" shall mean the date herein above, as of which the FWS issues this Permit.

S.6. The term "the Act" shall mean the Endangered Species Act of 1973, as amended (16 U.S.C. §1531 et seq.) Terms defined and utilized in the Act and implementing regulations shall have the same meaning when utilized in this Permit, as specifically noted therein.

S.7. The term "HCP" shall mean the Habitat Conservation Plan prepared for the Skyranch Project as described in Sections 1.0, 3.1, and 4.1 of the HCP/Draft EA and Final EA.

S.8. The term "Permit" shall mean this incidental take permit, issued by the FWS to Exeter LXI, L.L.C. pursuant to section 10(a)(1)(B) of the Act.

S.9. The term "Permittee" shall mean Exeter LXI, L.L.C. and its successors and assigns as applicable pursuant to the terms of this Permit.

S.10. The term "Permit Area" shall mean the area of approximately 512 acres that includes the 103 to 113-acre Project and the 399 to 409-acre Reserve as defined in the HCP.

S.11. The term "Project or Project Area" shall mean the approximately 103 to 113 acres that will be subject to development under the HCP.

S.12. The term "Pygmy-owl" shall mean the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*).

S.13. The term "Reserve" shall mean the approximately 399 to 409 acres that will be preserved in their natural state as described by the HCP.

S.14. The term "FWS" shall mean the U.S. Fish and Wildlife Service.

S.15. The term "Unforeseen Circumstances" shall mean changes in circumstances affecting a species or geographic area covered by this HCP, which could not reasonably have been anticipated by the Permittee and the FWS at the time of the HCP's negotiation and development, and which result in a substantial and adverse change in the status of the covered species.

ADDITIONAL CONDITIONS FOR INCIDENTAL TAKE PERMIT TE-063647

A. Establishment of Reserve and Management

Within 6 months of the date of the permit, or prior to habitat disturbance, whichever occurs first, Exeter shall:

- 1) Erect a fence around the Reserve
- 2) Execute a Conservation Easement on the first 368 acres of the Reserve that incorporates the Reserve Manager and a third party right of enforcement for the Conservation Easement
- 3) Select the entity that will hold the Conservation Easement, subject to the approval of the FWS
- 4) Select the entity that will enforce the Conservation Easement, subject to the approval of the FWS

Within 12 months of the date of the Permit, Exeter shall:

- 1) Hire a Reserve Manager, subject to the approval of the FWS, who will be signatory to the IA
- 2) Complete a Resource Management Plan for the Reserve that is acceptable to the FWS
- 3) Complete a PAR analysis, subject to the approval of the FWS, to determine the amount of funding necessary for the endowment
- 4) Establish an endowment fund sufficient to implement the Sky ranch HCP, the Permit, and the IA.

Prior to the expiration of the Permit

The final 10 percent of the Reserve (approximately 41 acres) will be placed in a Conservation Easement subject to the management obligations for the Reserve in perpetuity.

B. Funding of Sky ranch HCP and Establishment of Endowment

- 1.1** Exeter fully commits to ensure that adequate funding will be provided to meet all of its obligations in the Sky ranch HCP. Exeter will ensure adequate funding to conserve and manage the Reserve in perpetuity, including all relevant requirements as described in the Sky ranch HCP, the Permit, and the IA.
- 1.2** During the first 6 months of the permit, or prior to habitat disturbance, whichever occurs first, Exeter will provide sufficient funding to: 1) execute a conservation easement on 368 acres (90 percent) of the reserve, 2) erect a fence around the Reserve, and 3) implement all other relevant

requirements of the Sky ranch HCP, including surveys, monitoring and management of the Reserve.

- 1.3** No later than 12 months from the date of the permit, Exeter shall ensure that permanent funding is available to meet its continuing obligations under the Sky ranch HCP. Exeter shall provide sufficient funding to: 1) hire a Reserve Manager, 2) complete a Resource Management Plan, 3) complete a Property Analysis Report to determine the cost of perpetual management and monitoring of the Reserve, and 4) establish an endowment consisting of a non-wasting account designated solely for the purpose of implementing the Sky ranch HCP, Permit, and IA. Funding will be sufficient for land management, monitoring, surveys, recording of the subsequent conservation easement on the remaining 41 acres of the reserve, enforcement of the conservation easement, and other relevant conservation measures as detailed in the HCP. Principal will be placed in a non-wasting account designated solely for that purpose. Principal in the account will be of an amount to generate annual cash flow sufficient to satisfy Exeter's continuing obligations under the Sky ranch HCP, as agreed to by FWS and Exeter. Cash flow will include that needed for inflation as measured by an annual index calculated by dividing the U.S. Department of Commerce's final estimate of the chain-type annual weights price index for the Gross Domestic Product for the most recently completed third quarter by the value of that same index for the third quarter of the prior year.
- 1.4** At least once every 3 years, Exeter shall contract for a third-party audit of the endowment to ensure that it is being managed appropriately. The cost of the audit shall be funded through the endowment.
- 1.5** The Permittee will provide such funds as may be necessary to carry out its obligations under the HCP during the term of the Permit and in perpetuity. The Permittee will provide to the Service notice of any material change in the Permittee's funding resources, including a discussion of the nature of the change. If the prospective change is known to the Permittee more than 60 days before it occurs, the Permittee shall give the Service 60-days notice thereof.
- 1.6** The Permittee shall establish an escrow fund to be available solely to the Manager to support the activities of the Manager on the Reserve. Until the Permittee and the Service agree on the amount to be deposited in the fund and the fund is established, the Permittee shall be responsible for providing funding directly to the Manager to support the Manager's activities on the Reserve or for expending funds itself on any activity required by the HCP or this Agreement on the Reserve to be undertaken prior to the selection of the Manager pursuant to paragraph 10.1.b. of this Agreement.

- 1.7 If the Permittee and/or the Manager proposes that another entity assume its or their funding and/or management obligations under this Agreement, the Permittee and/or the Manager shall ensure that the assuming entity has sufficient funds to perform such obligations.

C. Audits.

At least once every 3 years, Exeter shall contract for a third-party audit of the endowment to ensure that it is being managed appropriately. The cost of the audit shall be funded through the endowment.

D. Management of the Reserve

Exeter, with the approval of the FWS, will develop a Reserve Management Plan (RMP). The Reserve management entity (and until the entity is selected, the Permittee) will be responsible for implementing the RMP, including any adaptive management action. In addition, subject to the limitations stated herein, the Reserve management entity (and until the entity is selected, the Permittee), as applicable, will cooperate with the FWS in the implementation of adaptive management actions. (HCP 6.0).

Management objectives of the Reserve are, to the maximum extent practicable and subject to limitations on the commitment of resources, to (HCP 6.0):

Maintain the Reserve's habitat in the naturally occurring conditions on-site at the time of acquisition; and protect the Reserve from damage or harm that may be caused by vandalism, motor vehicle use, livestock grazing, and free-roaming domestic animals.

Only passive recreational activities will be allowed in the Reserve. Passive recreation includes public pedestrian and equestrian access to existing undeveloped trails that transect the Reserve (HCP 6.0). Equestrian use of the Reserve will be limited to common saddle stock (horses, mules, and donkeys). Access to the Reserve will be limited to passive recreational riding occurring on established trails. No saddle stock will be permitted off of established trails. No picketing or pasturage of saddle stock will be permitted on the Reserve at any time. All other forms of livestock will be strictly prohibited from the Reserve (HCP 6.0).

Exeter shall require adherence to the RMP, which addresses acceptable and prohibited uses and management actions. Vegetation disturbance and other activities (e.g. off-road vehicles, motorbike use/racing, firearm target practicing, jeep tours, and application of insecticides and herbicides) that might significantly degrade pygmy-owl habitat shall be restricted within the Reserve (HCP 7.2.1.1; EA 6.2.1.1).

E. Lighting

Only directional and low-intensity lights will be used within 100 meters (330 feet) of a new nest site or activity center to minimize potential adverse effects to resident pygmy-owls (HCP 7.2.1.1; EA 6.2.1.1).

F. Restriction on Construction Activities in the Reserve

Land clearing, heavy equipment operation, and all other construction-related activities will be limited to the Project area. No construction-related activities, personnel, or equipment will be allowed into the Reserve (HCP 7.2.1.1; 6.2.1.1).

G. Delineation of Reserve Boundaries

A fence shall be erected around the Reserve within six months of the issuance of the Permit (HCP 7.5; EA 6.5). Silt fence will be installed and maintained around the perimeter of the Project area in order to delineate the approved construction boundaries (HCP 7.2.1.1; EA 6.2.1.1).

H. Public Outreach Program

Exeter will develop and implement a Public Outreach program. The information will be distributed to potential homebuyers, neighbors, and other interested parties. The informational package will include a basic description of the conservation goals of the HCP and permit, emphasizing measures taken to protect the pygmy-owl. A copy of this informational brochure is found in Appendix C of the HCP (HCP 6.0). Activities completed under this measure should be reported in accordance with Section G.3 of this permit.

I. Educational Program

Exeter will develop an educational program, with FWS approval, to provide construction personnel and future residents of the Project with information regarding the pygmy-owl, long-term preservation, and limits to use of the Reserve. All construction management personnel will be required to attend an environmental training session conducted by Thomas Olsen Associates, Inc., or a similarly qualified firm, prior to their participation in construction activities. This educational program will inform construction personnel of the following (HCP 6.0):

- The Endangered Species Act:
- Pygmy-owl ecology and regulatory status
- The conservation goals of the HCP
- The terms and conditions of the Permit
- Actions to minimize and mitigate impacts
- Development and reserve area boundaries
- Specific limitations on construction activities on the Property
- Prohibited activities
- Reporting recommendations and requirements

Activities completed under this measure should be reported in accordance with Section G.3 of this permit.

J. Residential Development Landscape Theme

Exeter will implement a Residential Development Landscape Theme for the Project to maintain a desert theme, incorporating plant materials indigenous to, and blending in with, the Sonoran Desert (HCP 7.2.1.1; EA 6.2.1.1).

K. Native Plant Salvage Plan

Exeter will commission a Native Plant Salvage Plan. This plan will conform to all applicable state, county, and local regulations (HCP 7.2.2; EA 6.2.2).

L. Saguaro Preservation

If practicable, saguaros will be preserved in place. If it is not practicable to preserve saguaros in place and if the saguaro is salvageable, it will be transplanted to an appropriate location. Exeter will make every reasonable effort to preserve saguaros in place. The FWS will be notified prior to the removal of saguaros and potential nest trees and given the opportunity to inspect them prior to removal. The FWS will have 15 days subsequent to notification to conduct their inspection. All FWS inspections will be conducted in the presence of a qualified biologist retained by Exeter (HCP 7.4; EA 6.4).

Within the Project area, if salvage of a saguaro is not practicable, construction activities may proceed and can include destruction of saguaros, provided that they are inspected and determined to not be in current use for pygmy-owl nesting. If a saguaro must be destroyed, Exeter will plant three saguaros (minimum of 12 feet tall) as replacements (HCP 7.2; EA 6.2).

M. Saguaro Cavity Inspections

Within the Project area, if inspected trees or saguaros are not being used for nesting by pygmy-owls, construction may proceed. Following inspections with negative results (no pygmy-owl detection), Exeter will require the developer and/or lot owner to cover the inspected cavities with wire mesh or other appropriate material to preclude use of the cavities by pygmy-owls until grading and construction activities have ceased. All cover material will be removed at the completion of building activities. Materials used to cover cavities will be placed in a manner that does not injure the plant (HCP 7.2; EA 6.2).

Cavity inspection requirements will only apply to construction that is commenced during the pygmy-owl nesting period. No cavity inspection will be required for construction commenced outside of the pygmy-owl nesting period (HCP 7.3; EA 7.3). Activities completed under this measure should be reported in compliance with Section G.3 of this permit.

N. Maintenance of Natural Buffers

Natural buffers will be maintained along all roadways abutting and within the Property (HCP 7.2.1.1; EA 6.2.1.1). Natural buffers will be maintained along the perimeter of the

development pods and lot lines adjacent to the Reserve, maximizing the conservation value of the Reserve (HCP 7.2.1.1; EA 6.2.1.1).

O. Pet Restrictions

Pet restrictions will be put in place for all residences in the Project as homeowner resolutions in order to guard against possible mortality to pygmy-owls, their prey species, and other wildlife. Dogs will be kept under control or leashed at all times. Residents of the Project will be strictly prohibited from keeping free roaming cats (HCP 7.2.1.1; EA 6.2.1.1)

P. Project Area Surveys

Exeter will conduct surveys (using the FWS approved survey protocol in effect at the time of such activity) prior to initiating, salvaging, clearing, or construction activities in all suitable pygmy-owl habitat on the Property. If vegetation disturbance activities within the Project area have not been completed prior to January 1 of any given year, pygmy-owl surveys will be conducted the following survey season according to protocol (HCP 7.2.1.1; EA 6.2.1.1). Activities completed under this measure shall be reported in compliance with Section G.3 of this permit.

Q. Annual Surveys

Exeter will conduct annual surveys on the entire Property using current survey protocol during the 5-year term of this Permit corresponding to the construction phase of the Project. Exeter will be responsible for funding these surveys. Personnel will conduct all surveys with appropriate survey permits from the FWS. Should any pygmy-owl be detected during these surveys, Exeter will notify the FWS as required under the conditions of the Surveyor's permit to conduct the survey (HCP 7.3; EA 6.3). Activities completed under this measure shall be reported in compliance with Section G.3 of this permit.

R. Environmental Compliance Monitors

Exeter will employ Environmental Compliance Monitors (ECMs) during construction in order to ensure compliance with the terms and conditions of this HCP and the Permit (HCP 7.2.1.1; EA 6.2.1.1). ECMs will be present on the Project area during the clearing, grading, and construction phases of the Project. These ECMs will have the authority to ensure that the Project is executed in compliance with all environmental regulations and permit conditions. Specific responsibilities of the ECMs will include, but not be limited to the following (HCP 7.2.3; EA 6.2.3):

- Ensure that all construction management personnel have attended the environmental training session;
- Prevent any unauthorized encroachment into the Reserve;
- Monitor all construction activities;

- Provide relevant biological information and assistance to construction personnel; and
- Report any instances of non-compliance with environmental regulations.

On-site monitoring will occur during the clearing, grading, and construction phase of the Project. The on-site monitor will ensure that all construction related activities would conform to the terms and conditions of the HCP and permit (HCP 7.2.3; EA 6.2.3).

S. Additional Monitoring if a Pygmy-owl shows up

Should a pygmy-owl be detected on-site during annual surveys, a more in-depth monitoring effort may be implemented at the FWS's discretion. Prior to initiating these surveys, the FWS will coordinate with Exeter to ensure that there is no conflict between the telemetry protocol and the Permittee's activities on the Property. Exeter will fund this telemetry effort at up to \$1,000 per bird for up to five birds. The total potential maximum commitment of funds by Exeter for follow-up survey/telemetry is a total of \$5,000. All telemetry activities within the Property will be conducted in the presence of a qualified biologist retained by Exeter. Exeter's obligation to fund telemetry studies will cease within 1 year of completion of build-out, or upon the expiration date of the permit, whichever occurs first. On a confidential basis, a copy of the telemetry results will be provided to Exeter. The Permittee will not release this information to the public or otherwise make it available without the prior written consent of the FWS. Exeter's responsibility for funding telemetry studies is triggered by pygmy-owl detection on or immediately adjacent (within 600 meters) to the Property (HCP 7.3; EA 6.3).

If it is determined that a pygmy-owl has established an active breeding territory on the Property, the Permittee will provide funding for AGFD to intensively monitor the activities of the breeding pair. Exeter will provide up to \$15,000 for this effort. It is hoped this intensive monitoring will provide the scientific community with valuable information regarding pygmy-owl breeding productivity, foraging ecology, habitat use, and time activity budgets. It is anticipated that the collection and analysis of this information will aid in the conservation and recovery of pygmy-owls. All monitoring activities within the Property will be conducted in cooperation with a biological consultant retained by Exeter. On a confidential basis, a copy of the monitoring results will be provided to Exeter. Exeter will not release this information to the public or otherwise make it available without the prior written consent of the FWS. Exeter's responsibility for funding intensive monitoring studies is triggered by the detection of an active pygmy-owl breeding territory on the Property. Exeter's obligation to fund monitoring studies will cease within one year of completion of build-out, or upon the expiration date of the permit, whichever occurs first (HCP 7.3; EA 6.3)