

APPENDIX C
Implementing Agreement

IMPLEMENTING AGREEMENT

by and between

TEJON RANCHCORP

and the

U.S. FISH AND WILDLIFE SERVICE

concerning the

'Tehachapi Upland Multiple Species Habitat Conservation Plan'

April 2013

TABLE OF CONTENTS

1.0	PARTIES
2.0	RECITALS AND PURPOSE
2.1	Recitals
2.2	Purpose
3.0	DEFINITIONS
3.1	Additional Lands
3.2	California condor
3.3	California Condor Non-Lethal Incidental Take
3.4	Certificate of Inclusion
3.5	Changed Circumstances
3.6	Condor Study Area
3.7	Covered Activities
3.8	Covered Lands
3.9	Covered Species
3.10	Development Areas
3.11	Effective Date
3.12	ESA
3.13	Established Open Space
3.14	Existing Conservation Easement Areas
3.15	Incidental take
3.16	Initial Mitigation Lands
3.17	Initial TMV Planning Area Open Space Lands
3.18	Lease
3.19	Operating Conservation Program
3.20	Parties and Party
3.21	Permit
3.22	Permittee
3.23	Ranchwide Management Plan
3.24	Remaining Mitigation Lands
3.25	Take
3.26	TCWD
3.27	Tejon Ranch
3.28	Tejon Ranch Conservancy
3.29	Tejon Ranch Conservation and Land Use Agreement
3.30	Tejon Staff Biologist
3.31	Third Party Lessee
3.32	Third Person
3.33	TMV
3.34	TMV Planning Area
3.35	TMV Planning Area Open Space Lands
3.36	TMV Project

3.37	TRC
3.38	TU MSHCP
3.39	TU MSHCP Mitigation Lands
3.40	Unforeseen Circumstances
3.41	USFWS
4.0	INCORPORATION OF TU MSHCP
5.0	OBLIGATIONS OF THE PARTIES
5.1	Obligations of Permittee
5.1.1	Mitigation Obligations
5.1.2	Interim Obligations upon a Finding of Unforeseen Circumstances
5.1.3	Incorporation of the TU MSHCP, this Agreement, and Permit Obligations in Future and Existing Leases by Permittee
5.1.4	Incorporation of the TU MSHCP, this Agreement, and Permit Obligations in Certificates of Inclusion by Permittee
5.1.5	Transfer Obligations
5.1.6	Duty to Enforce
5.1.7	Duty to Notify of Incidental Take
5.2	Obligations of the USFWS
5.2.1	Permit Coverage
5.2.2	"No Surprises" Assurances
5.2.3	USFWS Cooperation and Assistance
5.2.4	USFWS Review and Approval of Management Plans
5.2.5	USFWS Monitoring
5.2.6	USFWS Performance of California Condor Management Activities
5.2.7	USFWS Notification of Incidental Take
6.0	TERM
7.0	EARLY PERMIT TERMINATION AND PERMIT RENEWAL
7.1	Relinquishment or Revocation of the Permit
7.1.1	Early Termination of the Permit
7.1.2	Post-Termination Access to Covered Lands by USFWS
7.1.3	Full Extent of Post-Termination Mitigation and Minimization
7.2	Procedure Applicable to Early Termination of the Permit
7.3	Effect of Early Termination
7.4	Other Rights and Authorities Not Affected
7.5	Renewal of the Permit
8.0	FUNDING
8.1	Funding of Mitigation
8.2	Funding Security
9.0	MONITORING AND REPORTING
9.1	Annual Reports
9.2	Other Reports
9.3	Certification of Reports
9.4	Monitoring by USFWS
10.0	MIGRATORY BIRD ACT PERMIT
10.1	Migratory Bird Act Permit
11.0	CONSULTATIONS WITH OTHER PUBLIC AGENCIES

- 11.1 Consultations on Activities Consistent with the TU MSHCP and Permit
- 11.2 Critical Habitat
- 12.0 ENFORCEMENT OF PERMIT
 - 12.2 Permit Suspension or Revocation
 - 12.3 Dispute Resolution
 - 12.3.1 Informal Dispute Resolution Process
- 13.0 MODIFICATIONS AND AMENDMENTS
 - 13.1 Minor Modification Process
 - 13.1.1 Minor Modifications
 - 13.1.2 Other Modifications
 - 13.2 Amendment of the Permit
 - 13.3 Amendment of this Agreement
- 14.0 ADAPTIVE MANAGEMENT
 - 14.1 Implementation of the TU MSHCP's Adaptive Management Provisions Regarding the California Condor
 - 14.2 Implementation of the TU MSHCP's Adaptive Management Provisions Regarding the Other Covered Species
 - 14.3 Limits on Adaptive Management Changes
 - 14.4 Reductions in Mitigation
 - 14.5 No Increase in Take
- 15.0 LAND TRANSACTIONS
 - 15.1 Acquisition of Land by Permittee
 - 15.1.1 Limitation on Inclusion of Acquired Lands as Covered Lands
 - 15.1.2 Procedure to Add Covered Lands
 - 15.2 Transfer of Ownership or Control of the Condor Study Area
 - 15.3 Disposal of other Covered Lands by Permittee
- 16.0 MISCELLANEOUS PROVISIONS
 - 16.1 No Partnership
 - 16.2 Tejon Ranch Conservation and Land Use Agreement
 - 16.3 Successors And Assigns
 - 16.4 Notice
 - 16.5 Incorporation into Permit
 - 16.6 Defense of Permit
 - 16.7 Execution/Duplicate Originals
 - 16.8 Third Party Beneficiaries
 - 16.9 Relationship to ESA and Other Authorities
 - 16.10 References to Regulations
 - 16.11 Applicable Laws
 - 16.12 Terms Used
 - 16.13 Availability of Funds
 - 16.14 Temporary and Injunctive Relief
 - 16.15 Agreement not an Enforceable Contract

EXHIBITS

- A Form of Certificate of Inclusion
- B Condor Study Area Conservation Easement and Form Easement

1.0 PARTIES

The Parties to this Implementing Agreement (Agreement) are the Tejon Ranchcorp (TRC or Permittee) and the United States Fish and Wildlife Service (USFWS).

2.0 RECITALS AND PURPOSE

2.1 Recitals.

- (a) Tejon Ranch provides habitat for the Covered Species, as defined in Section 3.
- (b) Tejon Ranch is currently used for a variety of purposes including, but not limited to agriculture; livestock production; residential, utility, and commercial projects; and hunting, equestrian and other recreational activities. TRC is desirous of undertaking additional development on portions of the Tejon Ranch over the 50 year term described in Section 2 of the TU MSHCP in a manner that is designed to avoid adverse impacts to the Covered Species. Additionally, TRC wishes to undertake or assist in actions that would be beneficial to and contribute to the conservation of the Covered Species and ensure that the Tejon Ranch remains hospitable to those species' presence.
- (d) TRC, with technical assistance from the USFWS, has developed a series of measures, described in the TU MSHCP, to minimize and mitigate to the maximum extent practicable the effects on the Covered Species and their associated habitat incidental to the activities on the Tejon Ranch that are subject to the Permit and this Agreement and to provide long-term preservation of habitat and undertake other activities to benefit, and assist the recovery of, the Covered Species.

2.2 Purpose. The purpose of this Agreement is:

- (a) To clarify the provisions of the TU MSHCP and the processes the Parties intend to

follow to ensure successful implementation of the TU MSHCP in accordance with the Permit and applicable law.

3.0 DEFINITIONS

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

3.1 The term "**Additional Lands**," also called "Not-A-Part Lands" in the TU MSHCP, means any inholdings up to 3,870 acres within the boundaries of the Covered Lands.

3.2 The term "**California condor**" means *Gymnogyps californicus*.

3.3 The term "**California Condor Non-Lethal Incidental Take**" means when a Covered Activity results in physical injury to a California condor requiring medical intervention or adversely affects one or more essential behavioral patterns of the California condor to the point that USFWS, in consultation with Permittee, determines the animal should be temporarily or permanently removed from the wild.

3.4 The term "**Certificate of Inclusion**" means a document executed by Permittee and a third party that extends the incidental take authorization granted to Permittee to such third party for the purpose of carrying out a Covered Activity on Covered Lands. Execution of the Certificate of Inclusion by the third party places such third party under the legal control of Permittee for purposes of enforcing and implementing relevant portions of the TU MSHCP, this Agreement, and the Permit. A Certificate of Inclusion template is attached as Exhibit A.

3.5 The term "**Changed Circumstances**" as defined at 50 C.F.R. Section 17.3 means changes in circumstances affecting a species or geographic area covered by the TU MSHCP that can reasonably be anticipated by the Parties and that can be planned for in the TU MSHCP (e.g., the listing of new species, or a fire or other natural catastrophic event in areas

prone to such events). Changed Circumstances and the planned responses to those circumstances are described in Section 8.1 of the TU MSHCP. Changed Circumstances and the planned responses to them are part of the TU MSHCP's Operating Conservation Program (see definition below).

3.6 The term "**Condor Study Area**" means the 37,099 acres of lands within the TU MSHCP Mitigation Lands depicted on Figure 1-3 of the TU MSHCP on which special restrictions apply to benefit the California condor.

3.7 The term "**Covered Activities**" means certain activities carried out by Permittee, its Third Party Lessees or the holder of a Certificate of Inclusion on the Covered Lands that may result in incidental take of Covered Species that is authorized under the Permit. Covered Activities include plan-wide and development-related activities which are described in detail in Section 2.2 of the TU MSHCP. Covered Activities exclude hunting and mineral extraction and processing.

3.8 The term "**Covered Lands**" means the certain lands of Tejon Ranch described in Section 1.3 of the TU MSHCP and depicted in Figure 1-4 of the TU MSHCP. During the Permit term, the Permit's authorization of take of Covered Species incident to Covered Activities and the TU MSHCP's Operating Conservation Program apply or may apply to those Covered Lands that are owned by Permittee as of the Effective Date. Additional Lands may be added to the Permit as Covered Lands only in accordance with Section 15.0 of this Agreement.

3.9 The term "**Covered Species**" means the 25 species listed in Table 1-1 of the TU MSHCP: (1) California condor (*Gymnogyps californicus*), (2) Tehachapi slender salamander (*Batrachoseps stebbinsi*), (3) western spadefoot (*Spea hammondi*), (4) yellow-blotched salamander (*Ensatina eschscholtzii croceater*), (5) American peregrine falcon (*Falco*

peregrines anatum), (6) bald eagle (*Haliaeetus leucocephalus*), (7) burrowing owl (*Athene cunicularia*), (8) golden eagle (*Aquila chrysaetos*), (9) least Bell's vireo (*Vireo bellii pusillus*), (10) little willow flycatcher (*Empidonax traillii brewsteri*), (11) purple martin (*Progne subis*), (12) southwestern willow flycatcher (*Empidonax traillii extimus*), (13) tricolored blackbird (*Agelaius tricolor*), (14) Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), (15) white-tailed kite (*Elanus leucurus*), (16) yellow warbler (*Dendroica petechia brewsteri*), (17) Tehachapi pocket mouse (*Perognathus alticolus inexpectatus*), (18) coast horned lizard (frontale and blainvilli populations) (*Phrynosoma coronatum*), (19) two-striped garter snake (*Thamnophis hammondi*), (20) Fort Tejon woolly sunflower (*Eriophyllum lanatum var. hallii*), (21) Kusche's sandwort (*Arenaria macradenia var. kuschei*), (22) round-leaved filaree (*Erodium macrophyllum*), (23) striped adobe lily (*Fritillaria striata*), (24) Tehachapi buckwheat (*Eriogonum callistum*), and (25) Tejon poppy (*Eschscholzia lemmonii ssp. Kernensis*).

3.10 The term "**Development Areas**" means the areas identified in Table 2-1 of the TU MSHCP for development, including the TMV Planning Area, Lebec/Existing Headquarters Area, and 16 acres for operations and expansion of the TCWD facilities on the Department of Water Resources parcel.

3.11 The term "**Effective Date**" means the later of the date of execution of this Agreement by the Parties or the date on which the Permit is issued.

3.12 The term "**ESA**" means the Endangered Species Act of 1973 (16 U.S.C. Sections 1531 *et seq.*), as amended.

3.13 The term "**Established Open Space**" means the 155,000 acres of land within the entire Tejon Ranch that are permanently protected for conservation purposes pursuant to the Tejon Ranch Conservation and Land Use Agreement (excluding the Existing Conservation

Easement Areas and TMV Planning Area Open Space Lands). Within the Covered Lands, Established Open Space comprises 93,522 acres of land, including the 37,099 acre Condor Study Area, and is part of the TU MSHCP Mitigation Lands.

3.14 The term "**Existing Conservation Easement Areas**" means the 62,000 acres of land within the entire Tejon Ranch that have been permanently protected for conservation purposes as of March 2011, pursuant to the Tejon Ranch Conservation and Land Use Agreement. Within the Existing Conservation Easement Areas, 12,795 acres are in Covered Lands as depicted on Figure 1-3 of the TU MSHCP.

3.15 The term "**incidental take**" means the "take" under Federal law of a covered wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity. The term is not intended, and shall not be construed, to include any take under applicable California law.

3.16 The term "**Initial Mitigation Lands**" means the Initial TMV Planning Area Open Space Lands and the Condor Study Area.

3.17 The term "**Initial TMV Planning Area Open Space Lands**" means those approximately 10,572 acres of lands within the TMV Planning Area Open Space Lands that are part of the Initial Mitigation Lands required to be permanently preserved for the benefit of the Covered Species in accordance with, and subject to the terms and conditions of the TU MSHCP, this Agreement and the Permit. The Initial TMV Planning Area Open Space Lands are depicted on Figure 1-3 of the TU MSHCP.

3.18 The term "**Lease**" means any existing or future lease, license, joint venture, agreement, purchase and sale, or other contract entered into between Permittee and a third party, or any fee, easement or real property interest on Covered Lands on Tejon Ranch held by a third party, under which the third party has the right to engage in an activity identified as

a Covered Activity in the TU MSHCP.

3.19 The term "**Operating Conservation Program**" means the totality of take avoidance, minimization, and mitigation measures, responses to changed circumstances, monitoring and reporting measures, conservation measures, and other implementation measures, provided for under the TU MSHCP.

3.20 The terms "**Parties**" and "**Party**" means TRC and USFWS, parties to this Agreement.

3.21 The term "**Permit**" means the incidental take permit issued by the USFWS pursuant to Section 10(a)(1)(B) of the ESA.

3.22 The term "**Permittee**" means TRC.

3.23 The term "**Ranchwide Management Plan**" means the plan governing the management of the portion of conserved lands on Tejon Ranch managed by the Tejon Ranch Conservancy which includes prescribed management standards to assure that existing natural resource and conservation values of the Tejon Ranch are protected while existing ranch uses remain ongoing per the terms of the Tejon Ranch Conservation and Land Use Agreement.

3.24 The term "**Remaining Mitigation Lands**" means the 56,423 acres of Established Open Space remaining after recordation of a conservation easement over the 37,099-acre Condor Study Area and the 12,429 acres of TMV Planning Area Open Space Lands remaining after recordation of a conservation easement over the Initial TMV Planning Area Open Space Lands.

3.25 The term "**take**" as defined in Section 3 of the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Under 50 C.F.R. Section 17.3, "Harm" in the definition of "take" in the ESA means an act that actually kills or injures wildlife. Such act may include significant habitat modification

or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Under 50 C.F.R. Section 17.3, "Harass" in the definition of "take" in the ESA means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

3.26 The term "**TCWD**" means the Tejon Castac Water District, which is the entity providing water and wastewater infrastructure in the Covered Lands, including infrastructure within the Development Areas, which will serve the TMV Project and other development identified as a Covered Activity, as further described in Section 2 of the TU MSHCP. TCWD's infrastructure on the Department of Water Resources parcel is separate from the TMV Project.

3.27 The term "**Tejon Ranch**" means the lands owned by TRC as of the Effective Date, which consist of approximately 270,365 acres of land in Los Angeles and Kern Counties, California as depicted in Figure 1-1 of the TU MSHCP.

3.28 The term "**Tejon Ranch Conservancy**" means the non-profit entity created to preserve in perpetuity, enhance and restore the native biodiversity and ecosystem values of the Tejon Ranch and the Tehachapi Range for the benefit of California's future generations on the areas of the Tejon Ranch to be conserved through the Tejon Ranch Conservation and Land Use Agreement.

3.29 The term "**Tejon Ranch Conservation and Land Use Agreement**", also referred to as the "Ranchwide Agreement" in the TU MSHCP, means the agreement attached as Appendix A entered into between TRC, as owner of the Tejon Ranch, and the Sierra Club, the National Audubon Society, the Natural Resources Defense Council, the Endangered

Habitats League, and the Planning and Conservation League, which, inter alia, provides for the permanent preservation of up to 90% of Tejon Ranch.

3.30 The term "**Tejon Staff Biologist**" means the biologist, as defined in the "Definitions" section of the TU MSHCP to be retained by Permittee to perform the functions (and/or report on the activities) assigned to the biologist in Sections 4, 7 and 8 of the TU MSHCP.

3.31 The term "**Third Party Lessee**" means any person other than Permittee or the holder of a Certificate of Inclusion 1) who holds a Lease under which the Third Party Lessee has the right to engage in an activity identified as a Covered Activity in the TU MSHCP and 2) against whom Permittee has authority and has committed to enforce applicable terms of the TU MSHCP, this Agreement, and the Permit. While Permittee commits to enforce applicable provisions of the TU MSHCP, this Agreement, and the Permit against Third Party Lessees, such Third Party Lessees are not insulated under the Permit from liability for incidental take of Covered Species.

3.32 The term "**Third Person**" means any person other than Permittee, the holder of a Certificate of Inclusion, or a Third Party Lessee, over which Permittee has committed to enforce applicable terms of the TU MSHCP, this Agreement, and the Permit. While Permittee commits to enforce applicable provisions of the TU MSHCP, this Agreement, and the Permit against Third Persons, such Third Persons are not insulated under the Permit from liability for incidental take of Covered Species.

3.33 The term "**TMV**" means Tejon Mountain Village LLC, its subsidiaries and affiliates, and their employees.

3.34 The term "**TMV Planning Area**" means that area considered for commercial and residential development as depicted on Figure 2-1 of the TU MSHCP.

3.35 The term "**TMV Planning Area Open Space Lands**" means the 23,001 acres in the

TMV Planning Area that is part of the TU MSHCP Mitigation Lands as depicted in Figure 1-3 of the TU MSHCP.

3.36 The term "**TMV Project**" means the low-density development project proposed for the TMV Planning Area, including 3,450 residences, 160,000 square feet of commercial development, 750 hotel rooms, and other recreational and support uses including 350,000 square feet of support uses.

3.37 The term "**TRC**" means Tejon Ranchcorp, its subsidiaries and affiliates, and their employees that conduct Covered Activities under the direct control (for purposes of enforcing the requirements and restrictions of the TU MSHCP, this Agreement, and the Permit) of Tejon Ranchcorp.

3.38 The term "**TU MSHCP**" means the "Tehachapi Upland Multiple Species Habitat Conservation Plan" prepared by Permittee with the technical assistance of USFWS.

3.39 The term "**TU MSHCP Mitigation Lands**" means (1) the 93,522 acres of Established Open Space within the Covered Lands, including the Condor Study Area, and (2) the 23,001 acres of TMV Planning Area Open Space Lands, both of which are required to be permanently preserved for the benefit of the Covered Species in accordance with, and subject to the terms and conditions of the TU MSHCP, this Agreement and the Permit. The TU MSHCP Mitigation Lands are depicted on Figure 1-4 of the TU MSHCP.

3.40 The term "**Unforeseen Circumstances**" as defined in the "No Surprises" rule at 50 C.F.R. Section 17.3 means changes in circumstances affecting a species or geographic area covered by the TU MSHCP that could not reasonably have been anticipated by Permittee and USFWS at the time of the TU MSHCP's negotiation and development, and that result in a substantial and adverse change in the status of a Covered Species.

3.41 The term "**USFWS**" means the United States Fish and Wildlife Service.

4.0 INCORPORATION OF TU MSHCP

The TU MSHCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the TU MSHCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the TU MSHCP shall be interpreted to be supplementary to each other.

5.0 OBLIGATIONS OF THE PARTIES

5.1 Obligations of Permittee. The Permittee will fully perform all obligations assigned to it under the Operating Conservation Program, this Agreement and the Permit.

5.1.1 Mitigation Obligations. The Permittee shall:

- (a) **Lead Ammunition Ban.** Although hunting is not a Covered Activity, on February 23, 2007, TRC voluntarily committed to establish and enforce a ban in perpetuity on all use of lead ammunition on Covered Lands and elsewhere throughout the entirety of the Tejon Ranch effective January 1, 2008. Subsequently, the state also enacted the Tree-Ridley Condor Conservation Act, which banned the use of lead ammunition for hunting within the range of the California condor. Because lead poisoning has been documented as the principal cause of California condor mortality, the decision to ban the use of lead ammunition throughout Tejon Ranch is a significant conservation measure that will substantially reduce any potential for take of California condors on Tejon Ranch. TRC has committed under the TU MSHCP to continue the Ranch-wide ban on use of lead ammunition in perpetuity, irrespective of any take, and irrespective of whether the Ridley-Tree Condor Conservation Act is repealed, to further minimize the potential for take during and following the term of the Permit.

- (b) **Recordation and Enforcement of CC&Rs.** Prior to the first sale of a residential unit, custom lot, or commercial lot in the TMV Project, Permittee shall cause to be recorded, and during the Permit term, shall enforce the CC&Rs required in Section 4 and Section 7 of the TU MSHCP. After the Permit term, or if the Permit terminates early, Permittee shall cause to be enforced in perpetuity, irrespective of any take, the CC&Rs required in Section 4 and Section 7 of the TU MSHCP.
- (c) **Hiring of a Tejon Staff Biologist.** Per the requirements of Section 4.4.3.5 of the TU MSHCP, prior to TMV Project groundbreaking activities in the Covered Lands, and for the duration of the Permit term, TRC will retain the service of a full-time biologist, the Tejon Staff Biologist, to perform the functions described in Sections 4, 7 and 8 of the TU MSHCP. The hiring will occur no later than 30 days prior to initiation of the start of construction (i.e., prior to surface disturbing activities) of the TMV Project. Also, promptly after issuance of the Permit, TRC will contract with a qualified third party, whose qualifications are approved by the USFWS, to perform the biologist's functions identified at Section 4.4.3.5 of the TU MSHCP until the Tejon Staff Biologist is retained. The qualifications of the Tejon Staff Biologist will be reviewed and approved by the USFWS and will either have expertise or contract with a biologist to be approved by the USFWS that has expertise with raptor (preferably California condor) life history and conservation.
- (d) **Management of TU MSHCP Mitigation Lands.**
- (1) As of the Effective Date, all TU MSHCP Mitigation Lands shall be protected and managed in accordance with provisions of the TU MSHCP, this Agreement and the Permit and in accordance with the Tejon Ranch Conservation and Land Use Agreement. In the event of a conflict between the provisions of the Permit and the

Tejon Ranch Conservation and Land Use Agreement, the provisions of the Permit shall control.

(2) Within 6 months of the Effective Date, Permittee shall submit the grazing management plan, the public access plan, and the fuel modification plan to USFWS for review and approval, and shall submit an integrated pest management plan for review and comment, in accordance with Section 5.2.4(a) of this Agreement and as required in Section 7.2.1 of the TU MSHCP to ensure that activities within the Covered Lands comply with the ESA and the Permit, including applicable take avoidance, minimization and mitigation measures and other conservation measures for Covered Species identified in the TU MSHCP and the terms of any conservation easement required under the Permit that has been recorded over the lands. During the Permit term, Permittee shall also submit to USFWS any proposed revisions to the grazing management plan, public access plan, and fuel modification plan for review and approval and any proposed revisions to the integrated pest management plan for review and comment, in accordance with Section 5.2.4(a).

(3) Permittee shall ensure that the portions of the Ranchwide Management Plan applicable to the Covered Lands, and any revisions to such plan proposed during the Permit term, are submitted to USFWS for review and approval in accordance with Section 5.2.4(b) prior to its adoption under the Tejon Ranch Conservation and Land Use Agreement and shall further ensure that the portions of the Ranchwide Management Plan applicable to the Covered Lands submitted to USFWS under this paragraph, and any revisions thereto, are not inconsistent with the plans submitted to USFWS under Section 5.1.1(d)(2).

(4) The sole purpose of the USFWS review of the plans during the Permit term will

be to ensure compliance with the ESA, and to ensure that the portions of the plans applicable to the Covered Lands are consistent with the requirements of the ESA and the Permit, including applicable take avoidance, minimization and mitigation measures and other conservation measures for Covered Species identified in the TU MSHCP and the terms of any conservation easement required under the Permit that has been recorded over the lands. During the Permit term, in the event of a conflict identified by USFWS between the requirements of the ESA, the TU MSHCP, or a recorded conservation easement required under the Permit and the provisions of a proposed plan for the Covered Lands that is not in dispute, the plan shall be modified to meet the undisputed requirements as identified by USFWS. In the event of a disagreement between the Parties over the contents of the plan, the process in Section 5.2.4(b) applies.

(5) Following the end of the Permit term, Permittee shall continue to submit each plan identified in this subsection (d) that covers TU MSHCP Mitigation Lands to USFWS for review and comment, and with regard to the public access plan, for review and approval, as such plans are proposed for revision under the terms of the Tejon Ranch Conservation and Land Use Agreement until or unless USFWS determines that agency review of the plans is no longer warranted. The purpose of such review shall be solely to ensure compliance with the ESA and to ensure that the portions of such proposed revised plans applicable to the TU MSHCP Mitigation Lands are consistent with the terms of the conservation easements covering the TU MSHCP Mitigation Lands.

(e) **Conservation of TU MSHCP Mitigation Lands.**

(1) As of the Effective Date, all TU MSHCP Mitigation Lands shall be protected and

managed in accordance with provisions of the TU MSHCP, this Agreement and the Permit and in accordance with the Tejon Ranch Conservation and Land Use Agreement. In the event of a conflict between the provisions of the TU MSHCP and the Tejon Ranch Conservation and Land Use Agreement, the provisions of the TU MSHCP shall control.

(2) Prior to initiation of construction of the TMV Project, Permittee shall record one or more perpetual conservation easements in favor of the Tejon Ranch Conservancy, or another qualified conservation organization approved by USFWS, over the Initial Mitigation Lands. The form of conservation easement shall be approved by USFWS, its terms shall be consistent with the TU MSHCP, this Agreement and the Permit, and shall name USFWS as a third party beneficiary with access rights and the right to enforce the terms of the conservation easement. The conservation easement shall further include management and reporting requirements, including the requirement to continue to submit to USFWS any proposed revisions to the applicable management plans identified in Section 5.1.1(d) of this Agreement for USFWS review and approval, and with regard to the integrated pest management plan, for review and comment, during the Permit term and, with the exception of the public access plan, to USFWS for review and comment following the end of the Permit term. The conservation easement shall require submission of any proposed revisions to the public access plan to USFWS for review and approval in perpetuity notwithstanding the end of the Permit term. The draft conservation easements shall be submitted by Permittee within 60 days of the Effective Date. The draft conservation easement covering the Condor Study Area portion of the Initial Mitigation Lands as well as a form conservation easement used by the California Department of Fish and Wildlife

are attached to this Agreement as Exhibit B and provide general guidance as to the form of easement required. The Parties shall undertake best efforts to negotiate the terms of conservation easements covering the remaining Mitigation Lands in Established Open Space within one year, which may be extended upon mutual written agreement. The Parties further agree to coordinate with the California Department of Fish and Wildlife and Kern County, as needed. Permittee may, at its option, increase the acreage of Initial TMV Planning Area Open Space Lands to coordinate easement boundaries with the California Department of Fish and Wildlife. The obligation to record a conservation easement over the TMV Planning Area Open Space portion of the Initial Mitigation Lands will be extended for up to five years provided that a Memorandum of Permit and irrevocable offer to convey a conservation easement or other appropriately restricted conveyance satisfactory to USFWS is recorded prior to TMV Project groundbreaking activities.

(3) Permittee shall record conservation easements in favor of the Tejon Ranch Conservancy, or another qualified conservation organization approved by USFWS, covering the 56,423 acres of Established Open Space within the Remaining Mitigation Lands in accordance with the schedule for execution and recordation of conservation easements contained in the Tejon Ranch Conservation and Land Use Agreement, but in no event shall the recording of easements be extended beyond the Permit term. The form of conservation easement shall be approved by USFWS, its terms shall be consistent with the TU MSHCP, this Agreement and the Permit, and shall name USFWS as a third party beneficiary with access rights and the right to enforce the terms of the conservation easement. The conservation easement shall further include management and reporting requirements, including the requirement to

continue to submit to USFWS for review and approval, and with regard to the integrated pest management plan, for review and comment, during the Permit term and, with the exception of the public access plan, to submit to USFWS for review and comment following the end of the Permit term any revisions to the management plan. The conservation easement shall require submission of any proposed revisions to the public access plan to USFWS for review and approval in perpetuity notwithstanding the end of the Permit term.

(4) The TMV Planning Area Open Space Lands within the Remaining Mitigation Lands shall be preserved in perpetuity as open space through an easement or other appropriately restricted conveyance approved by the USFWS as the TMV Planning Area is developed and tentative maps are approved, but in no event shall the recording of easements or other appropriately restricted conveyance covering the TMV Planning Area Open Space Lands extend beyond the Permit term. The form of open space easement or other appropriately restricted conveyance shall be approved by USFWS, its terms shall be consistent with the TU MSHCP, this Agreement and the Permit and shall include management and reporting requirements and shall name the USFWS as a third party beneficiary with access rights and the right to enforce the terms of the conveyance. The exact boundaries of the TMV Planning Area Open Space Lands within the Remaining Mitigation Lands will be determined as the TMV Planning Area is developed.

(f) **Management of Existing Conservation Easement Areas.** The 12,795 acres of Existing Conservation Easement Areas are not TU MSHCP Mitigation Lands but are Covered Lands. The Existing Conservation Easement Areas are subject to permanent protection through conservation easements recorded in favor of the Tejon Ranch

Conservancy as grantee in accordance with the terms of the Tejon Ranch Conservation and Land Use Agreement. These areas may be improved and/or enhanced as mitigation for other TRC needs. As of the Effective Date, the Existing Conservation Easement Areas will be managed in accordance with the provisions of the TU MSHCP and the applicable conservation easements.

- (g) **Other California Condor-Specific Measures.** Permittee shall implement and fund the California Condor Non-Lethal Incidental Take Measures described in Section 4.4.2 of the TU MSHCP as follows: If USFWS, in consultation with Permittee, determines that a California condor requires temporary or permanent removal of the bird from the wild due to either 1) a Covered Activity under the TU MSHCP or 2) non-compliance with a term of the TU MSHCP, this Agreement, or the Permit, by Permittee, a Third Party Lessee, or a Certificate of Inclusion holder, then Permittee shall fully fund the costs of capture, care, including medical care, and, if necessary, translocation of the bird. Permittee shall also fund the costs of medical care for any California condor otherwise injured as the result of a Covered Activity or non-compliance with a term of the TU MSHCP, this Agreement or the Permit by Permittee, a Third Party Lessee or a Certificate of Inclusion holder. Permittee shall separately fund such costs, in accordance with this section and Sections 7.1.1 and 8.0. Except where USFWS determines, following consultation with Permittee, that release of a captured condor is not viable (due to long term or permanent physical impairment, inability to reverse habituated behaviors, or similar causes) USFWS shall undertake reasonable efforts to release the individual in a timely manner following completion of any necessary treatment. In the event of a disagreement among the Parties under this section, the Parties may utilize the informal dispute

resolution process provided in Section 12.3.1.

- (h) **Other Covered Species Measures.** In addition to the specific measures identified in this section, Permittee shall undertake all remaining obligations assigned to it under the TU MSHCP.
- (i) **Changed Circumstances.** Permittee shall undertake all measures provided in Section 8 of the TU MSHCP to respond to Changed Circumstances.

5.1.2 Interim Obligations upon a Finding of Unforeseen Circumstances. If the USFWS makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected Covered Species.

5.1.3 Incorporation of the TU MSHCP, this Agreement, and Permit Obligations in Future and Existing Leases by Permittee. Except where, and to the extent that, the Permit has been transferred pursuant to Section 5.1.5 and applicable law and regulations, the incidental take authorization conferred by the Permit covers solely Permittee and each holder of a Certificate of Inclusion. However, Permittee commits to require in all future Leases, to the extent allowed by law and applicable contracts, that Third Party Lessees holding and/or acting under such future Leases shall abide by all applicable terms of the TU MSHCP, this Agreement, and the Permit when such Third Party Lessee(s) are engaging in Covered Activities on the Covered Lands, irrespective of whether Permittee issues Certificates of Inclusion to such Third Party Lessees. Permittee further commits to enforce the terms of such future Leases against such Third Party Lessees holding or acting under such future leases. Permittee also agrees to enforce against all Third Party Lessees holding or acting under existing Leases all applicable terms of the TU MSHCP, this Agreement, and the Permit where

Permittee has retained under such existing Leases authority sufficient to implement the TU MSHCP, this Agreement, and the Permit.

5.1.4 Incorporation of the TU MSHCP, this Agreement, and Permit Obligations in Certificates of Inclusion by Permittee

Permittee commits to reserve in all Certificates of Inclusion, the legal authority to require the holder of the Certificate of Inclusion to abide by all applicable terms of the TU MSHCP, this Agreement, and the Permit, and Permittee further commits to enforce such terms against each holder of a Certificate of Inclusion. The Parties anticipate that Permittee will issue Certificates of Inclusion to TMV, TCWD, the Tejon Ranch Conservancy, and potentially other entities that may purchase all or portions of the Development Areas.

5.1.5 Transfer Obligations. On one or more occasions after issuance of the Permit, Permittee may propose to transfer to another party the ownership of, or responsibility for a Covered Activity on, a portion of the Covered Lands, and the incidental take authority under the Permit applicable to that land or activity. That party could be a public entity, a non-governmental organization, or a commercial enterprise. An application by Permittee for partial transfer of the Permit authorization will be reviewed and approved or denied by the USFWS in accordance with the requirements of 50 C.F.R. Section 13.25(b) and all other applicable law and regulations. Any such approved partial transfer of the Permit authorization shall not allow or authorize any incidental take collectively by Permittee and the transferee beyond the incidental take set forth in the TU MSHCP and authorized in the Permit.

5.1.6 Duty to Enforce. Permittee agrees to take all necessary action to enforce all applicable terms of the TU MSHCP, this Agreement and the Permit as to itself and all holders of Certificates of Inclusion, Third Party Lessees and Third Persons over which

Permittee has committed to enforce the terms of the TU MSHCP, this Agreement, and the Permit. Any non-compliance by Permittee, a holder of a Certificate of Inclusion, a Third Party Lessee, or a Third Person (except Third Persons undertaking hunting, which is not a Covered Activity) with applicable terms of the TU MSHCP, this Agreement, or the Permit may be deemed a violation of the Permit by Permittee. In addition, the failure by Permittee to enforce applicable terms of the TU MSHCP, this Agreement, or the Permit against itself, a holder of a Certificate of Inclusion, a Third Party Lessee, or a Third Person may be deemed non-compliance by Permittee with the TU MSHCP, this Agreement, or the Permit and a violation of the Permit by Permittee. In determining whether to suspend or revoke the Permit from Permittee for acts or omissions constituting non-compliance committed by Permittee, a holder of a Certificate of Inclusion, a Third Party Lessee, or a Third Person, USFWS shall take into account all efforts undertaken by Permittee to enforce the terms of the TU MSHCP, this Agreement, and the Permit as to itself, the holder of a Certificate of Inclusion, the Third Party Lessee, or the Third Person and all actions taken by Permittee to redress the effects of such non-compliance, particularly the enforcement efforts and redress actions specifically described in the TU MSHCP.

5.1.7 Duty to Notify of Incidental Take. Permittee shall immediately notify USFWS if it concludes that an incidental take of a Covered Species has occurred or is likely to occur or if the loss of suitable habitat for Covered Species in excess of the amounts identified in Table 7-2 of the TU MSHCP occurs or is likely to occur.

5.2 Obligations of the USFWS. Upon execution of this Agreement by the Parties, and a determination that all legal requirements have been satisfied, the USFWS will issue to Permittee the Permit under Section 10(a)(1)(B) of the ESA, authorizing the limited incidental take of the animal Covered Species resulting from Covered Activities on the Covered Lands.

The Permit will be conditioned on compliance with all terms and conditions of the Permit, including the TU MSHCP and this Agreement, and applicable law.

5.2.1 Permit Coverage. The Permit will identify the Covered Species. The Permit will take effect to authorize incidental take by Permittee for listed Covered Species upon the Effective Date. The Permit will take effect for an unlisted animal Covered Species upon the listing of such species. Because take of listed plant species is not prohibited under the ESA and therefore is not authorized under the Permit, plant Covered Species are listed on the Permit in recognition of the conservation measures and benefits provided for such plant species under the TU MSHCP. Any reference in this Agreement or in the TU MSHCP to incidental take of Covered Species shall, for the purpose of incidental take authorized under the Permit, refer solely to species other than plants on the Covered Species list. The incidental take authorized under the Permit may be extended by Permittee to holders of Certificates of Inclusion issued by Permittee.

5.2.2 "No Surprises" Assurances. Upon issuance of the Permit, Permittee shall receive regulatory assurances pursuant to the "No Surprises" regulations at 50 C.F.R. Sections 17.22(b)(5) and (6) and 17.32(b)(5) and (6). Pursuant to the "No Surprises" regulations, as long as the TU MSHCP, this Agreement and the Permit are being properly implemented, USFWS shall not require additional conservation and mitigation measures that involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land water or other natural resources otherwise available for development or use under the original terms of the TU MSHCP without the consent of the Permittee.

5.2.3 USFWS Cooperation and Assistance. USFWS shall cooperate and provide, to the extent appropriated funds are available for that purpose, technical assistance to the Permittee. Nothing in this Agreement shall require the USFWS to act in a manner contrary

to the requirements of the Anti-Deficiency Act.

5.2.4 USFWS Review and Approval of Management Plans.

- (a) TU MSHCP Management Plans. During the Permit term, within 90 days of receipt of each plan identified in the TU MSHCP that affects management of the Covered Lands, including the grazing management plan, the integrated pest management plan and the fuel modification plan, or revisions to a previously approved plan from Permittee, USFWS shall use its reasonable efforts to review and either approve or request modifications to the plan, and with regard to the integrated pest management plan, to review and comment on, and recommend any appropriate modifications to, the plan. The purpose of the USFWS review will be solely to ensure that activities conducted within the Covered Lands are carried out in accordance with the ESA and the Permit, including applicable take avoidance, minimization and mitigation measures and other conservation measures for Covered Species identified in the TU MSHCP and the terms of any conservation easement required under the Permit that has been recorded over the lands. With respect to the grazing management plan, USFWS-requested modifications shall not modify the grazing level identified for coverage under the Permit in the TU MSHCP and shall continue to allow for reasonable access for cattle to on-site water sources and reasonable open habitat range management. In the case of undisputed requested modifications, Permittee shall revise the affected plan within 120 days of receipt of written notice of the requested modifications. In the event of a disagreement among the Parties over the contents of the affected plan, the Parties shall sever the disputed portion of the plan, and shall meet to resolve the issues and may utilize the informal dispute resolution process provided in Section 12.3.1. With the exception of the integrated pest management

plan, Permittee shall revise the affected plan to incorporate changes identified by USFWS within 120 days after completion of discussions among USFWS, Permittee and applicable conservation easement holder, including completion of the informal dispute resolution process, if such process is utilized by the Parties. With regard to the integrated pest management plan, Permittee may incorporate changes recommended by USFWS. For the undisputed portions of the affected plan, other than the integrated pest management plan, USFWS shall issue approval of the remainder of the plan, and the Grantee and Grantor shall implement such changes within 120 days of the written notice of approval.

- (b) Ranchwide Management Plan. During the permit term, within 90 days of receipt of the Ranchwide Management Plan, or any revisions to a previously reviewed Ranchwide Management Plan, USFWS shall use its reasonable efforts to review and either approve, or request modifications to the plan. The purpose of the USFWS review will be solely to ensure that activities conducted within, and management of, the Covered Lands are carried out in accordance with the ESA and the Permit, including applicable take avoidance, minimization and mitigation measures and other conservation measures for Covered Species identified in the TU MSHCP and the terms of any conservation easement required under the Permit that has been recorded over the lands. In the case of undisputed requested modifications, Permittee shall revise the affected plan within 120 days of receipt of written notice of the requested modifications. In the event of a disagreement among the Parties over the contents of the affected plan, the Parties shall sever the disputed portion of the plan, and shall meet to resolve the issues and may utilize the informal dispute resolution process provided in Section 12.3.1. Permittee shall revise the affected plan to incorporate

changes identified by USFWS within 120 days after completion of discussions among USFWS, Permittee and applicable conservation easement holder, including completion of the informal dispute resolution process, if such process is utilized by the Parties. For the undisputed portions of the plan, USFWS shall issue approval of the remainder of the plan and the Parties shall implement such changes within 120 days of the written notice of approval.

- (c) Following the end of the Permit term, unless or until USFWS determines that such review and comment is no longer necessary, USFWS shall review the grazing and other management plans, and revisions thereto, identified in Section 5.1.1(d), other than the public access plan, for the sole purpose of reviewing the plans for compliance with the ESA and consistency with the terms of the conservation easements recorded over the TU MSHCP Mitigation Lands and provide notice of any non-compliance to Permittee. With regard to the public access plan, unless or until USFWS determines that such review and comment is no longer necessary, USFWS shall continue to review and approve such plans and revisions thereto, in accordance with the procedure established in paragraph (b) above to ensure that any public use allowed within the TU MSHCP Mitigation Lands complies with the ESA and is consistent with the terms of the conservation easements recorded over the TU MSHCP Mitigation Lands.
- (d) Following the end of the Permit term, notwithstanding the foregoing review and approval rights with respect to public access plans, and review and comment rights with respect to the other management plans, (i) with respect to any public access plan, if USFWS has not provided written determination of either approval or non-compliance/disapproval (and to the extent of non-compliance or disapproval only for

the foregoing reasons) within 135 days of receipt thereof, or (ii) with respect to any other management plan, to the extent USFWS has not provided written comments (and in such case, only with respect to the reasons above stated) within 135 days of receipt thereof, USFWS shall be deemed to have waived its right of approval of a public access plan or comment on other management plans. Approval or waiver by USFWS of its right of approval of a public access plan and comment by or waiver by USFWS of its right to comment on other management plans shall not relieve Grantor or Grantee of their independent duty to comply with the ESA and any applicable conservation easement and shall not preclude USFWS from taking action to enforce the ESA or any applicable conservation easement.

5.2.5 USFWS Monitoring. After issuance of the Permit, the USFWS shall monitor Permittee's compliance with the TU MSHCP, this Agreement, and the Permit in order to ensure compliance.

5.2.6 USFWS Performance of California Condor Management Activities. USFWS staff shall perform all trapping, relocation, supplemental feeding, hazing and other species management activities involving physical contact with California condors, provided the Tejon Staff Biologist may also haze California condors in appropriate circumstances if he or she has been issued by the USFWS a scientific permit under Section 10(a)(1)(A) of the ESA, and is permitted to do so by applicable federal and state law.

5.2.7 USFWS Notification of Incidental Take. USFWS shall immediately notify Permittee if any incidental take of a California condor has occurred or is likely to occur.

6.0 TERM

This Agreement shall become effective on the Effective Date of the Permit and shall remain in full force and effect for a period of 50 years or until termination of the Permit, whichever occurs sooner. Notwithstanding the stated term, the Parties agree that the preservation of the Initial Mitigation Lands and Remaining Mitigation Lands, the duty to cause the CC&R terms to be in effect and enforced in perpetuity, including providing USFWS and California Department of Fish and Wildlife with third party beneficiary rights to enforce the CC&Rs, and the ban on use of lead ammunition required under the TU MSHCP, this Agreement and the Permit shall be permanent.

7.0 EARLY PERMIT TERMINATION AND PERMIT RENEWAL

7.1 Relinquishment or Revocation of the Permit. Permittee may relinquish the Permit in accordance with the regulations of the USFWS in force on the date of such relinquishment. (These regulations are currently codified at 50 C.F.R. Sections 17.22(b)(7) and 17.32(b)(7).) In addition, USFWS may revoke the Permit for cause. (These regulations are currently codified at 50 C.F.R. Sections 13.28, 17.22(b)(8) and 17.32(b)(8).) "Termination" as used in this Agreement refers to both relinquishment of the Permit by Permittee and revocation of the Permit by USFWS. Consistent with 50 C.F.R. Section 17.22(b)(8), this Agreement and those TU MSHCP minimization and mitigation measures as described in this Section 7.0 shall remain in effect notwithstanding early termination of the Permit through either relinquishment by Permittee or revocation by USFWS.

7.1.1 Early Termination of the Permit

- (a) If Permit termination occurs for any reason after Permittee has initiated construction of the TMV Project, Permittee will:
- (1) continue the TRC Ranch-wide ban on use of lead ammunition described in Section 4.4.3.3 of the TU MSHCP in perpetuity.
 - (2) if any California Condor Non-Lethal Incidental Take from a Covered Activity on Covered Lands has occurred during the time the Permit is in effect, complete any remaining funding obligation for medical care or for capture, care, and translocation costs for that individual as provided in Section 4.4.2 of the TU MSHCP and 5.1.1(g). USFWS shall notify Permittee of the existence of any remaining funding obligation within 60 days of permit surrender. The amount of the remaining funding obligation shall be determined by USFWS, following consultation with Permittee to determine the anticipated length and cost of care and shall be supported by an endowed fund, a letter of credit, or other assured funding source acceptable to USFWS. Permittee shall satisfy the obligation within 60 days from the date Permittee receives notice of the amount of the remaining funding obligation. Except where USFWS determines, following consultation with Permittee, that release of a captured condor is not viable (due to long term or permanent physical impairment, inability to reverse habituated behaviors, or other similar causes) USFWS shall undertake reasonable efforts to release the individual in a timely manner following completion of any necessary treatment. In the event of a disagreement among the Parties under this section, the Parties may utilize the informal dispute resolution process provided in Section 12.3.1.
 - (3) cause the CC&Rs described in Section 4.4.1 of the TU MSHCP governing the siting and design of houses and roads and the behavior of residents in certain portions

of the Covered Lands to be recorded and cause such CC&Rs to be enforced in perpetuity, including providing USFWS, and California Department of Fish and Wildlife with third party beneficiary rights to enforce the CC&Rs.

(4) continue to abide by all provisions in Section 4.4.1.4 of the TU MSHCP and the provisions of any recorded conservation easements required under the Permit relating to restrictions on siting and design of power, communication, and other utility lines, towers, and antennas and wind farms on Covered Lands and the Ranch-wide prohibition on wind farms for the remainder of the original 50 year Permit term, except that such restrictions and prohibition shall be maintained on the TU MSHCP Mitigation Lands in perpetuity. Notwithstanding the permanent prohibition on windfarms, Permittee may construct and operate individual wind turbine devices which have the primary purpose to serve electrical generation needs on site, if the device and its location are approved by the USFWS.

(5) continue to retain the Tejon Staff Biologist to perform continuing applicable and relevant tasks for the remainder of the original 50-year term of the Permit or, with the agreement of USFWS, provide funding to USFWS to carry out such tasks.

(6) early termination of the Permit shall not affect the conserved status of all TU MSHCP Mitigation Lands covered by an executed and recorded conservation easement granted under the terms of the Permit or required to be covered by i) an executed and recorded conservation easement or ii) within TMV Planning Area Open Space Lands, an easement or other appropriately restricted conveyance under the terms of the Permit. TRC shall execute and record conservation easements or other appropriately restricted conveyances on all such lands to ensure their permanent legal protection in accordance with the schedule provided for under this Agreement in

Section 5.1(e)(2) and 5.1(e)(3).

(7) Notwithstanding early termination, Permittee shall continue to submit all management plans to USFWS for review and approval, and with regard to the integrated pest management plan, for review and comment, for the remainder of the Permit term in accordance with Section 5.1.1(d) and Section 5.2.4(a) and (b), until or unless USFWS determines agency review and approval is no longer necessary and shall continue to submit all management plans to USFWS for review and comment and all public access plans to USFWS for review and approval in perpetuity, until or unless USFWS determines agency review and comment, or with regard to the public access plans, review and approval, is no longer necessary.

(b) If Permit termination occurs by voluntary withdrawal of Permittee prior to initiation of any construction described in Section 7.1.1(a), Permittee will:

(1) continue in perpetuity the TRC Ranch-wide ban on use of lead ammunition described in Section 4.4.3.3 of the TU MSHCP.

(2) if the Condor Study Area is still subject to TRC control (e.g., it has not been transferred by fee or easement to the Tejon Ranch Conservancy or an alternate public or private entity approved by, and on terms acceptable to, USFWS for conservation purposes consistent with the protection of the California condor), Permittee will continue to provide the protections to the Condor Study Area set forth in Section 4.4.3.1 of the TU MSHCP for a minimum period of five years following the date of termination to allow Permittee and the USFWS to consider other potential options for the future of the Condor Study Area, with emphasis given to options that would maintain such protections after such period.

(3) if any California Condor Non-Lethal Incidental Take from a Covered Activity on

Covered Lands has occurred during the time the Permit is in effect, complete any remaining funding obligation for medical care or for capture care, and translocation costs for that individual as provided in Section 4.4.2 of the TU MSHCP and 5.1.1(g). USFWS shall notify Permittee of the existence of any remaining funding obligation within 60 days of permit surrender. The amount of the remaining funding obligation shall be determined by USFWS, following consultation with Permittee to determine the anticipated length and cost of care, and shall be supported by an endowed fund, a letter of credit, or other assured funding source acceptable to USFWS. Permittee shall satisfy the obligation within 60 days from the date Permittee receives notice of the amount of the remaining funding obligation. Except where USFWS determines, following consultation with Permittee, that release of a captured condor is not viable (due to long term or permanent physical impairment, inability to reverse habituated behaviors or other similar causes), USFWS shall undertake reasonable efforts to release the individual in a timely manner following completion of any necessary treatment. In the event of a disagreement among the Parties under this section, the Parties may utilize the informal dispute resolution process provided in Section 12.3.1.

(4) preserve the TU MSHCP Mitigation Lands in accordance with the Tejon Ranch Conservation and Land Use Agreement.

7.1.2 Post-Termination Access to Covered Lands by USFWS. After early termination of the Permit, Permittee shall continue to allow reasonable access to Covered Lands by USFWS and its authorized agents in accordance with Section 9.4 for the limited purposes of implementing, and monitoring compliance with the post termination mitigation and minimization obligations described in this Section 7.0.

7.1.3 Full Extent of Post-Termination Mitigation and Minimization Related to Early Termination. After early termination of the Permit, the measures identified referenced in Section 7.1 constitute the full extent of post-termination mitigation and minimization required for any incidental take of Covered Species authorized under the Permit pursuant to Section 50 C.F.R. Section 17.22(b)(7) and 17.32(b)(7) as a result of Covered Activities carried out in accordance with the Permit, including the TU MSHCP and this Agreement..

7.2 Procedure Applicable to Early Termination of the Permit. If Permittee elects to relinquish the Permit before expiration of the full term of the TU MSHCP or if USFWS revokes the Permit, Permittee will immediately surrender the Permit to USFWS in accordance with USFWS regulations in effect at the time of such early termination. (Such regulations are currently codified at 50 C.F.R. Section 17.22(b)(7) and 17.32(b)(7).) In addition to the surrendered Permit, Permittee will provide a status report detailing the nature and amount of any incidental take of the Covered Species, the minimization and mitigation measures provided for take up through the date of early termination, and the status of compliance with all other terms of the TU MSHCP. Within 90 days after receiving the surrendered Permit and a status report meeting the requirements of this paragraph, USFWS will give written notice to Permittee stating whether any of the post-termination mitigation or minimization measures required in Section 7.1 are outstanding, and identifying each of the outstanding required measures.

7.3 Effect of Early Termination. Upon Permittee's surrender of the Permit per Section 7.2, no further take by Permittee or Certificate of Inclusion holder shall be authorized under the terms of the Permit. Notwithstanding early termination of the Permit, Permittee shall implement each of the post-termination mitigation and minimization measures described in Section 7.1, and identified by USFWS in its written notice under Section 7.2, for any

incidental take of a Covered Species resulting from Covered Activities carried out in accordance with the TU MSHCP and the Permit prior to the date of termination. USFWS shall only cancel the Permit upon determination that all applicable post-termination mitigation and minimization measures have been implemented. If prior to termination of the Permit, USFWS has approved the transfer of a portion of the Permit in accordance with all applicable statutory and regulatory requirements, then the transferred portion of the Permit shall remain in effect notwithstanding termination of the remaining portion.

7.4 Other Rights and Authorities Not Affected. Nothing in this Section 7.0 prevents Permittee from seeking review by a court of competent jurisdiction of any decision of the USFWS to revoke the Permit. Likewise, nothing in this Section 7.0 affects or circumscribes the authority of USFWS to carry out its enforcement and other responsibilities under the ESA.

7.5 Renewal of the Permit. Upon agreement of the Parties and compliance with all applicable laws and regulations, the Permit may be renewed beyond its initial term under regulations of the USFWS in force on the date of such renewal.

8.0 FUNDING

Permittee warrants that it has and will expend such funds as may be necessary to carry out its obligations under the TU MSHCP.

8.1 Funding of Mitigation.

In the event Permittee receives notice from USFWS that a California Condor Non-Lethal Incidental Take has occurred, Permittee shall pay all of the costs thereof to USFWS through a reimbursable agreement or alternative legal mechanism approved in writing by USFWS in accordance with Section 4.4.2 and Section 9 of the TU MSHCP. Permittee shall release such funds to USFWS within two weeks following receipt of a written statement from USFWS.

The estimated costs of capture, care and translocation of a California condor are identified in

Table 9-1 of the TU MSHCP; such estimate shall be adjusted for inflation pursuant to Section 9 of the TU MSHCP. Such costs may be guaranteed by a rolling letter of credit, as provided for in Section 9 of the TU MSHCP. In addition, Permittee shall pay all costs related to implementation of other California condor-related provisions and to implementation of all other take minimization and mitigation measures specified in the TU MSHCP for the other Covered Species, as provided in Section 9 of the TU MSHCP. As explained in Section 9 of the TU MSHCP, while the preservation of the TU MSHCP Mitigation Lands will result in significant benefits to all Covered Species, certain effects to Covered Species will occur in conjunction with implementation of the Covered Activities. A variety of measures to offset these effects are identified in the TU MSHCP which will require funding in the approximate amounts specified in Section 9 of the TU MSHCP.

8.2 Funding Security. Permittee shall, not later than 90 days following the date of Permit issuance unless an extension of time is granted by USFWS, provide for financial assurance as described in Section 9 of the TU MSHCP in a form acceptable to USFWS as a written guarantee of its performance of all take minimization and take mitigation measures requiring the expenditure of funds for the California condor per TUMSHCP Table 9-1. In addition to the specific guarantee for California condor mitigation as provided above, execution of the Permit by Permittee will be authorized by a resolution of both Permittee and its parent company, Tejon Ranch Co., a Delaware corporation. These resolutions will acknowledge Permittee's responsibility for and duty to expend all sums contemplated and necessary to implement Permittee's obligations under the TU MSHCP. The resolutions will also provide for annual certifications by TRC's Chief Financial Officer, or equivalent officer, to the effect that such funds have been budgeted and approved by all necessary corporate action. Each year, following the adoption of TRC's corporate budget in December and prior

to the start of its new fiscal year on January 1, TRC's Chief Financial Officer, or equivalent officer, will deliver to the USFWS a budget and scope of work outlining all components of the TU MSHCP to be implemented during the fiscal year accompanied by a certification that funds required of Permittee to perform duties under the TU MSHCP have been authorized and are available. The USFWS shall use its reasonable efforts to notify TRC within 30 days of receipt of the certification if the USFWS has any concerns related to budget and scope of work or the funding allocated thereto by TRC. If the Parties are unable to resolve such concerns, they may pursue informal dispute resolution as described in Section 12.3.1.

Permittee acknowledges that the failure to timely and fully implement their obligations under the TU MSHCP or to adequately fund those obligations could result in suspension or revocation of the Permit. Permittee will include in the annual reports described Section 9.0 of this Agreement a notice of any annual adjustment to the funding security to account for inflation. Permittee will promptly notify USFWS if their funding resources have materially changed, including a discussion of the nature of the change, from the information provided in Section 9 of the TU MSHCP.

9.0 MONITORING AND REPORTING

9.1 Annual Reports. In accordance with Sections 4.5.2 and 7.3 of the TU MSHCP, Permittee will submit two annual reports, or a combined report, by January 31 of each year that describes for the reporting period the status of Covered Activities, the results of the required monitoring, any instances of noncompliance with the provisions of the TU MSHCP, actions taken to rectify the non-compliance, known encounters with California condors, any problems under the TU MSHCP, and all other of the reporting requirements set forth in Sections 4.5.2 and 7.3 of the TU MSHCP.

9.2 Other Notices and Reports. Permittee shall provide copies of all notices required to

be provided to the California Department of Fish and Wildlife in the TUMSHCP with regard to surveys, buffer adjustments, and relocation plans at the same time such notices are provided to California Department of Fish and Wildlife to allow for optional review by the USFWS. Permittee will also use reasonable efforts to provide within 30 days of being requested by the USFWS, any additional information in its possession or control related to implementation of the TU MSHCP that is requested by the USFWS for the purpose of assessing whether the terms and conditions of the Permit and the TU MSHCP are being fully implemented. Permittee may designate, by notifying USFWS in writing, any trade secrets or commercial, proprietary, or financial information ("Confidential Information") requested by the USFWS as exempt from disclosure by the agencies pursuant to a request made under the Freedom of Information Act, because such trade secret and/or information so designated (1) is Confidential Information, (2) has not been disclosed to the public by Permittee, and (3) to Permittee's knowledge is not routinely available to the public from other sources. Should "Confidential Information" be requested, the USFWS will contact Permittee sufficiently prior to releasing any such information so as to allow Permittee a reasonable opportunity to protect the Confidential Information from release. This Section 9.2 is not intended to limit the applicability of the Freedom of Information Act.

9.3 Certification of Reports. All reports from Permittee pursuant to this Section 9.0 shall include the following certification from the respective responsible company officials who supervised or directed preparation of the report:

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

9.4 Monitoring by USFWS. Permittee acknowledges the necessity for USFWS to

monitor compliance with the TU MSHCP and will cooperate fully in such monitoring.

Pursuant to 50 C.F.R. Section 13.21(e)(2), by accepting the Permit, Permittee consents to and will allow entry to the Covered Lands by agents and employees of the USFWS engaged in and for the purpose of ensuring compliance with the Permit, and laws and regulations applicable to the Permit, and/or undertaking any activities that are necessary to protect the Covered Species and/or are identified in the TU MSHCP. Except where specified below, such entry will occur under the following conditions: (1) at reasonable hours; (2) in a manner consistent with the purpose of the entry, that minimizes any disruption of the Covered Activities or any other operation of Permittee or any holder of a Certificate of Inclusion; (3) after provision of advance notice to Permittee; and (4) with the opportunity for an agent or employee of Permittee to accompany the USFWS's agent or employee. These conditions on entry will not apply in the following circumstances: (1) when the USFWS has reason to believe a Covered Species is at risk of injury or death and an immediate response is necessary; or (2) when the USFWS has reason to believe a violation of the Permit, or laws or regulations applicable to the Permit, has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (3) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment to the Constitution. Access to the Covered Lands by USFWS agents or employees and California Condor Recovery Team members solely to establish and operate a trap and release/supplemental feeding site, if deemed necessary by USFWS in accordance with TU MSHCP Section 4.4.3.2, shall not be governed by this Section 9.4 but shall be allowed in accordance with provisions of the TU MSHCP.

10.0 MIGRATORY BIRD ACT PERMIT

The Permit issued in reliance on the TU MSHCP and this Agreement also constitutes

a Special Purpose Permit under 50 C.F.R. Section 21.27 for the take of listed Covered Species also listed under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. Sections 702 *et seq.*, as amended. The take of any of these birds as the result of any Covered Activity carried out in accordance with the TU MSHCP, this Agreement, and the Permit will not constitute a violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the Effective Date, provided the Permit issued in reliance on this Agreement remains in effect for such period. Such Special Purpose Permit shall be renewed without application provided that the terms of the TU MSHCP, this Agreement and the Permit are being properly implemented. Each such renewal shall be valid for the maximum period of time allowed under 50 C.F.R. Section 21.27 or its successor at the time of renewal. The Permit shall also constitute a Special Purpose Permit for each of the unlisted MBTA Covered Species that may become listed under the ESA during the term of the Permit. Such Special Purpose Permit shall become effective concurrent with the listing of the MBTA Covered Species under the ESA.

11.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

11.1 Consultations on Activities Consistent with the TU MSHCP and Permit. To the maximum extent appropriate in any consultation on any Covered Activity with respect to the Covered Species under Section 7(a) of the ESA and regulations issued thereunder, the USFWS shall ensure that the biological opinion issued in formal consultation, or views expressed by the USFWS in informal consultation, in connection with the proposed activity are consistent with the biological opinion prepared on the Permit and TU MSHCP, provided that the Covered Activity as proposed in the consultation is consistent, and will be implemented in accordance, with the TU MSHCP, this Agreement, and the Permit. Any reasonable and prudent measures and terms and conditions in the biological opinion, or views

expressed by the USFWS in informal consultation, on the proposed activity shall, to the maximum extent appropriate, be consistent with and not in excess of the measures included in the TU MSHCP, this Agreement, and the Permit.

11.2 Critical Habitat. Portions of the Covered Lands are designated critical habitat for the California condor. The TU MSHCP is designed and intended to incorporate special management requirements to protect habitat features on the Covered Lands essential for the conservation of the California condor. The USFWS will take the TU MSHCP into consideration in any future revision to critical habitat for the California condor.

12.0 ENFORCEMENT OF PERMIT

12.1 General Authorities and Legal Rights. Nothing contained in this Agreement is intended to, or shall, limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement and other responsibilities under the ESA or other applicable Federal law. Nothing in this Agreement is intended to, or shall, be construed as authorizing any take of Covered Species under applicable California law, or to limit the authority of the California Department of Fish and Wildlife to enforce such law. Nothing contained in this Agreement limits the rights of the Permittee under the U.S. Constitution or other applicable Federal or State law to seek redress against the USFWS as otherwise permitted by law.

12.2 Permit Suspension or Revocation. The USFWS may suspend or revoke the Permit, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. Such suspension or revocation may apply to the entire Permit, or only to specified Covered Lands, Covered Species, or Covered Activities. In the event of suspension or revocation, Permittee's obligations under the

Permit, including this Agreement and the TU MSHCP, will continue until the USFWS determines that all incidental take of Covered Species that occurred under the Permit has been fully mitigated in accordance with the TU MSHCP and Section 7.0 of this Agreement. Unless the Parties agree otherwise, if no more incidental take than that authorized by the Permit has occurred upon suspension or revocation, then, pursuant to 50 C.F.R. Sections 17.22(b)(7) and 17.32(b)(7), the USFWS may not require more, or different mitigation, beyond that specified under Section 7.0.

12.3 Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, or termination of the TU MSHCP, this Agreement, or the Permit may arise from time to time. The Parties will work together in good faith to resolve such disputes, and may use the informal dispute resolution procedures set forth in Section 12.3.1, or such other procedures upon which the Parties may adopt. However, if at any time, either Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

12.3.1 Informal Dispute Resolution Process. Unless the Parties elect another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in Federal court as provided in this Section 12.0, the Parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved Party will notify the other Party of the provision of the TU MSHCP, this Agreement, or the Permit that may have been violated, the basis for contending that a violation has occurred, and the remedies the aggrieved Party proposes to correct the alleged violation.
- (b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed to by the Parties, to respond. During this time the Party alleged to be in

violation may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

- (c) Within 10 days after such response was provided or was due, a representative from each Party will meet and negotiate in good faith toward a solution satisfactory to both Parties, or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

13.0 MODIFICATIONS AND AMENDMENTS

13.1 Minor Modification Process. Either Permittee or USFWS may propose minor modifications to the TU MSHCP or this Agreement by providing written notice to the other Party. The notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the TU MSHCP and on the Covered Species. The other Party will use reasonable efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Party's written approval. If, for any reason, a Party objects to a proposed modification, Permittee may propose it as an amendment to the Permit in accordance with Section 13.2 and 13.3. The USFWS will not propose or approve minor modifications to the TU MSHCP or this Agreement if the USFWS determines that such modifications would result in operations under the TU MSHCP that are different from those analyzed, or may result in adverse effects on the environment that are new or significantly

different from those analyzed, or may result in additional take that was not authorized in connection with the original TU MSHCP as of the Effective Date.

13.1.1 Minor Modifications. Subject to Section 13.1, minor modifications to the TU MSHCP and this Agreement processed pursuant to this Section 13.0 may include but are not limited to the following:

- (a) changes to the boundaries of the Covered Lands or the Initial Mitigation Lands or Remaining Mitigation Lands which the Parties agree are minor and would not alter the analysis of environmental effects, and in particular, the effects of the TU MSHCP on the Covered Species, contained in the Environmental Impact Statement or the USFWS ESA Section 7 biological opinion for the TU MSHCP and Permit. Except for fee sale of lands provided for in Section 15.3(b) of this Agreement, the aggregate of such minor boundary adjustments may not exceed 250 acres;
- (b) acquisition of Additional Lands inholdings (also termed "Not-A-Part Lands") within the boundaries of the Covered Lands not to exceed 3,870 acres;
- (c) minor changes to survey protocols;
- (d) minor modifications to reporting and monitoring requirements;
- (e) revisions of maps or exhibits to correct errors in mapping, or to reflect previously approved changes in the Permit or TU MSHCP;
- (f) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- (g) implementation of mitigation measures that are or may in the future become independently required by applicable laws or regulations;
- (h) transfer by conservation easement(s) of lands within the Initial Mitigation Lands or

the Remaining Mitigation Lands to the Tejon Ranch Conservancy or another entity approved by, and on terms acceptable to, USFWS that ensure the permanent protection of such lands for conservation purposes consistent with the TU MSHCP or pursuant to Section 15.2;

- (i) transfer by fee title of lands within the TU MSHCP Mitigation Lands that are covered by either (i) an executed and recorded conservation easement to an entity approved by, and which contains terms acceptable to, USFWS that ensure the permanent protection of such lands for conservation purposes consistent with the TU MSHCP or pursuant to Section 15.2, or (ii) within the TMV Planning Area Open Space Lands, an executed and recorded easement or other appropriately restricted conveyance to an entity approved by, and which contains terms acceptable to, USFWS that ensure the permanent protection of such lands for conservation purposes consistent with the TU MSHCP or pursuant to Section 15.2;
- (j) use of mining lease areas for plan-wide activities if and when mining leases expire; and
- (k) other types of modifications that the Parties agree are minor in relation to the TU MSHCP.

13.1.2 Other Modifications. Any other modifications to the TU MSHCP or this Agreement that do not meet the criteria set forth in Section 13.1.1 will be processed as amendments of the Permit in accordance with Section 13.2.

13.2 Amendment of the Permit. The Permittee may apply for other amendments to the Permit. The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA and the National Environmental Policy Act, and USFWS incidental take permit regulations. The Permittee shall provide a statement of the reasons for the amendment and an initial analysis of its environmental effects, including its effects on operations under the TU MSHCP and on the Covered Species.

13.3 Amendment of this Agreement. In addition to other approval requirements identified in Section 13 that may apply, this Agreement may only be amended consistent with the ESA and with the written consent of each of the Parties.

14.0 ADAPTIVE MANAGEMENT

14.1 Implementation of the TU MSHCP's Adaptive Management Provisions

Regarding the California Condor. Section 4.6 of the TU MSHCP provides for virtually no development in an important area of California condor use (the Condor Study Area), as well as significant other portions of the Covered Lands, and incorporates restrictions on development and design standards to minimize impact on the California condor. In addition, the TU MSHCP provides for use of the Condor Study Area and the Covered Lands for specific California condor conservation and recovery activities, including supplemental feeding/trap and release program, if determined to be necessary by the USFWS. Given the significant preservation of land for the California condor under the TU MSHCP and the Tejon Ranch Conservation and Land Use Agreement, and the California condor mitigation and conservation and recovery measures included in the TU MSHCP, the adaptive management measures are limited to those set forth in Section 4.6 and 7.6 of the TU MSHCP.

14.2 Implementation of the TU MSHCP's Adaptive Management Provisions

Regarding Other Covered Species. In order to meet the goals and objectives identified

in Section 7 of the TU MSHCP, the adaptive management measures for other Covered Species will be informed by the effectiveness monitoring, and implemented as set forth in the TU MSHCP.

14.3 Limits on Adaptive Management Changes. All adaptive management changes beyond those specified in the TU MSHCP or provided for in this Agreement must be consistent with the No Surprises Assurances Rule.

14.4 Reductions in Mitigation. Permittee will not implement adaptive management changes that may result in less mitigation than provided for the Covered Species under the original terms of the TU MSHCP, unless the USFWS first provides written approval. Permittee may propose any such adaptive management changes by notice to the USFWS, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on the Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the USFWS will use its reasonable efforts to approve the proposed adaptive management changes, approve them as modified by the USFWS, or notify Permittee that the proposed changes would necessitate a Permit amendment that must be reviewed under Section 13.2.

14.5 No Increase in Take. This Section 14.0 does not authorize any adaptive management changes that would result in an increase in the level and nature of incidental take, or increase the impacts of incidental take, of the Covered Species beyond those analyzed in connection with the original TU MSHCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under Section 13.2.

15.0 LAND TRANSACTIONS

15.1 Acquisition of Land by Permittee. Nothing in the TU MSHCP, the Agreement, or the Permit limits Permittee's right to acquire lands not currently owned by TRC within or

adjacent to the Covered Lands. Any lands outside the boundaries of the Covered Lands that may be acquired will not be covered by the Permit except upon amendment of the Permit in accordance with all applicable laws and regulations. Any inholdings within the boundaries of the Covered Lands to a maximum of 3,870 acres (“Additional Lands”) that may be acquired by Permittee may be covered by the Permit without amendment to the Permit provided the terms and conditions specified in Sections 15.1.1 and 15.1.2 are met.

15.1.1 Limitations on Inclusion of Acquired Lands as Covered Lands. The Permit will take effect with regard to Covered Activities on Additional Lands upon verification by USFWS that Permittee has provided evidence of legal control sufficient to implement the provisions of the TU MSHCP, this Agreement, and the Permit on such Additional Lands. Such Additional Lands shall become Covered Lands on satisfaction of the procedure provided in Section 15.1.2. Notwithstanding inclusion of Additional lands as Covered Lands, no development related Covered Activities may occur on any Additional Lands located outside of Development Areas.

15.1.2 Procedure to Add Additional Lands as Covered Lands and Extend Permit Coverage to Additional Lands. Permittee shall submit to the USFWS a notice to include Additional Lands under the Permit accompanied by a map showing the location and boundaries of the Additional Lands and a complete description of 1) the type of interest acquired, 2) all relevant baseline conditions on the Additional Lands, 3) the Covered Activities that will occur on the Additional Lands, and 4) the amount and timing of take of Covered Species, if any, anticipated to occur on the Additional Lands. Such Additional Lands will be included under the Permit as Covered Lands if USFWS concludes that extension of the TU MSHCP provisions to the Additional Lands will not result in significant impacts to the Covered Species not analyzed or mitigated under the TU MSHCP or other

significant environmental effects not analyzed under the Environmental Impact Statement prepared for the original TU MSHCP and will not result in unauthorized take under the Permit.

15.2 Transfer of Ownership or Control of the TU MSHCP Mitigation Lands.

Permittee may not transfer ownership or control, including fee title or a conservation easement, of any portion of the TU MSHCP Mitigation Lands to a third party, other than an agency of the Federal government, unless a conservation easement has been recorded pursuant to Section 5.1.1(e), above. Permittee may transfer all or a portion of the TU MSHCP Mitigation Lands to an agency of the Federal government if, prior to the transfer, the USFWS determines in writing that transfer will not compromise the effectiveness of the TU MSHCP based on adequate commitments by that agency regarding management of such land. Transfers of all or portions of the TU MSHCP Mitigation Lands under this section may be processed as minor modifications to the TU MSHCP in accordance with Section 13.1.

15.3 Disposal of other Covered Lands by Permittee. Nothing in this Agreement is intended, or shall be construed, to restrict Permittee's right to dispose, including by conveyance of fee title or other property interest, of any Covered Lands other than TU MSHCP Mitigation Lands which are addressed in Section 15.2 of this Agreement, except as follows:

- (a) Development Areas. The existence and applicability of the TU MSHCP shall be disclosed to parties who acquire an interest in lands within the Development Areas. Lands disposed of within the Development Areas shall continue to be Covered Lands, and Permittee shall continue to enforce applicable provisions of the TU MSHCP, including the CC&Rs during the Permit Term and after the Permit term, in

accordance with Section 6 of this Agreement, or, if the Permit terminates early, in accordance with Section 7.0 of this Agreement.

- (b) Other Covered Lands. Upon disposition by Permittee, the Covered Lands occupied by the National Cement Mine, La Liebre Mine and National Cemetery identified in Table 2-1 of the TU MSHCP shall no longer be Covered Lands and shall no longer be eligible to be covered by the incidental take authorization provided by the Permit or subject to the provisions of the TU MSHCP.

16.0 MISCELLANEOUS PROVISIONS

16.1 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the TU MSHCP shall make or be deemed to make USFWS the agent for or the partner of Permittee, either individually or collectively, or to make Permittee, either individually or collectively, the agent for or partner of USFWS.

16.2 Tejon Ranch Conservation and Land Use Agreement. Except where, and to the extent that, provisions of the Tejon Ranch Conservation and Land Use Agreement are expressly made applicable to the TU MSHCP, this Agreement or the Permit, nothing in this Agreement, the TU MSHCP or the Permit constitutes adoption of the Tejon Ranch Conservation and Land Use Agreement as part of the TU MSHCP, this Agreement or the Permit or subordinates the terms and conditions of the TU MSHCP, this Agreement and the Permit to the Tejon Ranch Conservation and Land Use Agreement. In particular, the issuance of the Permit to Permittee for take associated with Covered Activities does not constitute review under the ESA, or other federal law, or approval of take associated with, any other activity on Tejon Ranch that may affect listed species, including, but not limited to, possible rerouting of Pacific Crest Trail, or the establishment of a state park or University of California natural reserve on Tejon Ranch.

16.3 Successors And Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

16.4 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and bearing the addresses set forth in this Section 16.4, or at such other address as either Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means and shall be effective upon receipt, provided that promptly thereafter, they are also delivered personally by certified mail.

Field Supervisor
Ventura Field Office
United States Fish and Wildlife Service
2493 Portola Road
Ventura, CA 93003

Derek Abbott
Vice President –Community Development and
Resource Planning
Tejon Ranchcorp
P.O. Box 1000
Lebec, CA 93243

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Roberta Marshall
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Tejon Mountain Village LLC
c/o DMV Pacific Ventures
801 Montgomery Street, Ste 200
San Francisco, CA
94133

Elizabeth Lake
Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94111

16.5 Incorporation into Permit. This Agreement and the TU MSHCP shall be incorporated as terms and conditions of the Permit. In the event of any direct contradiction among the provisions of the TU MSHCP, the terms of this Agreement or the terms of the Permit, the terms of the Permit shall control. Notwithstanding this Section 16.5, any agreement made under *Tejon Ranch Co. v. United States Fish and Wildlife Service*, No. Civ-F-97-6261 REC SMS (E.D.Cal.) shall remain in effect until the lawsuit is dismissed with prejudice or the Parties jointly inform the court that the agreement is no longer in effect. Each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied in the TU MSHCP, this Agreement, the Permit, or the lawsuit.

16.6 Defense of Permit. The USFWS and Permittee acknowledge that Permittee has a significant and independent interest in maintaining the validity and effectiveness of the TU MSHCP, this Agreement, and the Permit, and supporting documentation, including documentation under the National Environmental Policy Act and ESA, and that Permittee's interests may not be adequately protected or represented in the event of a judicial challenge to the Permit unless Permittee is able to participate in such litigation. Subject to Section 16.13 (Availability of Funds), the USFWS will, upon the request of Permittee, and subject to the responsibilities of the U.S. Department of Justice in the conduct of litigation, use reasonably available resources to provide appropriate support to Permittee in defending, consistent with the terms of the TU MSHCP, this Agreement, and the Permit, lawsuits against Permittee arising out of the USFWS's approval of the Permit.

16.7 Execution/Duplicate Originals. This Agreement may be executed in duplicate originals. Each Party shall maintain in its records a complete original of this Agreement.

16.8 Third Party Beneficiaries. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. Section 1540(g), this Agreement shall not create any right or interest in the public, or any member of the public, as a third party beneficiary hereof, nor shall it authorize anyone to maintain a suit for personal injuries or property damages or any other cause of action pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing Federal or State law.

16.9 Relationship To ESA And Other Authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA, and other applicable Federal and State laws and regulations. In particular, nothing in this Agreement is intended to limit the authority of the USFWS to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the USFWS as an agency of the Federal government.

16.10 References To Regulations. Any reference in the TU MSHCP, this Agreement, or the Permit to any regulation or rule of the USFWS shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

16.11 Applicable Laws. All activities undertaken pursuant to the TU MSHCP, this Agreement, or the Permit must be in compliance with all applicable Federal laws and regulations.

16.12 Terms Used. Terms defined in the ESA or in regulations adopted by USFWS under the ESA shall have the same meaning when utilized in this Agreement.

16.13 Availability of Funds. This Agreement is subject to the requirements of the Anti-

Deficiency Act and, where applicable, 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 that USFWS 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.

16.14 Injunctive and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of the Permit.

16.15 Agreement not an Enforceable Contract. Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the USFWS and Permittee under law with regard to the Permit and neither party to this Agreement shall be liable in damages to the other party or any other person for any performance or failure to perform any obligation identified in this Agreement. The sole purposes of this Agreement as between the USFWS and Permittee are to clarify the provisions of the TU MSHCP and the processes the Parties intend to follow to ensure the successful implementation of the TU MSHCP in accordance with the Permit and applicable Federal law.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing Agreement as of the dates signed below:

President and Chief Executive

Officer Tejon Ranchcorp

Lebec, California

Deputy Regional Director, Region 8

United States Fish and Wildlife Service

Sacramento, California

EXHIBIT A
Certificate of Inclusion

Certificate of Inclusion

Tejon Ranch Multiple Species Conservation Plan

The United States Fish and Wildlife Service has issued Permits under Section 10 of the Endangered Species Act, 16 U.S.C. 1539(a)(1)(b) to _____, ("Permittees") authorizing the incidental take of certain species ("Covered Species") in accordance with and subject to the terms and conditions of the Permits, the Tejon Ranch Multiple Species Habitat Conservation Plan (MSHCP) and the associated Implementing Agreement. Under the Permits, the Permittees are authorized to take the Covered Species incident to certain activities (Covered Activities) as defined in the MSCHP provided all applicable terms and conditions of the Permits, the MSCHP and the associated Implementing Agreement are met. In accordance with 50 C.F.R. 13.25(d), the Permittees may extend the incidental take authorization granted to them under the Permits to certain third parties, provided such third parties are under their direct control for purposes of implementing the requirements of, and complying with the terms and conditions of the MSCHP, Implementing Agreement and Permits.

You are engaged in _____, which is one of [are among] the Covered Activities covered by the Permits. [Or you are the owner/operator of the property depicted on Exhibit ____, incorporated herein by this reference and are engaged in _____, which is one of the Covered Activities covered by the Permits.] By executing this Certificate of Inclusion, you commit to comply with all of terms and conditions, and implement all of the requirements of the MSCHP, the Implementing Agreement and the Permits applicable to the Covered Activity in consideration for Permittees' extending take authorization under the Permits to you. [Such terms and conditions and requirements are specified in Exhibit __ which is incorporated herein by this reference.] By executing this Certificate of Inclusion, you further acknowledge and consent to the enforcement against you of the terms and conditions and applicable requirements of the MSCHP, the Implementing Agreement and the Permits by the Permittees and consent to allow access to your property, in accordance with Section _____ of the Implementing Agreement, by Permittees and the U.S. Fish and Wildlife Service for purposes of monitoring your compliance with the MSCHP, Implementing Agreement and the Permits. If you fail to abide by the terms and conditions of the MSCHP, Implementing Agreement and the Permits in carrying out the Covered Activity, the incidental take authorization granted to you through the Certificate of Inclusion will lapse and you may also be subject to civil or criminal liability under the Endangered Species Act.

Extension to you of Incidental Take coverage under the Permits will become effective upon execution of this Certificate of Inclusion by you and by Permittees. In the event that the subject property is sold or leased or the Covered Activity is assumed by another, you agree to immediately notify Permittees. Any subsequent owner or operator will not be insulated from liability for incidental take until and unless such subsequent owner or operator and the Permittees execute a new Certificate of Inclusion.

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EXHIBIT B
Conservation Easement Deeds

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED
for the Condor Study Area
(Including Third-Party Beneficiary)

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made this ____ day of _____, 20____, by Tejon Ranchcorp ("Grantor"), in favor of Tejon Ranch Conservancy ("Grantee") (Grantor and Grantee are referred to each individually as "Party" and collectively as the "Parties"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately 37,099 acres located in the County of Kern, State of California, as more particularly described in Exhibit A attached hereto, and depicted for illustrative purposes only on the figure attached hereto as Exhibit B (the "Easement Property"). The Easement Property is part of a larger property commonly known as "Tejon Ranch," which comprises approximately 270,000 acres located in Los Angeles and Kern Counties and is depicted for illustrative purposes only on the figure attached hereto as Exhibit C ("Tejon Ranch" or "Ranch"). Tejon Ranch is owned in whole by Grantor.

B. On [XXX] Grantor entered into an Implementing Agreement ("IA") dated [XXX] under the Endangered Species Act ("ESA") for the Tehachapi Uplands Multiple Species Habitat Conservation Plan ("TU MSHCP") and Incidental Take Permit No. [XXX], approved on [XXX] by the U.S. Fish and Wildlife Service ("USFWS"), that among other things, requires Grantor to permanently protect and conserve 116,523 acres of Tejon Ranch (identified in the TU MSHCP and IA as the portion of "Established Open Space" within the Covered Lands and "TMV Planning Area Open Space" and depicted in Exhibit D (together, "TU MSHCP Mitigation Lands"), which includes the 37,099 acre Easement Property, for the benefit of the California condor and 26 other threatened, endangered and sensitive species ("Covered Species") and their habitats. The TU MSHCP mitigates for the impacts to the Covered Species and their habitats of "Covered Activities" as defined in the TU MSHCP, including the TMV Planning Area development and associated infrastructure, and other identified activities on certain portions of Tejon Ranch by Grantor and/or certain third parties under its direct control. Compliance with the TU MSHCP and IA, including permanent conservation of the Easement Property is required as a condition of Incidental Take Permit No. [XXX]. (The TU MSHCP, IA, and Incidental Take Permit are collectively referred to hereafter as the "ESA Permit.") The ESA Permit is incorporated herein by this reference. A complete copy of the ESA Permit is available at [XXX].

C. The Easement Property, identified as the "Condor Study Area" in the ESA Permit, is located within the Established Open Space, and is depicted on Exhibit D. Among other provisions, the ESA Permit requires that Grantor record a permanent conservation easement over the Easement Property identifying the USFWS as a third party beneficiary of the conservation easement with a right of access to the Easement Property and a right to enforce the terms of the conservation easement.

D. This Conservation Easement is intended to satisfy Grantor's obligation to convey a conservation easement over the Easement Property pursuant to the ESA Permit.

E. Grantor also agreed to convey conservation easements to Grantee over various portions of Tejon Ranch (the "Conserved Lands"), which includes the Easement Property and the remainder of the TU MSHCP Mitigation Lands except the TMV Planning Area Open Space, in accordance with the terms and conditions of that certain Tejon Ranch Conservation and Land Use Agreement, dated June 17, 2008 (as the same may be amended from time to time, the "Ranch Agreement"), by and among Natural Resources Defense Council, Inc., a New York nonprofit corporation; National Audubon Society, Inc., a New York nonprofit corporation, doing business in California as Audubon California; Planning and Conservation League, a California nonprofit public benefit corporation; Sierra Club, a California nonprofit public benefit corporation; and Endangered Habitats League, Inc., a California nonprofit public benefit corporation; Tejon Ranch Co., a Delaware corporation; Grantee; and Grantor. On April 29, 2009, a Memorandum of the Ranch Agreement was recorded in the Official Records of Kern County as Instrument No. 20904943. To date, conservation easements have been recorded over approximately 62,000 acres of the Conserved Lands, a portion of which are within the Covered Lands and referred to as the "Existing Conservation Easement Areas" in the ESA Permit. Conservation easements over those areas were purchased with funding by the Wildlife Conservation Board and are not TU MSHCP Mitigation Lands. The Conserved Lands are depicted for illustrative purposes only on the figure attached hereto as Exhibit E. Pursuant to the Ranch Agreement, a conservation easement for the Easement Property is required to be granted to Grantee ("Ranch Agreement CE") over the Conserved Lands. The form of the Ranch Agreement CE is attached hereto as Exhibit F.

F. Pursuant to the Ranch Agreement, Grantee must adopt a Ranch-Wide Management Plan (the "RWMP") to identify and assess the natural resource and conservation attributes of the Conserved Lands (which includes portions of the TU MSHCP Mitigation Lands excepting the TMV Planning Area Open Space on Exhibit D), and provide for both the protection and conservation of the natural resources of the Conserved Lands and the continued use of such lands for ranching, hunting, and other Ranch uses, as more particularly described in the Ranch Agreement. On September 18, 2009, Grantee approved an interim RWMP ("Interim RWMP") documenting existing best management practices ("BMPs") for ranching, hunting and other ranch uses and included plans for grazing management, pest management, and fuel management, as well as the Public Access Plan (as defined in ESA Permit). Pursuant to the Ranch Agreement, an initial RWMP, which will replace the Interim RWMP is required to be prepared and adopted by Grantee on or before June 17, 2013, and revisions thereto are to be adopted at intervals of no less than five (5) years thereafter as more particularly set forth in the

Ranch Agreement (the initial RWMP, as periodically updated and amended, is hereinafter referred to as the "RWMP").

G. Pursuant to the ESA Permit, during and after the ESA Permit term, the RWMP as well as the Grazing Management Plan, Integrated Pest Management Plan, Fuel Management Plan, and Public Access Plan ("Other Management Plans"), which may be incorporated into the RWMP, must be reviewed by the USFWS in accordance with the procedures set forth in Section 8.

H. The Easement Property possesses significant conservation values as listed below (collectively referred to in this Conservation Easement as the "Conservation Values") that are to be protected pursuant to and consistent with the terms of this Conservation Easement and that are of great importance to Grantor, Grantee and the people of the State of California and the people of the United States:

1. The Easement Property contains open space land important to maintaining various natural communities, including, but not limited to chaparral, scrub, conifer forest, savannah, woodland and grassland communities.

2. The natural communities and habitats on the Easement Property reflect more than a century of ranching, farming, hunting, and other uses, are generally devoid of urban development, mass grading, or similar significant human alterations, and support the communities and species on the Easement Property.

3. The Easement Property also supports several watersheds, including but not limited to portions of El Paso and Tunis creeks. The watersheds on the Easement Property support natural watershed functions and aquatic, wetland, and riparian habitats.

4. The Easement Property provides significant regional landscape connectivity functions, and its protection will ensure that this function will be maintained, and that this area and its existing features will remain available for its natural habitat values.

5. The Easement Property supports diverse flora and fauna dependent on its high quality natural communities, functional watersheds, intact ecosystem processes, and landscape connectivity, including habitat for the endangered California condor and other endangered, threatened and/or sensitive wildlife and plant species covered by the ESA Permit (collectively the "Covered Species"). The Covered Species on the Easement Property may include the following: California condor (*Gymnogyps californianus*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), Tehachapi slender salamander (*Batrachoseps stebbinsi*), American peregrine falcon (*Falco peregrinus anatum*), golden eagle (*Aquila chrysaetos*), bald eagle (*Haliaeetus leucocephalus*), white-tailed kite (*Elanus leucurus*), ringtail (*Bassariscus astutus*), Tehachapi pocket mouse (*Perognathus alticolus inexpectatus*), tricolored blackbird (*Agelaius tricolor*), least Bell's vireo (*Vireo bellii pusillus*), little willow flycatcher (*Empidonax traillii brewsteri*), southwestern willow flycatcher (*Empidonax traillii extimus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), burrowing owl (*Athene cunicularia*), yellow-blotched salamander (*Ensatina eschscholtzii croceater*), western spadefoot

(*Spea hammondi*), two-striped garter snake (*Thamnophis hammondi*), purple martin (*Progne subis*), coast horned lizard (*frontale* and *blainvilli* populations) (*Phrynosoma coronatum*), round-leaved filaree (*Erodium macrophyllum*), Fort Tejon woolly sunflower (*Eriophyllum lanatum* var. *hallii*), Kusche's sandwort (*Arenaria macradenia* var. *kuschei*), Tehachapi buckwheat (*Eriogonum callistum*), striped adobe lily (*Fritillaria striata*), Tejon poppy (*Eschscholzia lemmonii* ssp. *Kernensis*), and yellow warbler (*Dendroica petechia brewsteri*).

6. The Easement Property contains scenic resources, including but not limited to prominent peaks visible from a distance, and the protection of the Easement Property will provide a significant public benefit by preserving open space against development pressure and will protect scenic qualities unique to the area.

I. Grantor intends that the Conservation Values of the Easement Property be permanently preserved, maintained and protected, in perpetuity, subject to the terms and conditions of this Conservation Easement. To accomplish the conservation purposes (as set forth in Section 1), Grantor desires to convey to Grantee and Grantee desires to obtain from Grantor a perpetual conservation easement that restricts certain uses of the Easement Property and grants certain rights to Grantee in order to preserve, protect, and monitor the Easement Property as set out in more detail below.

J. Grantee is a nonprofit public benefit corporation incorporated under the laws of the State of California as a tax-exempt corporation described in Section 815.3 of the California Civil Code and Section 501(c)(3) of the Internal Revenue Code and the regulations promulgated thereunder, organized for the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

K. This Conservation Easement has been reviewed and approved by the USFWS as satisfying the requirements of the ESA Permit with regard to the subject matter hereof.

L. This instrument, when recorded, will (1) document Grantor's grant to Grantee of the subject Conservation Easement, and (2) set forth the rights and obligations of the Parties with respect to the Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Property in accordance with the terms and conditions hereafter set forth:

1. Purposes. The purposes of this Conservation Easement are to assure that (i) the Easement Property will be retained forever in its scenic and open-space condition consistent with the ESA Permit; (ii) the Easement Property uses will be restricted to (1) those activities specifically allowed in Section 4 (including Public Access uses governed by Section 4(c) and (f)), Section 5, Section 6, and Section 7(a) and (b) herein, and (2) any other additional use not specifically prohibited in Section 5 ("Additional Use") that is consistent with preservation of the

Conservation Values of the Easement Property and may be otherwise separately approved by the USFWS in accordance with the procedure described below; (iii) the Easement Property's ecological elements, scientific and aesthetic features and Conservation Values will be preserved and maintained in perpetuity consistent with the purpose of this Conservation Easement; and (iv) the Easement Property will be managed in perpetuity consistent with this Conservation Easement, the RWMP and the Other Management Plans.

Uses are "consistent with preservation of the Conservation Values of the Easement Property" if such uses would 1) either avoid adverse impacts to the species identified in Recital H(5) above and their habitats, on the Easement Property or 2) result in less than significant impacts to such species and habitats. Additional Uses may be proposed and if proposed, shall be subject to the process herein and shall be approved by USFWS unless USFWS determines the Additional Use is inconsistent with preservation of the Conservation Values of the Easement Property or out of compliance with this Conservation Easement and the ESA. Grantor may request such approval by providing written notification to USFWS of each proposed Additional Use and USFWS shall have 135 days after receipt of such written notification to provide written approval or be deemed to have waived its right of approval under this Conservation Easement (where early consultation has taken place, USFWS will undertake reasonable efforts to respond in a shorter timeframe). Approval or waiver by USFWS of its right of approval under this section of an Additional Use shall not absolve Grantor and Grantee of their obligation to obtain any necessary ESA authorization for such Additional Use. Further, a waiver by USFWS of its right of approval under this section shall not relieve Grantor or Grantee of their independent duty to comply with the ESA and this Conservation Easement or preclude USFWS from taking action to enforce the ESA or this Conservation Easement.

2. Mitigation Land Dedication. The Easement Property is the first area of TU MSHCP Mitigation Lands required to be dedicated as required by the ESA Permit, and is more particularly described on Exhibit A, as attached hereto and incorporated herein by this reference.

3. Subsequent Mitigation Land Dedications.¹ Subsequent TU MSHCP Mitigation Land dedications will occur pursuant to the schedule set forth in the IA. Nothing provided herein shall in any way alter the obligations of Grantor under the ESA Permit to execute and record conservation easements over the additional TU MSHCP Mitigation Lands or to impose any similar or dissimilar covenants, conditions or restrictions in the conservation easements executed and recorded on any of the additional TU MSHCP Mitigation Lands.

4. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the rights specified below to Grantee:

(a) To preserve, protect, and sustain the Conservation Values of the Easement Property. Under the Ranch Agreement, Grantee has the right to perform conservation activities

¹ This form relates to the Condor Study Area - the Initial Mitigation Lands in Established Open Space. A different CE template form(s) will be required for the Remaining Mitigation Lands in Established Open Space and the TMV Planning Area Open Space Initial Mitigation Lands. The TMV Planning Area Open Space Remaining Mitigation Lands may be conserved through conservation easement or other USFWS-approved legal restrictions. There may be substantive differences in prohibited uses and reserved rights in conservation easements covering the various lands.

beyond those required by the ESA Permit if and to the extent such additional conservation activities are included in a RWMP that has been adopted by Grantee pursuant to the Ranch Agreement (“Grantee Conservation Activities”). Such Grantee Conservation Activities, whether included in a RWMP or separately proposed by Grantee, may only be undertaken if and to the extent that they have been 1) reviewed and approved by USFWS (if undertaken during the ESA Permit term or at any time with regard to any Public Access Plan), or 2) reviewed and commented on by USFWS for compliance with the ESA and this Conservation Easement (if proposed following the ESA Permit term). All Grantee Conservation Activities shall be in accordance with the procedure set forth in the Ranch Agreement CE.

(b) To enter upon the Easement Property at reasonable times in order to 1) monitor compliance with and otherwise enforce the terms of this Conservation Easement, 2) carry out its obligations under the RWMP and Other Management Plans, and 3) assist USFWS in carrying out the obligations of the ESA Permit relative to management and monitoring activities. The access rights of USFWS, and the access rights of Grantee when acting to monitor compliance with or carry out its obligations under this Conservation Easement and, during the ESA Permit term, the ESA Permit, are set forth in Section 8. All other rights of access by Grantee shall be in accordance with the procedure set forth in the Ranch Agreement CE.

(c) Recognizing that the public enjoyment of the Conserved Lands, including the TU MSHCP Mitigation Lands and this Easement Property, under an approved Public Access Plan is a high priority for the Parties, and because the Conservation Values, including natural communities and habitats, include diverse flora and fauna, scenic resources, and important cultural and historical resources, Grantor agrees that appropriate access to the Easement Property by the public shall be provided and managed by Grantee, for the benefit of the people of the State of California and the people of the United States, provided such public access is consistent with preservation of the Conservation Values of the Easement Property and is in accordance with the Public Access Plan that has been reviewed and approved by USFWS, as provided in Section 4(f), below (“Public Access”);

(d) To enforce the terms and provisions of this Conservation Easement, prevent any activity on or use of the Easement Property that is inconsistent with the purposes of this Conservation Easement, including specifically, uses of air or water rights that are not consistent with preservation of the Conservation Values on the Easement Property in relation to either prohibited uses (Section 5) or reserved rights (Section 7(a) or (b)), and to restore or require the restoration of such areas or features of the Easement Property that may be damaged by any prohibited use that damages the Conservation Values of the Easement Property;

(e) All of Grantor's present and future rights to develop the Easement Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Property, nor any other property adjacent or otherwise. The foregoing shall not limit or restrict Grantor's reserved right to carry out any and all Covered Activities that are authorized to be conducted on the Easement Property as set forth in the ESA Permit, and to carry out and continue other ranch uses allowed under Section 7(a) and (b) herein, or an Additional Use as authorized in Section 1, in conformance with applicable laws, including the ESA; and

(f) Notwithstanding Section 4(c), nothing in this Conservation Easement conveys any right of access to the public at large or to any individual or entity other than to Grantee and the USFWS. Any and all public use shall be limited to the types and intensity of public use allowed in the Public Access Plan developed by Grantor and Grantee, which plan shall be consistent with the ESA Permit during the permit term and consistent with preservation of the Conservation Values of the Conservation Easement and the ESA after the Permit term, and which, both during and after the Permit term, shall require the review and approval of USFWS as provided in Section 8.1(c) and 8.2(c) herein; provided however, that any additional public access use not considered in the ESA Permit (e.g., development of recreational facilities, such as relocation of the Pacific Crest National Trail or establishment of a State Park or University of California Natural Reserve) must be reviewed and approved in writing by USFWS as consistent with preservation of the Conservation Values of the Easement Property and obtain any necessary ESA authorization.

5. Prohibited Uses. All uses of the Easement Property that are inconsistent with preservation of the Conservation Values of the Easement Property are prohibited. Notwithstanding the following list of prohibited uses, (i) reserved rights allowed under Section 7(a) and (b); (ii) activities allowed in Sections 4, 5 and 6, (iii) any Additional Use approved by USFWS in the future in accordance with Section 1, and (iv) any public use approved by USFWS in accordance with Section 4(c) and 4(f), are considered consistent with preservation of the Conservation Values of the Easement Property, provided that any necessary ESA authorizations are obtained.

- (a) Except for emergency response activities required by state or local fire agencies, fuel modification zones other than (i) existing roads which serve as de facto fuel modification zones and (ii) 120 foot buffers around allowed structures (i.e., back country cabins allowed under Section 7(a)(8), ancillary ranch structures allowed under Section 7(a)(9), and structures allowed in Sections 7(b)(5), (6) and (7));
- (b) Commercial and industrial uses; except that this prohibition does not apply to reserved uses allowed under Section 7(a) and (b), including the renewal or extension of existing leases or licenses or new leases covering such reserved uses, and including low-intensity uses that have historically occurred on the Easement Property such as beekeeping. Any other commercial or industrial use shall be subject to review by USFWS in accordance with the Additional Use process in Section 1;
- (c) Row crop agricultural practices;
- (d) Residential structures and uses;
- (e) Collection or removal of any native plant, native or non-native animal or microorganism, unless consistent with preservation of the Conservation Values of the Easement Property (including for example, seed collection for conservation and propagation purposes) and authorized or undertaken in compliance with relevant state and/or federal permits, authorizations or agreements (e.g., wildlife management activities allowed under Section 7(b)(6));

- (f) Deliberate introduction of any non-native plant or microorganism, or deliberate introduction of any non-native wildlife species unless consistent with preservation of the Conservation Values of the Easement Property and authorized or undertaken in compliance with relevant state and/or federal permits, authorizations or agreements (e.g., wildlife management activities allowed under Section 7(b)(6));
- (g) Deliberate introduction of native species unless required by the ESA Permit or with consent of Grantor and Grantee;
- (h) Disturbance, collection, or removal of cultural resources unless conducted under a survey, salvage or research program approved by Grantee as consistent with preservation of the Conservation Values of the Conservation Easement and conducted in compliance with relevant state and/or federal permits, authorizations or agreements;
- (i) Collection of rocks, soils and fallen trees unless conducted under a survey, salvage or research program approved by Grantee as consistent with preservation of the Conservation Values of the Conservation Easement;
- (j) Collection of cultural artifacts unless authorized by the appropriate state/federal agency and conducted in compliance with applicable state and /or federal permits, authorizations or agreements;
- (k) Use of fireworks is prohibited, and explosives (louder than a gun shot) or other abnormally loud noises (louder than a gun shot) are also prohibited;
- (l) The construction of permanent structures or production facilities for film production activities;
- (m) Wood fires outside designated fire rings, and outdoor wood fires anywhere in the Easement Property during extreme fire conditions;
- (n) Cigarette, cigar, pipe or other smoking outside designated areas;
- (o) Off road use of OHVs or other motorized vehicles except by Grantor when necessary to carry out a reserved right allowed under Section 7(a) or (b) or for emergency response; all use of OHVs or motorized vehicles in connection with Public Access shall be limited to on-road use that is necessary for transportation related to recreational uses allowed in the Public Access Plan (except as may be necessary for emergency response);
- (p) All pets off leash except in designated areas as specified in the Public Access Plan, or except in connection with livestock grazing and range management activities allowed under Section 7(a)(1), film production activities allowed under Section 7(a)(4), and wildlife management activities allowed under Section 7(b)(6);

- (q) Alcohol consumption outside designated areas;
- (r) Dumping of ashes, trash, garbage or other unsightly, offensive or toxic material or the storage or use of biocides and agricultural chemicals;
- (s) Nurseries (except for native plants in relation to planting, enhancement, restoration or mitigation activities on Tejon Ranch that do not involve permanent greenhouse or other structures);
- (t) Construction offices;
- (u) Maintenance yards;
- (v) Commercial stables;
- (w) Research and development facilities, except scientific research related to conservation activities;
- (x) Waste disposal operations and associated uses;
- (y) Storage facilities;
- (z) Mining and quarrying of materials;
- (aa) Materials recycling and recovery facilities;
- (bb) Citrus or other orchard crops;
- (cc) Dry farming;
- (dd) Irrigated crops;
- (ee) Packing plants;
- (ff) Public recreation except as authorized in the Public Access Plan approved by USFWS in accordance with Section 4(c) and 4(f);
- (gg) Commercial feed lots; except that the foregoing shall not prohibit temporary confinement or supplemental feeding conducted by Grantor or a lessee of Grantor in the course of its customary and routine ranching operations;
- (hh) Permanent fire station or permanent wildland fire training facility;
- (ii) Exploration, excavating, dredging, drilling, extraction, removal, production, storage, transport of hydrocarbon substances or minerals on the surface of, or below and within a depth of 500 feet of the surface of, the Easement Property. Exploration and extraction of such substances below a depth of 500 feet of the surface of the Easement Property is not prohibited, provided that said activities do

not compromise or impair the integrity of the protected habitat and species resources located on the Easement Property;

- (jj) Water use that expands groundwater extraction activities beyond that permitted or conducted on the Easement Property as of June 17, 2008 to the extent such use would cause subsidence or otherwise impact the surface in a manner that would be inconsistent with preservation of the Conservation Values of the Easement Property;
- (kk) Any alterations or improvements to the surface of the Easement Property in connection with water storage, including storage of water in underground aquifers, that would be inconsistent with preservation of the Conservation Values of the Easement Property;
- (ll) Water use that expands surface water diversion activities beyond that permitted or conducted on the Easement Property as of June 17, 2008 to the extent such use would be inconsistent with preservation of the Conservation Values of the Easement Property; except that Grantor reserves the right to relocate and use two existing surface diversions immediately upstream of the Easement Property, which consists of a weir and pipe, one on El Paso Creek and one on Tunis Creek, provided they are sited on the Easement Property in a manner consistent with preservation of the Conservation Values of the Easement Property;
- (mm) Use of lead ammunition (except to the extent used by public law enforcement agencies for public safety purposes);
- (nn) Installation, establishment or maintenance by Grantor or any third party under Grantor's control as of the effective date of the ESA Permit of any power generation, wind farms, or wind generation equipment including individual wind turbines or other power generation equipment, except where the location and the primary purpose of such equipment is to serve on-site electrical generation needs of uses allowed under Section 7(a) and (b) and if USFWS determines that such use is consistent with preservation of the Conservation Values of the Easement Property (for purposes of this paragraph (nn), a determination by USFWS that such use is consistent with preservation of the Conservation Values of the Easement Property shall include a determination that the device is of a design and in a location that would not pose any significant threat to any bird species identified in Recital H(5));
- (oo) Construction or maintenance by Grantor or any third party under Grantor's control as of the effective date of the ESA permit of any new vertical communication or other utility structures, excluding flexible or small antennas (e.g., whip antennas) under 20 feet in height; provided, however, that TRC may request, and the USFWS, in its sole discretion, shall review and may approve the design and location of any vertical communication, or other utility structures;

- (pp) Expansion of existing utilities by Grantor or any third party subject to Grantor's control as of the effective date of the ESA Permit or construction of any new utilities on the Easement Property by Grantor or any third party subject to Grantor's control as of the effective date of the ESA Permit, other than as allowed under (nn) and (oo); third-party utilities not under Grantor's control that maintain existing utilities, or wish to expand existing utilities or construct new utilities, on the Easement Property must independently comply with the ESA and other applicable laws);
- (qq) Construction of new roads, or improvements to existing roads on the Easement Property, other than new roads or improvements to existing roads 1) required by local jurisdictional authorities to provide emergency vehicle or other similar access to the TMV Planning Area, 2) necessary to carry out ranch uses allowed under 7(a) or (b), 3) approved as part of an Additional Use authorized under Section 1, or 4) determined by USFWS to be consistent with preservation of the Conservation Values of the Easement Property; and
- (rr) Vertical encroachments, i.e., development of structures into air space, except as authorized in Section 7(a) and (b) or as an Additional Use as authorized under Section 1.

6. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Property. In addition, Grantor shall undertake all necessary actions to protect the rights of Grantee under Section 4 of this Conservation Easement.

7. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Property, including the right to engage in or to permit or invite others to engage in all uses of the Easement Property that are (i) not prohibited or limited by this Conservation Easement, (ii) are consistent with preservation of the Conservation Values of the Easement Property and (iii) are in conformance with all applicable laws, including the ESA. Section 7(a) and (b) is not an exhaustive list of reserved uses and there may be uses similar to those in 7(a) and (b) that are allowed pursuant to the Additional Use process in Section 1.

(a) Covered Activities. Grantor expressly reserves the right to perform, and allow to be performed, all covered activities that are authorized to be conducted within the Easement Property as set forth in the ESA Permit (as the ESA Permit may be amended over time) ("Covered Activities"); provided that upon termination of the ESA Permit, Grantor shall remain responsible for obtaining any state and federal authorizations necessary to carry out such Covered Activities, including any authorization required under the ESA. Covered Activities relevant to the Easement Property include:

(1) Livestock Grazing and Range Management Activities. Grantor retains the right to conduct livestock grazing and range management activities, including: breeding; grazing; calving; livestock movement; construction, operation and maintenance of livestock watering facilities, feeding areas, fences, and corrals, consistent with types and level of

historical grazing and ranch management practices on the Easement Property (up to 14,500 head of cattle, or equivalent animal units, are permitted on the TU MSHCP Mitigation Lands); repair, reconstruction and relocation of roads to accommodate historical grazing and ranch management practices on the Easement Property; and repair, maintenance or installation of Ranch management communication equipment (e.g., whip antennas) that are less than 20 feet high. Livestock grazing and range management activities shall be performed, or caused to be performed, in accordance with Best Management Practices established for such use in the Grazing Management Plan, RWMP, and the ESA Permit.

(2) Fuel Management. Grantor retains the right to conduct fuel management through grazing and additional fuel modification activities limited to maintaining fuel modification zones created by 1) existing roads and 2) through irrigation and/or vegetation clearing and mowing within 120 feet surrounding existing structures, (i.e., back country cabins allowed under Section 7(a)(8), ancillary ranch structures allowed under Section 7(a)(9) and existing structures allowed in Sections 7(b)(5), (6) and (7)) on the Easement Property. All fuel management activities shall be performed, or caused to be performed, in accordance with BMPs established for such use in the Fuel Management Plan and RWMP and terms of the ESA Permit.

(3) Monitoring and Management Activities. Grantor retains the right to conduct monitoring and management activities necessary to carry out identified mitigation and implement the goals and objectives for Covered Species included in the ESA Permit and, subject to USFWS review in accordance with the Additional Use process in Section 1, any future mitigation requirements related to the Easement Property; provided however, that such review is limited to the mitigation activity and not the activities for which mitigation is required. Such activities may include habitat restoration that includes temporary disturbance pending revegetation and related enhancements.

(4) Film Production. Subject to the prohibitions in Section 5(k) and (l), Grantor retains the right to use, and to permit other parties to use, the Easement Property for temporary film and photography-related uses, including but not limited to, the filming and staging of movies, television shows and commercials, photo shoots and still photography, and related uses in accordance with the requirements of the RWMP and the ESA Permit, and following the ESA Permit term, provided that all film production activities are conducted in a manner consistent with the RWMP and with preservation of the Conservation Values of the Easement Property. Filming activities generally consist of temporary on-scene activities such as the erection and dismantling of props; temporary installation of trailers and equipment for film crews; filming of on-camera action; catering; rehabilitation of disturbed areas; and the movement of film crews to and from locations.

(5) Passive Recreation. Grantor, for itself and its private invitees, retains the right to conduct non-commercial passive recreational activities ("Private Recreation"), including: walking; hiking; sightseeing; climbing; limited equestrian uses; non-motorized biking on roads or trails; bird/wildlife watching and other nature study; photography; picnics; astronomy; archery and target shooting; cross country snow skiing, snow shoeing, sledding; and fishing and boating, but shall not include overnight camping except by Grantor and its employees consistent with past practices or as may be allowed under a Public Access plan approved by Grantee and by USFWS under Section 4(c) and 4(f). In addition, Grantor shall have

the right to use, and to permit its invitees to use, the Easement Property for other (including commercial) recreational uses to the extent permitted in the Public Access Plan approved by Grantee and by USFWS under Section 4(c) and (f). All Private Recreation is subject to the requirements that it be conducted in a manner that is consistent with preservation of the Conservation Values of the Easement Property, which shall mean that, at minimum, the activity must be planned to avoid sensitive areas and known species occurrences and to require the use of existing roads for access where possible.

(6) Repair, Maintenance and Use of Roads. Grantor retains the right to use, repair and maintain existing roads in the Easement Property in accordance with the restrictions in Section 5.

(7) Maintenance and Construction of Utilities. With respect to aboveground and sub-surface utilities, Grantor retains the right to maintain or replace utilities in existence as of June 17, 2008, the date of the Ranch Agreement, throughout the Easement Property in their current locations and footprint size. Grantor also retains the right to construct an above-ground emergency water line immediately adjacent to the existing Ranch road that generally follows the southwest border of the Easement Property. Except for ancillary ranch uses as provided in 7(a)(9), Grantor is prohibited from expanding existing utilities or constructing new utilities on the Easement Property or allowing third parties under its control from doing so. Third-party utilities not under Grantor's control that maintain existing utilities, or wish to expand existing utilities or construct new utilities, on the Easement Property must independently comply with the ESA and other applicable laws.

(8) Back Country Cabins. Grantor retains the right to maintain and use the two back country cabins that currently exist on the Easement Property. The two existing back country cabins may be maintained, improved, repaired, replaced or reconstructed in their existing locations, within their existing footprints and without substantial increase in height. Additionally, the two cabins may be expanded, removed and constructed new in a different location within the Easement Property with the approval of Grantee and USFWS if USFWS determines that such activity is consistent with preservation of the Conservation Values of the Easement Property. No other back country cabins may be constructed on or relocated to the Easement Property. Power for relocated cabins must be undergrounded pursuant to Section 7(a)(9) or power may be generated on or near the cabin location so long as the USFWS reviews and approves the power generation or sources and provides a written determination that such activity is consistent with preservation of the Conservation Values of the Easement Property.

(9) Ancillary Ranch Structures. Grantor retains the right to preserve and maintain structures in existence as of the date of the Ranch Agreement, June 17, 2008, that support ranching activities, including squeezes, loading chutes, holding and feeding fields, corrals, branding traps, barns, sewage disposal facilities, livestock and wildlife watering facilities, and utilities serving ranch uses. Grantor additionally retains the right to maintain, expand existing, construct new, relocate or remove any ancillary ranch structures on the Easement Property provided that such activity is de minimis. De minimis activities means maintenance, expansion, construction, relocation, or removal of structures, including any squeezes, loading chutes, holding and feeding fields, corrals, catch pens, minor watering facilities (such as troughs), water distribution facilities, livestock and wildlife watering facilities,

branding traps, signs, and other, similar types of activities as necessary to support existing ranch uses as defined in the TU MSHCP at historical levels; de minimis activities shall not include construction or relocation of new barns, roads, watering facilities that are not minor (stock ponds and modifications of springs, ponds, and other natural water bodies are not considered minor), power transmission lines and other associated facilities, oil and gas pipelines and associated facilities and other, similar types of activities. The enlargement, expansion, or new construction of ancillary ranch structures (excluding back country cabins which are addressed in Section 7(a)(9)) in existing locations, within existing footprints, and without a substantial increase in height, also constitutes a de minimis activity; any other enlargement, expansion or new construction is not considered de minimis. Non-de minimis activities associated with ancillary ranch structures are allowed 1) if the activity is located in disturbed areas (e.g., undergrounding utilities in road rights of ways), or 2) following a meet and confer process with the Grantee and USFWS to insure that the activity associated with an ancillary ranch structure avoids or minimizes impacts to species identified in Recital H(5) and their habitats.

(10) Fencing. Grantor retains the right to maintain existing fences and construct and maintain new fencing, as required to support 1) existing ranch uses as defined in the TU MSHCP and 2) mitigation, enhancement or restoration, provided that new fencing may only be built to the extent that the new fencing, by design and location, would not unreasonably interfere with the movement, nesting, or foraging of, and would avoid known occurrences of, the Covered Species and any other ESA listed species, and provided further that any new fencing is in accordance with the ESA Permit, the BMPs established for such activities in the RWMP and preservation of the Conservation Values of the Easement Property.

(b) Additional Reserved Rights and Uses. Without limiting Section 7(a), Grantor reserves the right to perform, and to allow to be performed, the following activities on the Easement Property, provided Grantor obtains authorization under the ESA, if required, prior to the exercise of such activities and all such reserved rights and uses are carried out in a manner that is consistent with preservation of the Conservation Values of the Easement Property:

(1) All activities reasonably required to comply with (i) applicable laws, including the ESA; and (ii) any mitigation requirements imposed pursuant to any local, state or federal approval of development (a) covered by the ESA Permit provided that all such activities must be carried out in accordance with the ESA; or (b) on Tejon Ranch provided that all such activities must be carried out in accordance with the ESA and must be reviewed by USFWS in accordance with Additional Use process in Section 1, provided however, that such review is limited to the mitigation activity and not the activities for which mitigation is required. The initial preservation, protection or conservation of the biological and physical conditions on the Easement Property existing as of the effective date of the Permit may not be used to satisfy any such mitigation obligation imposed by the USFWS beyond the TU MSHCP (except that the USFWS acknowledges that other agencies may credit Grantee's preservation activities for mitigation imposed by such other agencies), and any restoration, enhancement or similar mitigation activities shall not result in unpermitted take or otherwise violate the ESA. For purposes of this paragraph, "mitigation" means conservation, preservation, monitoring, enhancement and restoration of land and natural resource values to mitigate the natural resource impacts of development covered by the ESA Permit or other development on Tejon Ranch.

(2) Subject to the requirements of Section 5.1.3 – 5.1.6 of the IA, all activities of third parties permitted under, and all activities of Grantor reasonably required to comply with its obligations under, any contract, lease or agreement in existence as of the effective date of the ESA Permit, including options that may be exercised without consent of Grantor ("Third Party Agreements"); provided, however, that nothing herein shall be construed or interpreted as authorizing such third party or Grantor activities under the ESA, and such third parties and Grantor, as applicable, remain liable for any violations of the ESA notwithstanding the existence of, or compliance with, such Third Party Agreement(s).

(3) Entering into, terminating, amending or modifying any Williamson Act Contract; provided however, that in no event shall any new Williamson Act Contract or amendment or modification of an existing Williamson Act Contract allow or require any use of the Easement Property not otherwise permitted in this Conservation Easement.

(4) Subject to Section 4(d) and Sections 5(jj), (kk) and (ll), use by Grantor of its rights to use surface or groundwater in a manner that is consistent with preservation of the Conservation Values of the Easement Property.

(5) Erecting, maintaining, repairing, modifying, replacing, or removing signs on the Easement Property, including, but not limited to, directional signs, signs denoting allowable uses, and signs used to control unauthorized entry or use of the Easement Property; provided, however, that Grantor shall not erect or permit the erection of any new billboard signs on the Easement Property and provided that the placement of any relocated signs is without a substantial increase in height, is in accordance with the ESA Permit, the ESA and the BMPs established for such activities in the RWMP and is consistent with preservation of the Conservation Values of the Easement Property.

(6) Subject to the restrictions in Section 5(p), the right to use, and to permit other parties to use, the Easement Property for the following wildlife management activities: creating, operating and maintaining commercial and non-commercial hunting programs, managing invasive mammal species such as wild pigs, non-consumptive wildlife viewing, security and patrolling and related uses. Grantor shall perform, or cause to be performed, all such activities in a manner consistent with preservation of the Conservation Values of the Easement Property. Grantor retains the right to expand existing, construct new, relocate or remove any incidental hunting facilities on the Easement Property that are or will be used in connection with this reserved right, provided that such activity is de minimis and is consistent with preservation of the Conservation Values of the Easement Property. De minimis activities means expansion, construction, relocation or removal of any sign-in boxes for permitted hunting activities, gun sighting boxes and other, similar types of activities on the Easement Property. Grantor shall require as part of its wildlife management prescriptions a permanent prohibition on the use of lead ammunition in connection with any permitted hunting on the Easement Property.

(7) The right to preserve, use, maintain, repair, improve, replace and/or reconstruct in its existing location, within its existing footprint and without a substantial increase in height the following existing structures on the Easement Property consisting of the McKenzie Cabin, Sandburg Lodge, and Winter's Homestead, provided that the structures may

not be used for habitation and provided that such activity is consistent with preservation of the Conservation Values of the Easement Property.

(8) The right to permit Native American tribes to continue traditional Native American tribal uses on those portions of the Easement Property being used by such tribes as of June 17, 2008, the date of the Ranch Agreement so long as such uses are carried out in conformance with applicable law.

8. USFWS and Applicable Grantee Rights and Obligations.

8.1 During the period that the ESA Permit remains in effect:

(a) USFWS shall have the right to access the Easement Property for the purpose of ensuring compliance with the ESA Permit, and laws and regulations applicable to the ESA Permit, and/or undertaking any activities that are necessary to protect the Covered Species and both USFWS and Grantee shall have the right of access to the Easement Property for the purpose of exercising their rights and obligations under the Conservation Easement. Except where specified below, such entry will occur under the following conditions: (i) at reasonable hours; (ii) in a manner consistent with the purpose of the entry, that minimizes any disruption of the Covered Activities or any other operation of Grantor or others who become covered by the ESA Permit; (iii) after provision of advance notice to Grantor; and (iv) with the opportunity for an agent or employee of Grantor to accompany Grantee's or USFWS's agent or employee. These conditions on entry will not apply in the following circumstances: (1) when the USFWS has reason to believe a Covered Species is at risk of injury or death and an immediate response is necessary; or (2) when the USFWS has reason to believe a violation of the ESA Permit, or laws or regulations applicable to the ESA Permit, has occurred or may be occurring which, in the USFWS's good-faith judgment, warrants immediate or noticeless access; or (3) entry, without consent, is otherwise for law enforcement purposes consistent with the Fourth Amendment to the Constitution; and, if USFWS exercises its right of entry pursuant to (1), USFWS will use its reasonable efforts to provide notice of its entry to Grantor within 48 hours after such an entry.

(b) USFWS shall have the right to enforce the ESA Permit and USFWS and Grantee shall have the right to enforce the terms of this Conservation Easement as set forth in Section 9.

(c) After issuance of the ESA Permit, USFWS shall have the right and obligation to review and approve the RWMP and Other Management Plans, including the Public Access Plan, and any revisions or amendments to such plans, excluding Integrated Pest Management Plan and revisions thereto, for which the USFWS shall have the right to review and comment, during the ESA Permit term in accordance with the terms of this section. The sole purpose of the USFWS's review of the RWMPs and/or Other Management Plans, including the Public Access Plan, and revisions or amendments thereto during the ESA Permit term is to ensure that with regard to the portions of those plans that address the Covered Lands, the plans comply with the ESA and are consistent with the ESA Permit, and this Conservation Easement. Within 90 days of receipt of each plan, the USFWS shall use its reasonable efforts to review and either approve or request modifications to the plan, and with regard to the Integrated Pest Management Plan, to review and comment on, and recommend any appropriate modifications to,

the plan. In the case of undisputed requested modifications, Grantee and Grantor shall revise the affected plan within 120 days of receipt of written notice of the requested modifications. In the event of a disagreement over the contents of the affected plan or disputed requested modification, the parties shall sever the disputed portion of the plan, and the parties shall meet to resolve the issues and may utilize the informal dispute resolution process set forth in the IA Section 12.3.1. With the exception of the integrated pest management plan, Grantor and Grantee shall revise the affected plan, to incorporate changes identified by USFWS within 120 days after completion of discussions among USFWS, Grantor and Grantee, including completion of the informal dispute resolution process, if such process is utilized by the parties. With regard to the integrated pest management plan, Permittee may incorporate changes recommended by USFWS. For the undisputed portions of the affected plan, USFWS shall issue approval of the remainder of the plan, other than the Integrated Pest Management Plan, and the Grantee and Grantor shall implement such changes within 120 days of the written notice of approval. Additionally, until such time as the RWMP, or any of the Other Management Plans, is submitted to the USFWS, management of the Easement Property shall be consistent with the terms of the ESA Permit and this Conservation Easement, and in the event of any conflict between the existing Interim RWMP (which was approved by Grantee in 2009 consistent with the Ranch Agreement) and the ESA Permit or this Conservation Easement, the terms of the ESA Permit and this Conservation Easement shall control. Neither Grantee nor Grantor shall perform, or allow a third party subject such Party's control, to perform any action or activity on the Easement Property pursuant to the Ranch Agreement or the Ranch Agreement CE, if the USFWS has provided notice that such action or activity is contrary to the ESA Permit, this Conservation Easement, or the ESA.

8.2 Following the expiration of the ESA Permit:

(a) USFWS and Grantee shall have the right to access the Easement Property in the manner set forth in Section 8.1(a) above;

(b) USFWS shall have the right to enforce the ESA and USFWS and Grantee shall have the right to enforce the terms of this Conservation Easement as set forth in Section 9 below;

(c) USFWS shall have the right to review and approve all Public Access Plans, including revisions thereto, developed after expiration of the Permit, and the right to review and comment on the RWMP and Other Management Plans (other than Public Access Plans), including revisions thereto, developed after the expiration of the Permits, until or unless the USFWS determines that its review of the such plans (including the Public Access Plan) is no longer warranted. The sole purpose of the USFWS's review of the RWMPs and/or Other Management Plans (including the Public Access Plan), including revisions to such plans, after the ESA Permit term is to ensure that with regard to the portions of those plans that address the Covered Lands, the plans comply with the ESA and are consistent with the Conservation Easement. With respect to the RWMP and Other Management Plans (except the Public Access Plan), the USFWS shall notify the Grantor and Grantee in the event that an RWMP or Other Management Plan (other than Public Access Plan), including revisions to such plans, would result in any non-compliance with the ESA or this Conservation Easement. With respect to the Public Access Plan, the USFWS may either approve or request modifications to the plan. In the case of undisputed requested modification(s), Grantee and Grantor shall revise the affected plan

within 120 days of receipt of written notice of the requested modification(s). In the event of a disagreement over the contents of the plan or disputed requested modification, the parties shall sever the disputed portion of the affected plan, and the parties shall meet to resolve the issues and may utilize the informal dispute resolution process set forth in the IA Section 12.3.1. Grantor and Grantee shall revise the affected plan to incorporate changes identified by USFWS within 120 days after completion of discussions among USFWS, Grantor and Grantee, including completion of the informal dispute resolution process, if such process is utilized by the parties. For the undisputed portions of the plan, USFWS shall issue approval of the remainder of the affected plan and the Grantee and Grantor shall implement such changes within 120 days of the written notice of approval. Notwithstanding the foregoing review and approval rights with respect to Public Access Plans, and review and comment rights with respect to the RWMP and Other Management Plans (other than Public Access Plans), (i) with respect to any Public Access Plan, if USFWS has not provided written determination of either approval or non-compliance/disapproval (and to the extent of non-compliance or disapproval only for the foregoing reasons) within 135 days of receipt thereof, or (ii) with respect to any RWMP or Other Management Plans (other than Public Access Plans), to the extent USFWS has not provided written comments (and in such case, only with respect to the reasons above stated) within 135 days of receipt thereof, USFWS shall be deemed to have waived its right of approval of a Public Access Plan or comment on a RWMP or Other Management Plans under this Conservation Easement. Approval or waiver by USFWS of its right of approval of a Public Access Plan and comment by or waiver by USFWS of its right to comment on a RWMP or Other Management Plans shall not relieve Grantor or Grantee of their independent duty to comply with the ESA and this Conservation Easement with respect to any Public Access Plan or RWMP or Other Management Plans and shall not preclude USFWS from taking action to enforce the ESA or this Conservation Easement. Neither Grantee nor Grantor shall perform, or allow a third party subject to Grantee or Grantor's control, to perform any action or activity on the Easement Property pursuant to the Ranch Agreement or the Ranch Agreement CE, if the USFWS has provided notice that such action or activity is not allowed under the ESA, the ESA Permit, or this Conservation Easement.

9. Remedies. USFWS as a third party beneficiary of the Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. Grantee's rights under this section relate solely to the provisions of this Conservation Easement and are independent of and shall not affect Grantee's rights or obligations under the Ranch Agreement CE, except as provided in Sections 9.5 and 11.2(c).

(a) If Grantee or USFWS determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee or USFWS shall give written notice to Grantor of such violation, and demand in writing the cure of such violation. At the time of giving any such notice, the noticing party shall provide copies of the notice to all parties. To the extent reasonably practicable, within fourteen (14) days after delivery of such notice, Grantor and Grantee and/or USFWS, as the case may be, shall meet at a location that the parties agree upon to discuss the circumstances of the alleged or threatened violation and to attempt to agree on appropriate corrective action. If Grantor and Grantee and/or USFWS, as the case may be, are unable to agree on appropriate corrective action within thirty (30) days after such meeting, then Grantee and/or USFWS, as the case may be, shall deliver a further written notice to Grantor to demand reasonable, particular corrective action to cure the violation.

(b) If Grantor fails to cure the violation within thirty (30) days after receipt of such written notice and demand from Grantee and/or USFWS, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee or USFWS may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to recover any damages to which Grantee or USFWS may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Property, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Easement Property to the condition in which it existed prior to any such violation or injury.

(c) Without limiting Grantor's liability therefore, Grantee shall apply any damages recovered to the cost of undertaking any corrective action on the Easement Property.

(d) If Grantee or USFWS, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Easement Property, Grantee or USFWS may pursue its remedies under this Section 9 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) Grantee's and USFWS's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement.

(f) Grantor agrees that Grantee's and USFWS's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee and USFWS shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee and USFWS may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(g) Grantee's and USFWS's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive and all civil or criminal penalties and remedies provided under the ESA .

(h) The failure of Grantee or USFWS to discover a violation or to take immediate legal action shall not bar Grantee or USFWS from taking such action at a later time.

9.1 Costs of Enforcement. Any costs incurred by Grantee or USFWS where Grantee or USFWS is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including but not limited to costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's breach of this Conservation Easement, shall be borne by Grantor.

9.2 Discretion. Enforcement of the terms of this Conservation Easement by Grantee or USFWS shall be at the discretion of the Grantee or USFWS, and any forbearance by Grantee or USFWS to exercise its rights under this Conservation Easement in the event of any breach of

any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee or USFWS of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's or USFWS's rights under this Conservation Easement. No delay or omission by Grantee or USFWS in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

9.3 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee or USFWS to bring any action against Grantor for any injury to or change in the Easement Property resulting from (i) any natural cause beyond Grantor's control, including, but not limited to, fire, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes; (ii) acts by Grantee or its employees, or the USFWS or its employees; (iii) trespass or other acts by unrelated third parties that Grantor does not knowingly allow, provided Grantor has taken all reasonable steps to prevent and remove trespass; or (iv) any action taken by Grantor in a good faith effort to prevent, abate, or mitigate injury to the Easement Property resulting from the foregoing causes. Notwithstanding the above, Grantor remains obligated to implement the relevant responses to "Changed Circumstances" as defined in and as required by the ESA Permit.

9.4 Third Party Beneficiary Right of Enforcement. All rights conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by the USFWS, the third party beneficiary specified in Section 15(o). These rights are in addition to, and do not alter or restrict, the rights of enforcement under the ESA Permit and the ESA. USFWS is not a third party beneficiary of, or party to, and has no rights or obligations under, the Ranch Agreement CE.

9.5 Consistency. Subject to Section 15(b)(ii), Grantee will use reasonable efforts to exercise its rights and obligations under both this Conservation Easement and the Ranch Agreement CE in a consistent manner.

10. Enforcement by Grantor. Grantor, any Successor Grantors (as defined below), and their successors, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Conservation Easement or any amendment thereto, including the right to specific enforcement and otherwise to prevent the violation of any such restrictions, conditions, covenants or conditions; provided, however, that Grantor shall not have the right to terminate this Conservation Easement.

11. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Property; and (ii) Grantor agrees that Grantee and USFWS shall not have any duty or responsibility under this Conservation Easement for the operation, upkeep or maintenance of the Easement Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Property. Notwithstanding the foregoing provisions of this Section 11, Grantee shall be responsible, and shall bear all costs and liabilities as otherwise provided in the Ranch Agreement CE (including, without limitation, activities related to Public Access and Grantee Conservation Activities).

Grantor shall be solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement that is undertaken by Grantor or under Grantor's authority, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantee shall be responsible for obtaining any applicable governmental permits and approvals for any Grantee activity or use permitted by this Conservation Easement (including without limitation Public Access and Grantee Conservation Activities) that is undertaken by Grantee, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements. Grantor shall not impede any effort by Grantee to obtain applicable governmental permits and approvals for such permitted activities and uses.

11.1 Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USFWS with satisfactory evidence of payment upon request. Notwithstanding the foregoing, if any such Taxes are levied against Grantor or the Easement Property (or if the assessed value thereof is increased) as a result of any activities of Grantee on the Easement Property, including, but not limited to, any Public Access or Conservation Activity, then Grantee shall, upon demand, repay to Grantor the amount so paid. Further, nothing in this Section 11.1 shall be interpreted to obligate Grantor, and Grantee shall remain responsible, to pay any Taxes owed by Grantee as a result of a voluntary or involuntary transfer of Grantee's interests under this Conservation Easement. Grantor shall keep the Easement Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

11.2 Hold Harmless.

(a) Grantor shall hold harmless, protect and indemnify Grantee and USFWS and their respective employees, agents, contractors, and representatives, successors and assigns (each a "Grantee Indemnified Party" or "USFWS Indemnified Party", as applicable) from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with this Conservation Easement to the extent permitted by state and/or federal law except to the extent caused by the negligence or willful misconduct of Grantee or USFWS, or a Grantee Indemnified Party or USFWS Indemnified Party and, as to Grantee only, except to the extent arising from Grantee's management of Public Access or Grantee Conservation Activities.

(b) Grantor's hold harmless, release and indemnification obligations to Grantee arising out of the Ranch Agreement CE, including obligations relating to Public Access or Grantee Conservation Activities, consist solely of those prescribed in the Ranch Agreement CE.

(c) In order to promote efficient resolution of Claims, including consolidation of Claims where appropriate, and in order to avoid double recovery for Claims under the indemnity provisions of this Conservation Easement and the Ranch Agreement CE, but in any event subject to Section 15(b)(ii), Grantee shall use reasonable efforts to coordinate its Claims for indemnity under this Section 11.2 with its claims for indemnity under the Ranch Agreement CE.

11.3 Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantor shall provide written notice to Grantee and USFWS at least 45 days prior to taking any action to extinguish this Conservation Easement and prior to extinguishment shall provide a conservation easement at an alternative site to Grantee, or another entity or organization authorized to acquire and hold conservation easements under California Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States, that has been approved in writing by USFWS, or shall provide alternative mitigation acceptable to USFWS and determined in writing by USFWS to be adequate to mitigate for the impacts to the Covered Species under the ESA Permit. No such extinguishment shall affect the value of Grantee's interest in the Easement Property, and if the Easement Property, or any interest therein, is sold, exchanged, or taken after such extinguishment, Grantee shall be entitled to receive its pro-rata share of the proceeds of such sale, exchange or taking. The amount of the compensation to which Grantee shall be entitled from any sale, exchange, or taking of all or any portion of the Easement Property subsequent to such extinguishment shall be based on the respective fair market values of the interests of Grantee and Grantor extinguished as determined in the judicial extinguishment proceedings, and Grantee shall use any proceeds received in a manner determined in writing by USFWS to be consistent with the conservation purposes of this Conservation Easement and Grantor's mitigation obligations under the ESA Permit.

11.4 Condemnation. Grantor shall immediately notify Grantee and the USFWS in writing of any action to condemn this Conservation Easement. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure Section 1240.680. Grantee shall use any proceeds received from condemnation of the Easement Property in a manner determined by USFWS to be consistent with the conservation purposes of the Conservation Easement and Grantor's mitigation obligations under the ESA Permit.

12. Transfer of Easement. This Conservation Easement may only be assigned or transferred by Grantee in compliance with the Ranch Agreement CE and with the written approval of the USFWS, which approval shall not be unreasonably withheld or delayed. Grantee shall give USFWS at least ninety (90) days prior written notice of the proposed transfer. In particular, approval of any assignment may be withheld in the reasonable discretion of the USFWS if the transfer will result in a single owner holding both the Conservation Easement and the fee title to the Easement Property and, upon such transfer, the doctrine of merger would apply to extinguish the Conservation Easement by operation of law, unless prior to the assignment or transfer, an alternative mechanism deemed acceptable in writing by USFWS to achieve the purposes of this Conservation Easement following such merger has been provided for. Grantee may assign this Conservation Easement only to another entity or organization

authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 (or any successor provision then applicable) or the laws of the United States and determined to be acceptable in writing by USFWS. Grantee shall require the assignee to record the assignment in the county where the Easement Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement.

13. Transfer of Easement Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference, applicable provisions of the ESA Permit and any amendments thereto. Grantor further agrees to give written notice to Grantee and the USFWS of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee or USFWS shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Conservation Easement, including the exhibits and documents incorporated by reference in it. If Grantor proposes to transfer fee title to the Easement Property to the then Grantee of this Conservation Easement, and if the doctrine of merger would apply and extinguish the Conservation Easement by operation of law upon such transfer, then the transfer shall be subject to the prior written approval of the USFWS, which approval shall not be unreasonably withheld or delayed. Approval of any such transfer to the Grantee may be withheld in the reasonable discretion of the USFWS unless, prior to the transfer, an alternative mechanism acceptable to the USFWS to achieve the purposes of this Conservation Easement following such merger has been provided for. Upon the recordation of such writing accepting such assignment and assuming such duties, such assignee (the "Successor Grantor"), to the extent of such assignment, shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Grantor herein and Grantor shall be released and relieved of such rights and obligations; provided that notwithstanding any such assignment or transfer, Grantor shall remain liable to perform and fund its obligations under the ESA Permit until and unless an assignment of the Permits and release of Grantor's obligations thereunder is approved in writing by the USFWS. The failure of Grantor, Grantee, or the USFWS to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. This Section 13 shall not apply to a transfer of property pursuant to, or in lieu of, a condemnation of the Easement Property or any portion thereof; however, Grantor agrees to give written notice to Grantee and the USFWS of such transfer at least thirty (30) days prior to the date of such transfer.

14. Notices. Any notice, demand, request, consent, approval, or communication that any Party desires or is required to give to the other Party or to USFWS shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class mail, postage fully prepaid, addressed as follows:

To Grantor:	Tejon Ranchcorp P.O. Box 1000 Lebec, CA 93243 Attn: General Counsel
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And Tejon Ranchcorp
P.O. Box 1000
Lebec, CA 93243
Attn: CEO

Overnight mail address: 4436 Lebec Road
Lebec, CA 93243
Attn: General Counsel

To Grantee: The Tejon Ranch Conservancy
P.O. Box 216
Frazier Park, CA 93225

To: USFWS: United States Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

or to such other address as Grantor, Grantee, or the USFWS may designate by written notice to the other Parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

15. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and applicable federal law.

(b) Construction and Conflicts.

(i) Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(ii) The Ranch Agreement CE requires that the form of any conservation easement required under the Ranch Agreement be generally consistent with the form Ranch Agreement CE. The Ranch Agreement also provides that to the extent one or more resource agencies require the use of a form of easement other than the Ranch Agreement CE, the form of conservation easement required by the resource agencies shall control. The Ranch Agreement CE and this Conservation Easement both grant an easement over the Easement Property to Grantee, and are generally consistent, although each conservation easement contains certain additional and/or different terms and conditions. In order to avoid any conflict between the two

conservation easements, Grantor, Grantee and USFWS have agreed that in the event of a conflict between the terms of the Ranch Agreement CE and this Conservation Easement, and irrespective of which conservation easement is recorded first, the terms of this Conservation Easement are intended to, and shall be deemed to, control; provided, however, that the preceding sentence shall not be deemed to modify or affect, in any manner, the terms and conditions of the Ranch Agreement CE to the extent such terms and conditions are not covered by, or do not directly conflict with the terms of this Conservation Easement.

(c) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(d) Entire Agreement. This instrument, including the ESA Permit, incorporated herein by this reference, sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 15(n).

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Property.

(g) Covenant Running with the Land. This Conservation Easement and covenants contained herein are (i) imposed upon the Easement Property, (ii) shall run with and against the same and shall be a charge and burden thereon for the benefit of Grantee and/or the current holder of this Conservation Easement and the USFWS and (iii) are perpetual and irrevocable.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Easement Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(j) No Hazardous Materials Liability. Except as disclosed in any Phase 1 report provided to the Grantee prior to the recordation of this Conservation Easement, Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed

of, deposited or abandoned in, on, under, or from the Easement Property, or transported to or from or affecting the Easement Property.

(1) Despite any contrary provision of this Conservation Easement, the Parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee, or the USFWS, any of the following:

(i) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "CERCLA"); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Easement Property; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(2) Without limiting the obligations of Grantor under Section 11.2(a), Grantor hereby releases and agrees to indemnify, protect and hold harmless the USFWS and each USFWS Indemnified Party (defined in Section 11) from and against any and all Claims (as defined in Section 11) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed, or released by the USFWS or a USFWS Indemnified Party. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants that its activities upon and use of the Easement Property will comply with all Environmental Laws and its contracts with its agents, employees, invitees and contractors will require compliance with all Environmental Laws.

(3) Grantor's Hazardous Materials release, indemnification and hold harmless obligations to Grantee consist solely of those prescribed in the Ranch Agreement CE.

(k) Warranty. Grantor represents and warrants that there are no outstanding mortgages or liens in the Easement Property that have not been expressly subordinated to this Conservation Easement, and that the Easement Property is not subject to any other conservation easement.

(1) Additional Easements. Except for the Ranch Agreement CE described in Recital E, Grantor shall not grant any additional easements, rights of way or other similar interests in the Easement Property (other than a security interest that is subordinate to this Conservation Easement), without first obtaining the written consent of Grantee and the USFWS, except that written consent is not required for additional conservation easements required as mitigation on the Easement Property approved through Section 7(b)(1) or where such easement is required for another agency to credit preservation (rather than enhancement) of the Easement Property to Grantor. Grantee or the USFWS may only withhold such consent if it reasonably determines that the proposed interest or transfer is inconsistent with ESA Permit or the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Property. This Section 15(1) shall not prohibit transfer of a fee or leasehold interest in the Easement Property that is subject to this Conservation Easement and complies with Section 13. Further, this Section 15(1) shall not prohibit the grant of an easement in connection with a project which involves the transfer of land by Grantor pursuant to, or in lieu of, a condemnation of the Easement Property or any portion thereof. In the event of a conflict between this Conservation Easement and any additional conservation easement that may be recorded on the Easement Property, the terms of this Conservation Easement shall control.

(m) Recording. Grantor shall record this Conservation Easement in the Official Records of Kern County, California, and Grantee may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(n) Amendment; Inconsistency. Except as expressly hereinafter provided, this Conservation Easement may be modified only by written instrument executed by the record owners of the property encumbered hereby, the then-holder of this Conservation Easement, and only if such modification is approved in advance in writing by the USFWS and, in each event, provided that such modification is otherwise consistent with the terms, policies and goals hereof, and the ESA Permit.

(o) Third-Party Beneficiary. Grantor and Grantee acknowledge that the USFWS shall be deemed, and is hereby, a third party beneficiary of this Conservation Easement

with a right of access to the Easement Property as specified in Section 8, and the right to enforce the terms and provisions hereof, as specified in Sections 8 and 9. In addition, Grantor and Grantee acknowledge and agree that USFWS is expressly granted certain additional rights under this Conservation Easement including, but not limited to, prior written notice of certain specified actions and a right of approval of certain specified actions.

(p) No Public Gift/Dedication. Nothing in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Easement Property for use by the general public, and in no event shall any third party acquire any prescriptive rights in or over the Easement Property.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement the day and year first above written.

GRANTOR:

GRANTEE:

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

PLEASE NOTE:

The following Conservation Easement Deed form is the multi-agency Project Delivery Team standardized template document for Mitigation and Conservation Banks in California, as modified to address permit-required conservation easements. (Template Version Date: March 2010)

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

[*Fill in Grantee Name/Address*]

Grantee Name

Grantee Address

City, State ZIP

Attn: _____

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

[*Insert Easement Name*]

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 20____, by [*insert full legal name(s) of Grantor: _____*] ("Grantor"), in favor of [*insert Grantee's full legal name: _____*] [*if CDFG is Grantee insert: the State of California*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately _____ acres, located in the City of [*insert City name*], County of [*insert County name*], State of California, and designated Assessor's Parcel Number(s) [*insert Assessor's Parcel Number(s)*] (the "Easement Property"). The Easement Property is legally described and depicted in **Exhibit A** attached to this Conservation Easement and incorporated in it by this reference.

B. The Easement Property possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Easement Property will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Easement Property.

C. The California Department of Fish and Game ("CDFG") has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code Section 1802. CDFG is authorized to hold easements for these purposes pursuant to California Civil Code Section 815.3, Fish and Game Code Section 1348, and other provisions of California law.

D. The United States Fish and Wildlife Service (the "USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law.

E. **[Remove/modify this recital as appropriate]**. The U.S. Environmental Protection Agency ("USEPA") and U.S. Army Corps of Engineers ("USACE") have jurisdiction over waters of the United States pursuant to the federal Clean Water Act, 33 U.S.C. Section 1251, *et seq.*

F. **[Use this version of Recital F when qualified nonprofit organization is Grantee]**. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

[Use this version of Recital F when governmental entity is Grantee]. Grantee is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3. Specifically, Grantee is a governmental entity identified in Civil Code Section 815.3 (b) and otherwise authorized to acquire and hold title to real property.

G. **[Modify this recital as appropriate]** This Conservation Easement is granted pursuant to the **[insert the appropriate term: Permit[s] from [insert agency as relevant]**. **[Remove reference to any agency that is not a party]** CDFG, USFWS, USACE, and USEPA are together referred to in this Conservation Easement as the "Signatory Agencies".

A final, approved copy of the Permit[s] and the Management Plan, and any amendments thereto approved by the Signatory Agencies, shall be kept on file at the respective offices of the Signatory Agencies. If Grantor, or any successor or assign, requires an official copy of the Permit[s] or the Management Plan, it should request a copy from one of the Signatory Agencies at its address for notices listed in Section 12 of this Conservation Easement.

The Permit[s] and the Management Plan are incorporated by this reference into this

Conservation Easement as if fully set forth herein.

H. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Property.

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Easement Property will be retained forever in its natural, restored, or enhanced condition as contemplated by the Permit[s] and the Management Plan, and to prevent any use of the Easement Property that will impair or interfere with the Conservation Values of the Easement Property. Grantor intends that this Conservation Easement will confine the use of the Easement Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the Permit[s] and the Management Plan.

2. Grantee's Rights.

To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve and protect the Conservation Values of the Easement Property.

(b) To enter the Easement Property at reasonable times, in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, the Permit[s] and the Management Plan and to implement at Grantee's sole discretion the Permit[s] and Management Plan activities that have not been implemented, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Easement Property.

(c) To prevent any activity on or use of the Easement Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Easement Property shall remain a part of and be put to beneficial use upon the Easement Property, consistent with the purposes of this Conservation Easement.

(e) All present and future development rights appurtenant to, allocated,

implied, reserved or inherent in the Easement Property; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Property, nor any other property adjacent or otherwise.

3. Prohibited Uses.

Any activity on or use of the Easement Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor's agents, and third parties are expressly prohibited:

(a) Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and any and all other activities and uses which may impair or interfere with the purposes of this Conservation Easement, except for [*insert specific exception(s)*] as specifically provided in the [*specify: Permit[s] or Management Plan*].

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways, except for [*insert specific exception(s)*] as specifically provided in the [*specify: Permit[s] or Management Plan*].

(c) Agricultural activity of any kind except grazing for vegetation management as specifically provided in the [*specify: Permit[s] or Management Plan*].

(d) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing except for personal, non-commercial, recreational activities of the Grantor, so long as such activities are consistent with the purposes of this Conservation Easement and specifically provided for in the Permit[s] or Management Plan.

(e) Commercial, industrial, residential, or institutional uses.

(f) Any legal or de facto division, subdivision or partitioning of the Easement Property.

(g) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except for [*insert specific exception(s)*] as specifically provided in the [*specify: Permit[s] or Management Plan*].

(h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials.

(i) Planting, introduction or dispersal of non-native or exotic plant or animal species.

(j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Easement Property, or granting or authorizing surface entry for any of these purposes.

(k) Altering the surface or general topography of the Easement Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Property with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Permit[s] or Management Plan.

(l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except for [*insert specific exception(s)*] as specifically provided in the [*specify: Permit[s] or Management Plan*].

(m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Easement Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except for [*insert specific exception(s)*] as specifically provided in the [*specify: Permit[s] or Management Plan*].

(n) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Property.

(o) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Property, or the use or activity in question.

4. Grantee's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Grantee and its successors and assigns shall:

(1) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Property; and

(2) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis.

(b) In the event that the Grantee's interest in this easement is held by, reverts to, or is transferred to the State of California, Section 4(a) shall not apply.

5. Grantor's Duties.

Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Property or that are otherwise inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect and defend Grantee's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of Grantor under the Permit[s] and the Management Plan.

6. Reserved Rights.

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from Grantor's ownership of the Easement Property, including the right to engage in or permit or invite others to engage in all uses of the Easement Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

7. Grantee's Remedies.

If Grantee determines that a violation of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). If Grantor fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Easement Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Easement Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Easement Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Grantor agrees that Grantee's remedies at law for any violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of Grantee to

discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

(a) Costs of Enforcement.

All costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Grantor.

(b) Grantee's Discretion.

Enforcement of the terms of this Conservation Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of Grantee under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Grantor's Control.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Property resulting from (i) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes; or (ii) acts by Grantee or its employees.

(d) Enforcement; Standing.

All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by [*insert if State of California is Grantee:* CDFG and] the Third-Party Beneficiaries (as defined in Section 14(m)). These enforcement rights are in addition to, and do not limit, the rights of enforcement under the Permit[s] or the Management Plan. If at any time in the future Grantor uses, allows the use, or threatens to use or allow use of, the Easement Property for any purpose that is inconsistent with or in violation of this Conservation Easement then, despite the provisions of California Civil Code Section 815.7, the California Attorney General and the Third-Party Beneficiaries each has standing as an interested party in any proceeding affecting this Conservation Easement.

(e) Notice of Conflict.

If Grantor receives a Notice of Violation from Grantee or a Third-Party Beneficiary with which it is impossible for Grantor to comply consistent with any prior uncured Notice(s) of Violation, Grantor shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Grantee and Third-Party Beneficiaries. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date Grantor receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, Grantor shall not be

required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revised Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, Grantor shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of Grantor to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of Grantor's ability to claim a conflict.

(f) ***[Add if nonprofit organization is Grantee]*** Reversion.

If the Signatory Agencies determine that Grantee is not holding, monitoring or managing this Conservation Easement for conservation purposes in the manner specified in this Conservation Easement or in the Permit[s] or the Management Plan then, pursuant to California Government Code Section 65965(c), this Conservation Easement shall revert to the State of California, or to another public agency or nonprofit organization qualified pursuant to Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable) and approved by the Signatory Agencies.

8. Access.

This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Property. Grantor agrees that neither Grantee nor Third-Party Beneficiaries shall have any duty or responsibility for the operation, upkeep or maintenance of the Easement Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Easement Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement [*insert if CDFG or another government entity is Grantee:* , including permits and approvals required from Grantee acting in its regulatory capacity], and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Easement Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Easement Property free from any liens (other than a security interest that is expressly subordinated to this Conservation Easement, as provided in Section 14(k)), including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Easement Property.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations specified in Sections 5, 9 and 9(a); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party [*insert if CDFG is grantee:* or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(2) Grantor shall hold harmless, protect and indemnify Third-Party Beneficiaries and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 9 (b) (2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 (b) (2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, Grantor shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, [*include this phrase only if there are jurisdictional wetlands:* including wetland functions and values,] or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

[Use the appropriate paragraph:]

[If CDFG or other state agency is Grantee:] Condemnation. This Conservation Easement is a "wildlife conservation easement" acquired by a State agency, the condemnation of which is prohibited except as provided in California Fish and Game Code Section 1348.3.

[All other Grantees:] Condemnation. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680 notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

10. Transfer of Conservation Easement or Easement Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 11.

(b) Easement Property.

Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the *[insert: BEI or CBEI]*, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 11.

11. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then,

unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Property.

12. Notices.

Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor: [Grantee name]
 [Grantee address]
 Attn: _____

To Grantee: *[insert the appropriate Grantee information:]*

[Department of Fish and Game]
[Region name] Region
[REGION ADDRESS]
[Attn: Regional Manager]

OR

[Grantee name]
[Grantee address]

[Remove/modify the following blocks as appropriate.]

To CDFG: [Department of Fish and Game]
 [Region name] Region
 [REGION ADDRESS]
 [Attn: Regional Manager]

With a copy to: Department of Fish and Game
 Office of General Counsel
 1416 Ninth Street, 12th Floor
 Sacramento, CA 95814-2090
 Attn: General Counsel

To USFWS: United States Fish and Wildlife Service
 [Field Office name] Field Office
 [FIELD OFFICE ADDRESS]
 Attn: Field Supervisor

[Remove/modify these blocks as appropriate.]

To USACE: U.S. Army Corps of Engineers
[District name] District
[DISTRICT ADDRESS]
Attn: Chief, Regulatory Branch

To USEPA: U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

13. Amendment.

This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Property is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

14. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* [***add if Grantee is nonprofit organization:*** and Government Code Section 65965]. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not

affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document (including its exhibits and the Permit and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 13.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Easement Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Easement Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) Grantor represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Property, or transported to or from or affecting the Easement Property.

(2) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties (defined in Section 9 (b) (1)) from and against any and all Claims (defined in Section 9 (b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Property at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental

Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party [*add if CDFG is Grantee*: or reimburse Grantee for all charges incurred for services of the California Attorney General in defending the action or proceeding].

(3) Without limiting the obligations of Grantor under Section 9 (b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third-Party Beneficiary Indemnified Parties (defined in Section 9 (b)(2)) from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or any Third-Party Beneficiaries any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Easement Property; or

(E) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Property.

(5) The term "Hazardous Materials" includes, without limitation, (a)

material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and Third-Party Beneficiaries that activities upon and use of the Easement Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty.

Grantor represents and warrants that Grantor is the sole owner of the Easement Property. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Signatory Agencies pursuant to the Easement Property Assessment and Warranty signed by Grantor and attached as an exhibit to the [*insert: BEI or CBEI*], [*choose applicable statement*]: there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement *or* the holder of any outstanding mortgage, lien, encumbrance or other interest in the Easement Property (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].

(k) Additional Interests.

Grantor shall not grant any additional easements, rights of way or other interests in the Easement Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Easement Property, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Property. This Section 14(k) shall not limit the provisions of Section 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Easement Property that is subject to this Conservation Easement and complies with Section 10. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

(l) Recording.

Grantee shall record this Conservation Easement in the Official Records of the County in which the Easement Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Grantor and Grantee acknowledge that the [*include the agencies that will be third-party beneficiaries*: CDFG, USFWS, USACE, and USEPA] (the “Third-Party Beneficiaries”) are third party beneficiaries of this Conservation Easement with the right of access to the Easement Property and the right to enforce all of the obligations of Grantor including, but not limited to, Grantor’s obligations under Section 14, and all other rights and remedies of the Grantee under this Conservation Easement.

(n) Funding.

Endowment funding for the perpetual management, maintenance and monitoring of the Easement Property is specified in and governed by the [*insert: BEI or CBEI*] and the Management Plan.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR: [*Notarization Required*]

Approved as to form:

[Remove or modify the approval block as appropriate, i.e., Grantee’s legal counsel if CDFG is not Grantee.]

BY: _____

General Counsel
State of California
Department of Fish and Game

NAME: _____

TITLE: _____

BY: _____
[Insert General Counsel Representative]
General Counsel

DATE: _____

[Delete this page if CDFG will not be Grantee. If the Grantee will be a government agency, that agency must include its own Certificate of Acceptance.]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 20____, to the State of California, Grantee, acting by and through its Department of Fish and Game, a governmental agency (under Government Code § 27281), is hereby accepted by the undersigned officer on behalf of the Grantee pursuant to the Fish and Game Code.

GRANTEE:

[Remove or modify the approval block as appropriate if CDFG is not Grantee.]

STATE OF CALIFORNIA, by and through its
DEPARTMENT OF FISH AND GAME

By: _____

Title: _____
Authorized Representative

Date: _____

