

SAFE HARBOR AGREEMENT

Draft

**FOR SMITH'S BLUE BUTTERFLY (*Euphilotes enoptes smithi*)
and
CALIFORNIA RED-LEGGED FROG (*Rana draytonii*)**

**AT GARRAPATA STATE PARK,
MONTEREY COUNTY, CALIFORNIA**

Prepared by

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

and

U.S. FISH AND WILDLIFE SERVICE,
VENTURA FISH AND WILDLIFE OFFICE

November 2014

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	SPECIES COVERED BY THIS AGREEMENT	2
2.1	Smith’s Blue Butterfly	2
2.2	California Red-legged Frog.....	3
3.0	DESCRIPTION OF ENROLLED PROPERTY	4
3.1	Coastal Scrub, Coastal Bluff Scrub, and Oatgrass Prairie	5
3.2	Stream and Associated Riparian and Wetland Vegetation.....	8
4.0	BASELINE DETERMINATION	13
4.1	Smith's Blue Butterfly	13
4.2	California Red-legged Frog.....	14
5.0	MANAGEMENT ACTIVITIES.....	16
5.1	Beneficial Management Activities	16
5.2	Other Management Activities	18
5.3	Avoidance and Minimization Measures.....	19
6.0	INCIDENTAL TAKE OF COVERED SPECIES	20
7.0	NET CONSERVATION BENEFIT	23
8.0	RESPONSIBILITIES OF THE PARTIES	25
9.0	AGREEMENT AND PERMIT DURATION.....	28
10.0	ASSURANCES TO DPR REGARDING TAKE OF COVERED SPECIES.....	29
11.0	MODIFICATIONS	29
12.0	OTHER MEASURES	30
	LITERATURE CITED	33
	Figure 1. Garrapata State Park – Enrolled Property	35
	Figure 2. Garrapata State Park – USGS Topo Map.....	36
	Figure 3. Extent of Seacliff Buckwheat.....	37
	Figure 4. Streams with Riparian and Wetland Habitat	38
	Attachment 1. Annual Monitoring Report.....	A-1

SAFE HARBOR AGREEMENT GARRAPATA STATE PARK

1.0 INTRODUCTION

This safe harbor agreement (Agreement) is made and entered into as of [MONTH] 2014, between the California Department of Parks and Recreation, Monterey District (DPR), and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereafter collectively referred to as the “Parties” or singularly as “Party.” The purpose of this Agreement is to restore, enhance, and maintain habitat for the federally endangered Smith’s blue butterfly (*Euphilotes enoptes smithi*) and threatened California red-legged frog (*Rana draytonii*) on lands owned and managed by DPR. This Agreement follows the Service’s safe harbor agreement policy (64 Federal Register (FR) 32717) and regulations (50 CFR 17.22(c) and 50 CFR 17.32(c)) and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act).

Safe harbor agreements encourage voluntary conservation efforts by non-Federal landowners and provide them certainty that future property-use restrictions will not be imposed if those efforts attract covered species to their properties or result in increased numbers or distributions of covered species already present. In return for voluntary conservation commitments, the safe harbor agreement will extend assurances to the landowner that allows future alteration or modification of the enrolled lands back to pre-agreement conditions (Baseline). This cooperative effort provides landowners with a way to manage enrolled lands to support the conservation of listed species while conducting certain other land-use practices.

The mission of the California Department of Parks and Recreation is to provide for the health, inspiration, and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. The DPR manages State Park lands within Monterey, San Benito, Santa Clara and Stanislaus Counties, including the Big Sur region. Within the Big Sur region, DPR’s lands include Andrew Molera State Park, Carmel River State Beach, Garrapata State Park, John Little State Natural Reserve, Julia Pfeiffer Burns State Park, Limekiln State Park, Pfeiffer Big Sur State Park, Point Lobos State Natural Reserve, and Point Sur State Historic Park.

This Agreement covers DPR’s lands at Garrapata State Park (Park). DPR manages the Park for the protection of historical and cultural resources, its natural communities and habitats, and passive recreation (hiking trails, shoreline fishing, and photography). There are several scenic overlooks within the Park west of California State Highway 1 (Highway 1).

When signed, this Agreement will serve as the basis for the Service to issue DPR an enhancement of survival permit under section 10(a)(1)(A) of the Act (Permit), for the incidental take of the species covered in this Agreement while conducting activities associated with the maintenance, enhancement, and restoration of habitat; trail construction and maintenance; and other covered activities, including the potential future return of any enrolled lands to the Baseline

condition. The Permit will authorize DPR to take individuals of covered species, and their progeny, that are introduced to the enrolled lands or have increased in numbers and/or distribution on those lands above the established Baseline conditions, as a result of these activities. The Parties expect that the maximum level of take authorized under this Agreement and the subsequent Permit will never be realized. Permit issuance will not preclude the need for DPR to abide by all other applicable Federal, State, and local laws and regulations.

2.0 SPECIES COVERED BY THIS AGREEMENT

This Agreement covers the Smith's blue butterfly and California red-legged frog, which are collectively referred to in this document as the "Covered Species." Additionally, through issuance by the Service of an enhancement of survival permit, DPR would be provided incidental take coverage for the Covered Species.

The Smith's blue butterfly is known to occur at the Park, and the California red-legged frog has the potential to occur at the Park. The Smith's blue butterfly has the potential to occur in coastal dune, cliffside chaparral, coastal scrub, and coastal grassland habitats from the mouth of the Salinas River in Monterey County to San Carpoforo Creek in northern San Luis Obispo County. The California red-legged frog has the potential to be found in ponds, streams, wetlands, and riparian habitats along the Central Coast of California. The California red-legged frog can occur in upland habitat that is adjacent to these ponds, streams, wetlands, and/or riparian habitats.

2.1 Smith's Blue Butterfly

Habitat for the Smith's blue butterfly is described in the Smith's Blue Butterfly Recovery Plan (Service 1984) and the Smith's blue butterfly 5-year review (Service 2006). The occurrence of the Smith's blue butterfly is dependent upon either one of its host plant species, seacliff buckwheat (*Eriogonum parvifolium*) or coast buckwheat (*E. latifolium*). Seacliff buckwheat seedlings in grassland, scrub, and chaparral habitats depend upon disturbances, such as fire and erosion, for the development of conditions favorable for germination and establishment. The quality of habitat can change quickly due to natural successional processes and non-native plants. The Smith's blue butterfly co-occurs with at least one of its two known host plants in coastal grassland, coastal dune, cliff-side chaparral, and coastal scrub habitats from the mouth of the Salinas River in Monterey County to San Carpoforo Creek in northern San Luis Obispo County. Smith's blue butterflies require their host buckwheat plants for all life stages. Adults feed on the nectar and deposit eggs on the flowers. Larvae feed on the flowers and seeds and pupate on or beneath the plants. Pupae morph into adults for a single flight season from mid-June to early September, in synchrony with the peak flowering period of their host buckwheat plants. Eggs are oviposited in flower heads and larvae hatch in 4 to 8 days, transforming into pupae from mid-August to early September, and overwintering as pupae until emerging as adults for the next flight season. Individuals in all life stages of the Smith's blue butterfly are difficult to detect because of their small size and cryptic nature, especially those in the non-adult stages.

2.2 California Red-legged Frog

Habitat for the California red-legged frog is described in Hayes and Jennings (1988) and the critical habitat rule for the California red-legged frog published on March 17, 2010 (75 FR 12815). Adult California red-legged frogs prefer dense, shrubby or emergent riparian vegetation closely associated with deep (greater than 2.3 feet), still, or slow-moving water (Hayes and Jennings 1988). However, California red-legged frogs also have been found in ephemeral creeks and drainages and in ponds that may or may not have riparian vegetation. Some California red-legged frogs have been found to remain in their breeding pond, while others disperse from their breeding habitat to forage and seek sheltering habitat. Habitat for the California red-legged frog consists of aquatic habitat, upland habitat, and/or dispersal habitat (75 FR 12815). The California red-legged frog requires aquatic habitat for breeding, such as any standing body of freshwater, including natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest of years. The California red-legged frog breeding season typically runs from November through April, which coincides with the general rainy season in California. Mating most commonly occurs during February or March, but can vary depending on local and seasonal climatic patterns. Non-breeding aquatic habitat includes freshwater habitats that may or may not hold water long enough for the species to hatch and complete its aquatic lifecycle but provides for shelter, foraging, predator avoidance, and aquatic dispersal habitat for juvenile and adult California red-legged frogs. This includes plunge pools within intermittent creeks, seeps, quiet water refugia during high water flows, and springs of sufficient moisture to withstand the summer dry period. Upland habitat for the California red-legged frog includes those areas of variable distance from the edge of the riparian vegetation or drip-line surrounding aquatic habitat that provide for shelter, foraging, and predator avoidance. The upland features also maintain hydrologic, geographic, topographic, ecologic, and edaphic features that support the aquatic habitat. Dispersal habitat for the California red-legged frog includes accessible upland or riparian habitat between occupied locations that allows for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats, such as agricultural fields, which do not contain barriers to dispersal. Dispersal distances are typically less than 0.5 mile, with a few individuals moving up to 1 to 2 miles (Fellers 2005). Movements are typically along riparian corridors, but some individuals, especially on rainy nights, move directly from one site to another through normally inhospitable habitats, such as heavily grazed pastures or oak-grassland savannas (Fellers 2005). Dispersing California red-legged frogs in northern Santa Cruz County traveled distances from 0.25 mile to more than 2 miles without apparent regard to topography, vegetation type, or riparian corridors (Bulger et al. 2003).

Population declines for the Covered Species are due primarily to destruction and loss of habitat and negative effects from non-native species. Beneficial management activities, such as those described in this Agreement, will contribute to the recovery and conservation of the Covered Species by maintaining, enhancing, and restoring habitat, and controlling non-native species within the Park.

3.0 DESCRIPTION OF ENROLLED PROPERTY

The property subject to this Agreement (Enrolled Property) is the 2,902-acre Garrapata State Park, which is owned and managed by DPR. The Enrolled Property is located south of Carmel Highlands and north of Big Sur in Monterey County, California (see Figure 1). Throughout the remainder of this Agreement, the terms Enrolled Property and Park are synonymous and are used interchangeably. The Enrolled Property is located west of unit MNT-2 and north of unit MNT-3 of designated critical habitat for the California red-legged frog (75 FR 12815) and is not within designated critical habitat for the species. There is no designated critical habitat for the Smith's blue butterfly.

DPR acquired the first parcel of the park property in 1980 and it was classified a State Park in 1985. The Park is part of the former Doud Ranch, a cattle ranch that operated until the 1950's. Designation of state-owned lands as a State Park includes a commitment to long-term conservation activities that maintain, restore, and protect the site's native environmental composition, making the area available for public enjoyment and education in a manner consistent with the preservation of natural, scenic, cultural, and ecological values for present and future generations.

Public access to the portion of the Enrolled Property located west of Highway 1 is currently provided via 21 vehicle turnouts/trail access gates along the western side of the highway. Public access to the portion of the Enrolled Property located east of Highway 1 is provided via two trails: the Rocky Ridge Trail; and Soberanes Canyon Trail. Numbered placards represent gate numbers along Highway 1. Key features of the Park include Garrapata Beach (Gates 18 and 19), scenic overlooks with benches (Gate 17), Soberanes Point trails and overlooks (Gates 8, 9, and 10), and back country access to trails east of Highway 1 (Gates 7 and 8). Current access is for pedestrians and hiking on established trails. Most of the trails are non-continuous due to terrain constraints.

Of the 2,902 acres that comprise the Enrolled Property, 277 acres are oriented in a narrow strip of land seaward (west) of Highway 1, featuring approximately 4 miles of coastline along the Pacific Ocean. The remaining 2,625-acre area contains mountainous terrain east of Highway 1 (see Figure 2). The property provides a unique area for conservation because of the large amount of coastal scrub habitat with relatively little public access due to the steep terrain as well as its proximity to other protected lands (see Figure 1). The eastern edge of the Enrolled Property abuts Palo Corona Regional Park. Figure 1 displays the relationship of the Enrolled Property to other protected lands.

This Agreement focuses on conservation activities for the Covered Species, which have potential to occur in the following vegetation communities that provide habitat for these species at the Enrolled Property: coastal scrub, coastal bluff scrub, oatgrass prairie, willow riparian woodland, and stream and adjacent wetlands and riparian areas. Additional communities within the Enrolled Property include non-native tree groves and coast redwood forest.

Steelhead (*Oncorhynchus mykiss*) are known to occur in Garrapata Creek and its tributaries. Garrapata Creek is not within the Park. The lower reach of Garrapata Creek that is located west

of Highway 1 occurs to the south of and almost adjacent to the southern extent of the Enrolled Property. Garrapata Creek is within the range of the federally threatened South-Central California Coast Distinct Population Segment of steelhead, which is under the regulatory jurisdiction of the National Oceanic and Atmospheric Administration, National Marine Fisheries Service. In addition, marine mammals occur in the Pacific Ocean and may on occasion haul out on outcrops within or adjacent to the Park. Marine mammals that could occur at the Enrolled Property are under the jurisdiction of the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, except for the federally threatened southern sea otter (*Enhydra lutris nereis*), which is under the jurisdiction of the Service. DPR supports conservation activities for steelhead and marine mammals at the Enrolled Property; however, this Agreement does not include nor cover any activities related to steelhead or its habitat or marine mammals. Steelhead and marine mammals would not be affected by activities associated with this Agreement at the Enrolled Property. DPR must coordinate with the National Marine Fisheries Service, the Service, and any other applicable agencies, for any activities that could affect steelhead or marine mammals.

The following descriptions of habitat for the Covered Species and presence of the Covered Species at the Enrolled Property are based upon information collected during field assessments for the preparation of this Agreement conducted by Biotic Resources Group, Entomological Consulting Services, Dana Bland and Associates, and DPR.

3.1 Coastal Scrub, Coastal Bluff Scrub, and Oatgrass Prairie

The Enrolled Property contains 2,267 acres of coastal scrub and coastal bluff scrub. Grassland, including patches of California oatgrass prairie, occurs within some scrub areas.

The scrub is composed of both native and non-native shrubs, sub-shrubs, grasses, and forbs. Shrubs commonly observed within the scrub habitat include California sagebrush (*Artemisia californica*), lizard tail (*Eriophyllum staechadifolium*), yellow bush lupine (*Lupinus arboreus*), poison oak (*Toxicodendron diversilobum*), mock heather (*Ericameria ericoides*), and sticky monkey flower (*Mimulus aurantiacus*). Seacliff buckwheat occurs in most, but not all, of the scrub habitat within the Enrolled Property. Other plant species include California fuchsia (*Epilobium canum*), coffee berry (*Frangula californica*), and blue blossom (*Ceanothus thrysiflorus*). A small patch of Little Sur manzanita (*Arctostaphylos edmundsii*) grows north of Gate 19 amid common coastal scrub shrubs. Little Sur manzanita is endemic to the Big Sur region and is a locally rare species; California Native Plant Society (CNPS) Rank 1B.2. Sub-shrubs and herbaceous species are numerous in the coastal scrub; species observed within the Enrolled Property include hedge nettle (*Stachys bullata*), stinging phacelia (*Phacelia malvaefolia*), yellow yarrow (*Eriophyllum confertiflorum*), common yarrow (*Achillea millefolium*), California bee plant (*Scrophularia californica*), California horkelia (*Horkelia californica*), and Monterey paintbrush (*Castilleja latifolia*). Openings in the canopy also provide areas that support low-growing herbs such as yerba buena (*Satureja douglasii*), common beach aster (*Lessingia filaginifolia*), and seaside daisy (*Erigeron glaucus*). Low-growing bluff scrub areas were found to support soap plant (*Chlorogalum pomeridianum*), Gray's locoweed (*Astragalus nuttallii*), sea pink (*Armeria maritima*), sea lettuce (*Dudleya ceaspitosa*), seacliff

buckwheat, sandmat (*Cardionema ramoissisium*), and California poppy (*Eschscholzia californica*).

Patches of grassland and oatgrass prairie occur in openings within the coastal scrub as well as along Rocky Ridge east of Highway 1. These grassland areas are characterized by the presence of native perennial bunchgrasses, most notably California oatgrass (*Danthonia californica*) and purple needlegrass (*Stipa pulchra*). Other herbaceous species include sea lettuce, Monterey paintbrush, beach aster, shamrock clover (*Trifolium dubium*), and scattered seacliff buckwheat.

The scrub and grassland habitats were found to support invasive non-native plant species; the most prominent species are iceplant (*Carpobrotus* spp.), mustards (*Brassica* spp. and *Hirschfeldia* sp.), poison hemlock (*Conium maculatum*), and Cape ivy (*Delairea odorata*). Naturalized landscape plants were also observed, such as pride of Madeira (*Echium* sp.) and Monterey cypress (*Hesperocyparis macrocarpa*).

Suitable habitat for the Smith's blue butterfly at the Enrolled Property is present within the coastal scrub and coastal bluff scrub where seacliff buckwheat occurs. Seacliff buckwheat occurs both east and west of Highway 1 and is the host plant for Smith's blue butterfly at the Enrolled Property. The distribution of seacliff buckwheat within the Enrolled Property is depicted in Figure 3. The Enrolled Property contains approximately 1,453 acres of coastal scrub, coastal bluff scrub, and grassland that are occupied by seacliff buckwheat plants, which provide habitat for the Smith's blue butterfly.

To quantify the occurrence of seacliff buckwheat within the Enrolled Property, surveys of seacliff buckwheat plants, with notation as to their age class and flower abundance, were conducted during August 2011 (west of Highway 1) and March and April 2012 (east of Highway 1) along 33 trails (approximately 3.5 miles) that support coastal scrub or coastal bluff scrub typical to the Enrolled Property. Seacliff buckwheat plants that occurred within a 3-foot-wide area along both sides of each sampled trail were tallied. Seacliff buckwheat plants were further tallied according to their age class (dead, seedling, juvenile, mature, or senescent) and abundance of flower heads (less than 50, 50 to 200, greater than 200). The majority of tallied plants were mature (75 percent) with most plants (57 percent) having less than 50 flowering heads; 29 percent of the mature plants had 50 to 200 flowering heads; and only 14 percent of the plants had greater than 200 flowering heads per plant. Approximately 21 percent of the plants were juvenile and 98 percent of the juvenile plants had less than 50 flower heads per plant (see Table 1).

Table 1. Characteristics of Buckwheat Plants along Representative Trails in Enrolled Property, by Age Class

	Dead	Seedling	Juvenile	Mature	Senescent
Number of Plants	2	6	283	1,026	49
Percentage of all Plants	0.1%	0.4%	20.7%	75.1%	3.6%
Flowering Heads	0	0	<50: 98% 50-200: 2% >200: 0%	<50: 57% 50-200: 29% >200: 14%	<50: 67% 50-200: 31% >200: 2%

The number of seacliff buckwheat plants within the 3-foot-wide area along both sides of the trail was used to approximate the density of seacliff buckwheat plants within the scrub habitat; however, there may be a higher density of buckwheat plants along the trail edge than within the adjacent scrub as open areas along trails provide favorable growing conditions for the species. The data found a density range of low (plants sparsely distributed containing less than 5 plants per 1,000 square feet), medium (stands containing 6-15 plants per 1,000 square feet), and high (stands containing over 15 plants per 1,000 square feet). Most stands displayed a medium density of seacliff buckwheat, although areas of low density and high density were also observed (see Table 2). Average density for all trails sampled is 8 plants per 1,000 square feet.

Table 2. Density of Buckwheat Plants from Sampled Areas of Enrolled Property, by Gate or Trail

Gate	Number of Plants						Number of Plants per 1,000 Square Feet
	Dead	Seedling	Juvenile	Mature	Senescent	All Ages	
1	0	0	4	25	0	29	7
2	0	0	29	65	0	94	15
3	0	0	0	0	0	0	0
4	0	1	9	18	0	28	10
5	0	0	8	21	0	29	11
7	1	4	32	119	9	165	12
8	1	0	21	132	4	158	21
9	0	1	33	130	12	176	15
10	0	0	100	224	5	329	19
11	0	0	3	16	0	19	10
12	0	0	2	6	0	8	3
14	0	0	1	0	0	1	2
16	0	0	5	1	0	6	7
17	0	0	3	41	0	44	4
18	0	0	0	2	0	2	<1
19	0	0	16	119	15	150	19
Soberanes Canyon	0	0	8	56	0	66	4
Rocky Ridge	0	0	8	51	4	63	4
Total						1367	
Average							8

The Smith's blue butterfly has been documented at the Soberanes Point and Rocky Ridge areas within the Park and is presumed present in other areas of the Park that support suitable habitat. Smith's blue butterflies have been observed at the Enrolled Property at Soberanes Point (Gates 8, 9, and 10) in areas of coastal scrub where seacliff buckwheat plants are present (Arnold 2010). The survey found the density of seacliff buckwheat plants along these trails to be high, with a range of 15 plants per 1,000 square feet to 21 plants per 1,000 square feet. Average density of seacliff buckwheat plants along the trails in the Soberanes Point area is 18 plants per 1,000 square feet. Data collected along a portion of the Soberanes Canyon Trail found a low density of seacliff buckwheat, at 4 plants per 1,000 square feet. Density of seacliff buckwheat plants along a portion of the Rocky Ridge Trail sampled was also 4 plants per 1,000 square feet, although areas of higher density were observed along some sections of the two trails.

Figure 3 depicts the extent of seacliff buckwheat on the Enrolled Property based on observations of the plant adjacent to trails in 2011 and 2012, observations of the plant within scrub and grassland areas, aerial photo interpretation, review of topographic features (aspect), and review of soil maps. Seacliff buckwheat was observed to occur on the following soil types within the Enrolled Property: Arroyo Seco sandy loam; Cieneba sandy loam; Sheridan coarse sandy loam; Chualar loam; and Arnold San Andreas complex.

Habitat for the Smith's blue butterfly at the Enrolled Property is primarily threatened by invasive, non-native plant species and degradation of habitat by user-made trails. Non-native plant species, such as iceplant and Cape ivy, can out-compete native species and have the potential to reduce the area occupied by Smith's blue butterfly host plants.

The loss of habitat and negative effects from non-native species threaten the survival and recovery of the Smith's blue butterfly. Activities associated with this Agreement are anticipated to maintain, enhance, and restore habitat for the species at the Enrolled Property.

3.2 Stream and Associated Riparian and Wetland Vegetation

The Enrolled Property includes 10 "blue-line streams" per the Soberanes Point U.S. Geological Survey Quadrangle Map (Figure 2, Table 3). There is an additional drainage that contains an unnamed ephemeral stream (Gate 17B.3), which is not indicated as a "blue-line stream" on the quadrangle map. The quadrangle map depicts Granite Creek as a "blue-line stream;" however, Granite Creek's entire length, including its terminus at the Pacific Ocean, lies to the east of Highway 1 outside of the Park. Seven of the 10 "blue-line streams" have perennial flow and the other 3 "blue-line streams" have intermittent flow. Of the perennial streams, three are unnamed; the others are Wildcat Creek, Malpasos Creek, Soberanes Creek, and Doud Creek (Figure 4).

In this Agreement, the location of an unnamed stream is identified by a corresponding "Gate" (see Figure 4). For the purposes of this Agreement (and as used in Table 3), the "Gate" location name of a stream may or may not coincide with an actual location for public access in the Park. As used in the circumstance when the term does not coincide with a public access location, "Gate" and a corresponding numeral or numeral/letter combination identifies the approximate location of a stream in relation to the other identified public access gates along Highway 1.

Portions of all the streams within the Enrolled Property support riparian and wetland vegetation. In wetted areas along the streams, the vegetation is characterized by arroyo willow (*Salix lasiolepis*) and understory plants adapted to the stream conditions. The riparian and wetland vegetation observed along Doud and Soberanes Creeks includes willows, common horsetail (*Equisetum arvense*), sedge (*Carex* sp.), spreading rush (*Juncus patens*), bog rush (*Juncus effusus*), nut sedge (*Cyperus* sp.), water hemlock (*Cicuta douglasii*), pacific silverweed (*Potentilla anserina* ssp. *pacifica*), and watercress (*Nasturtium officinale*). The other riparian zones within the Enrolled Property contain similar vegetation. Common monkey flower (*Mimulus guttatus*) occurs in some areas, growing on rocky outcrops near the streams. Invasive, non-native plant species were also observed along some streams; species include calla lily (*Zantedeschia aethiopica*), Cape ivy, nasturtium (*Tropaeolum majus*), and iceplant. The upper reach of Soberanes Creek is dominated by coast redwood (*Sequoia sempervirens*), with redwood understory species, such as redwood oxalis (*Oxalis oregona*), sword fern (*Polystichum munitum*), and thimbleberry (*Rubus parviflorus*).

The streams and adjacent areas of riparian and wetland vegetation provide cover and shelter for California red-legged frogs, as well as a prey base. Portions of some streams have rocky outcrops, pools, and waterfalls, features that provide California red-legged frogs with areas for foraging and escape from predators.

During the seasons that coincide with the rainy season in California, winter and spring, the flows in the streams at the Park transform from slow-moving waters and gentle pools to become swift and torrential. This is the time of year that coincides with California red-legged frog breeding. Because the streams within the Enrolled Property experience swift flows during the California red-legged frog's breeding season due to increased flows and the steep topography, they are unlikely to provide areas of habitat with the slow moving water that is needed for breeding by California red-legged frogs. Additionally, there are no ponds within the Park that are known to be suitable for California red-legged frog breeding; an old stock pond along the upper portion of the Rocky Ridge Trail, east of Highway 1, is likely too ephemeral to support California red-legged frog breeding. Therefore, the presence of suitable breeding habitat for California red-legged frogs at the Enrolled Property is unlikely.

Each of the 11 streams provide non-breeding aquatic and adjacent upland habitat for the California red-legged frog. The Enrolled Property contains approximately 45,640 linear feet of aquatic habitat for California red-legged frogs in these streams (see Table 3, Figure 4). For the purposes of this Agreement, the width of the adjacent riparian and wetland vegetation that provide upland habitat varies from 20 feet to 150 feet (see Table 3) per stream, although California red-legged frogs could occur beyond this area. The Enrolled Property contains approximately 108 acres of aquatic and adjacent upland habitat for the California red-legged frog (see Table 3).

Dispersal habitat is present between the streams and in uplands and could be utilized by California red-legged frogs for movement between aquatic habitats. There are no barriers to California red-legged frog movement within the Park, but Highway 1 presents a hazardous crossing due to the high traffic volume.

Table 3. Streams in Garrapata State Park with Habitat for the California red-legged frog.

Stream Name	Location Name	Flow	Linear Feet of Stream Habitat	Average Width of Riparian and Wetland Vegetation (feet)	Area of California red-legged frog Habitat (acres); derived from linear feet by width
Wildcat Creek	Wildcat	Perennial	2342.09	100	5.37
Malpaso Creek	Malpaso	Perennial	9862.60	150	33.17
Unnamed	Gate 1	Intermittent	296.08	20	0.14
Unnamed	Gate 4.3	Perennial	5439.49	115	14.27
Unnamed	Gate 6.2	Perennial	1097.89	20	0.50
Unnamed	Gate 6.4	Intermittent	2288.76	40	2.10
Soberanes Creek	Gate 7.5	Perennial	22,236.93	100	50.37
Unnamed	Gate 12C.5	Perennial	255.00	30	0.17
Unnamed	Gate 16.5	Intermittent	162.90	30	0.11
Unnamed	Gate 17B.3	Ephemeral	426.67	30	0.29
Doud Creek	Gate 18B	Perennial	1233.83	40	1.13
Total Acreage					107.62

Wildcat Creek is located in the northeastern corner of the Park. Within the Enrolled Property, the area of Wildcat Creek that contains suitable habitat for the California red-legged frog is 5.37 acres consisting of 2,342.09 linear feet of aquatic stream habitat by a 100-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. Within the Enrolled Property, Wildcat Creek also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. Wildcat Creek continues downstream out of the Park boundaries to the west where it enters private property and eventually its terminus at the Pacific Ocean.

Malpaso Creek is located in the north-central portion of the Park and, within the Enrolled Property, is comprised of its mainstem plus two tributaries. The area of Malpaso Creek that contains suitable habitat for the California red-legged frog within the Enrolled Property is 33.17 acres consisting of 9,862.60 linear feet of aquatic stream habitat by a 150-foot wide area of riparian and wetland vegetation that provide adjacent upland habitat. Within the Enrolled Property, Malpaso Creek also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. Malpaso Creek continues downstream outside of the Park boundaries to the west where it enters private property and eventually its terminus at the Pacific Ocean, and also continues upstream outside of the park boundary to the east where it enters Palo Corona Regional Park.

The unnamed creek at Gate 1 is located in the northern narrow strip of the Park that lies west of Highway 1. The portion of the unnamed creek at Gate 1 that occurs within the Park is from the western edge of the Park's boundary with Highway 1 until the creek reaches its terminus at the Pacific Ocean. Within the Enrolled Property, the area of the unnamed creek at Gate 1 that contains suitable habitat for the California red-legged frog is 0.14 acre consisting of 296.08 linear feet of aquatic stream habitat by a 20-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 1 also contains foraging,

sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 1 continues upstream east of Highway 1 and outside of the Enrolled Property where it enters private property.

The unnamed creek at Gate 4.3 is located in the central portion of the Park where the Park extends from the Pacific Ocean inland and east of Highway 1. The unnamed creek at Gate 4.3 forks into two drainages east of Highway 1. Within the Enrolled Property, the area of the unnamed creek at Gate 4.3 that contains suitable habitat for the California red-legged frog is 14.27 acres consisting of 5,439.49 linear feet of aquatic stream habitat by a 115-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 4.3 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 4.3 does not extend outside of the Park boundaries.

The unnamed creek at Gate 6.2 is located in the central portion of the Park where the Park extends from the Pacific Ocean inland and east of Highway 1. Within the Enrolled Property, the area of the unnamed creek at Gate 6.2 that contains suitable habitat for the California red-legged frog is 0.50 acre consisting of 1,097.89 linear feet of aquatic stream habitat by a 20-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 6.2 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 6.2 does not extend outside of the Park boundaries.

The unnamed creek at Gate 6.4 is located in the central portion of the Park where the Park extends from the Pacific Ocean inland and east of Highway 1. Within the Enrolled Property, the area of the unnamed creek at Gate 6.4 that contains suitable habitat for the California red-legged frog is 2.10 acres consisting of 3,250 linear feet of aquatic stream habitat by a 40-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 6.4 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 6.4 does not extend outside of the Park boundaries.

Soberanes Creek is located in the central portion of the Park where the Park extends from the Pacific Ocean inland and east of Highway 1 and, within the Enrolled Property, is comprised of its mainstem plus four tributaries. Within the Enrolled Property, the area of Soberanes Creek that contains suitable habitat for the California red-legged frog is 50.37 acres consisting of 22,236.93 linear feet of aquatic stream habitat by a 100-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. Soberanes Creek also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The mainstem of Soberanes Creek continues upstream outside of the park boundary to the east where it enters Palo Corona Regional Park and a tributary continues upstream outside of the park boundary to the east where it enters private property.

The unnamed creek at Gate 12C.5 is located in the southern narrow strip of the Park that lies west of Highway 1. The portion of the unnamed creek at Gate 12C.5 that occurs within the Park is from the western edge of the Park's boundary with Highway 1 until the creek reaches its terminus at the Pacific Ocean. Within the Enrolled Property, the area of the unnamed creek at Gate 12C.5 that contains suitable habitat for the California red-legged frog is 0.17 acre consisting of 255 linear feet of aquatic stream habitat by a 30-foot-wide area of riparian and wetland

vegetation that provide adjacent upland habitat. The unnamed creek at Gate 12C.5 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 12C.5 continues upstream east of Highway 1 and outside of the Enrolled Property where it enters private property.

The unnamed creek at Gate 16.5 is located in the southern narrow strip of the Park that lies west of Highway 1. The portion of the unnamed creek at Gate 16.5 that occurs within the Park is from the western edge of the Park's boundary with Highway 1 until the creek reaches its terminus at the Pacific Ocean. Within the Enrolled Property, the area of the unnamed creek at Gate 16.5 that contains suitable habitat for the California red-legged frog is 0.11 acre consisting of 162.90 linear feet of aquatic stream habitat by a 30-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 16.5 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 16.5 continues upstream east of Highway 1 and outside of the Enrolled Property where it enters private property.

The unnamed creek at Gate 17B.3 is located in the southern narrow strip of the Park that lies west of Highway 1. The portion of the unnamed creek at Gate 17B.3 that occurs within the Park is from the western edge of the Park's boundary with Highway 1 until the creek reaches its terminus at the Pacific Ocean. Within the Enrolled Property, the area of the unnamed creek at Gate 17B.3 that contains suitable habitat for the California red-legged frog is 0.29 acre consisting of 426.67 linear feet of aquatic stream habitat by a 30-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. The unnamed creek at Gate 17B.3 also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. The unnamed creek at Gate 17B.3 continues upstream east of Highway 1 and outside of the Enrolled Property where it enters private property.

Doud Creek is located in the southern narrow strip of the Park that lies west of Highway 1 and the southernmost portion that lies to the east of Highway 1. The portion of Doud Creek that occurs within the Park is from the eastern edge of the Park's boundary until the creek reaches its terminus at the Pacific Ocean. Within the Enrolled Property, the area of Doud Creek that contains suitable habitat for the California red-legged frog is 1.13 acres consisting of 1,233.83 linear feet of aquatic stream habitat by a 40-foot-wide area of riparian and wetland vegetation that provide adjacent upland habitat. Doud Creek also contains foraging, sheltering, and dispersal habitats for the California red-legged frog. Doud Creek continues upstream to the east and outside of the Enrolled Property where it enters private property.

In summary, all of the streams within the Enrolled Property contain suitable habitat for the California red-legged frog in the form of non-breeding aquatic habitat, upland habitat, and dispersal habitat; however, the presence of breeding aquatic habitat for California red-legged frogs at the Enrolled Property is unlikely.

California red-legged frogs have not been observed at the Enrolled Property; however, focused surveys for California red-legged frogs have not been conducted at any of the streams within the Enrolled Property. The majority of the streams and adjacent habitats east of Highway 1 at the Enrolled Property are not accessible because they lack trails and the terrain is difficult (except

portions of Soberanes Creek). If California red-legged frogs were present in those areas, observation of their presence would be unlikely. California red-legged frogs could occur in areas with suitable habitat because areas of suitable habitat at the Park are within dispersal distance of other areas occupied by California red-legged frogs. Although the presence of California red-legged frogs at the Enrolled Property has not been confirmed, the species could occur at the Enrolled Property at some point over the duration of this Agreement (if not currently present). Additionally, California red-legged frog breeding or the early life stages associated with breeding have not been observed at the Park. California red-legged frog breeding may not occur at the Park because suitable breeding habitat is not known to be present during the breeding season.

The nearest observations of California red-legged frogs are 0.5 mile north of the Enrolled Property in a pond on private property (northeast of Wildcat Creek). California red-legged frog egg masses and tadpoles, and evidence of breeding in ponds, have also been observed 2 miles northeast of the Enrolled Property in Palo Corona Regional Park. California red-legged frogs have been observed southeast of the Enrolled Property in Garrapata Creek east of Highway 1 (Nedeff 2004) and suitable habitat is present in its downstream reach, west of Highway 1, approximately 0.5 mile south of the Enrolled Property.

3.3 Coast Redwood Forest

The upper watershed of Soberanes Creek and its southern tributary support a band of coast redwood forest. The forest occupies the stream area and the lower portions of north-facing slopes. The forest supports coast redwood and California bay (*Umbellularia californica*) trees. Understory vegetation includes thimbleberry, poison oak, California blackberry, wood fern (*Dryopteris arguta*), hedge nettle (*Stachys* sp.), and gooseberry (*Ribes* sp.).

4.0 BASELINE DETERMINATION

This Agreement provides a mechanism for DPR to enhance, restore, and manage coastal scrub and stream habitats for the benefit of the Covered Species without incurring additional regulatory restrictions on the use of the Enrolled Property. The Agreement, however, does not release DPR from the responsibility to avoid take of any endangered or threatened species already occupying portions of their property. To receive the assurances regarding take of the Covered Species specified in this Agreement, DPR must maintain the Baseline conditions established in this Agreement for the Enrolled Property.

4.1 Smith's Blue Butterfly

The Smith's blue butterfly is known to occur at the Enrolled Property. Because of the difficulty in detecting the actual number of Smith's blue butterflies in each life stage, the Parties have agreed to set the Baseline for the Smith's blue butterfly at the Enrolled Property as the current area of suitable habitat for Smith's blue butterfly. The area of suitable habitat for Smith's blue butterfly at the Enrolled Property coincides with the area that contains seacliff buckwheat, its host plant. This area of suitable habitat is based on observations of seacliff buckwheat from field

surveys, sampling, and aerial photo interpretation. Field surveys and aerial mapping were more comprehensive west of Highway 1 and along the greater Soberanes and Rocky Ridge areas (west of Highway 1) where buckwheat plants were easily detectable. Aerial photo signatures were used to determine the presence of suitable scrub habitat in the northern and southeastern portions of the park where there was no trail access. There is no reliable estimate of the total number of seacliff buckwheat plants occurring within the entire Enrolled Property. The average density of seacliff buckwheat along the trails that were sampled is 8 plants per 1,000 square feet. Some trail subsections were found to support higher densities of seacliff buckwheat up to a high of 21 plants per 1,000 square feet, and some areas were lower at 1 plant per 1,000 square feet.

The Baseline area for the Smith's blue butterfly at the Enrolled Property is represented by the extent of seacliff buckwheat, its host plant, within the Park. The area in which seacliff buckwheat occurs at varying densities encompasses 1,453.58 acres (see Figure 3). Therefore, the Baseline area for the Smith's blue butterfly at the Enrolled Property is the 1,453.58-acre area that is occupied by various densities of seacliff buckwheat.

The Smith's blue butterfly Baseline area is based on field observations of seacliff buckwheat adjacent to trails, observations of seacliff buckwheat in other accessible areas, aerial photo interpretation of scrub, evaluation of slope and aspect, and a review of soil maps. In portions of the Park that are less accessible (i.e., areas of the Park without trails or roads) the baseline area is derived from the combined presence of coastal scrub or grassland (based on aerial photo interpretation), suitable soil types for the growth of seacliff buckwheat (based on the species presence on soil types elsewhere within the Enrolled Property), and topographic features and aspect (field observations found seacliff buckwheat is less likely to occur on north-facing slopes that support a dense growth of coyote brush and poison oak). The extent of seacliff buckwheat within these less accessible areas may be refined by DPR at a later date, as resources and funding are available.

4.2 California Red-legged Frog

Suitable habitat for the California red-legged frog occurs at the Enrolled Property and the species has been observed as close as 0.5 mile to the north of the Park boundary. The species has also been documented breeding in ponds 2 miles to the northeast of the Park boundary in Palo Corona Regional Park. Because of their cryptic nature and the difficulty in detecting the actual number of California red-legged frogs in each life stage, the Parties have agreed to set the Baseline for the California red-legged frog at the Enrolled Property as an area composed of the current length of suitable aquatic stream habitat for the species multiplied by the adjacent width of riparian and wetland vegetation that provides suitable upland habitat for the species, although California red-legged frogs could occur beyond this area.

The Baseline conditions for the California red-legged frog at the Enrolled Property consist of:

- 5.37 acres at Wildcat Creek, composed of 2,342.09 linear feet of aquatic stream habitat by 100 feet of adjacent upland habitat;
- 33.17 acres at Malpaso Creek, composed of 9,862.60 linear feet of aquatic stream habitat

by 150 feet of adjacent upland habitat;

- 0.14 acre at the unnamed creek at Gate 1, composed of 296.08 linear feet of aquatic stream habitat by 20 feet of adjacent upland habitat;
- 14.27 acres at the unnamed creek at Gate 4.3, composed of 5,439.49 linear feet of aquatic stream habitat by 115 feet of adjacent upland habitat;
- 0.50 acre at the unnamed creek at Gate 6.2, composed of 1,097.89 linear feet of aquatic stream habitat by 20 feet of adjacent upland habitat;
- 2.10 acres at the unnamed creek at Gate 6.4, composed of 2,288.76 linear feet of aquatic stream habitat by 40 feet of adjacent upland habitat;
- 50.37 acres at Soberanes Creek (Gate 7.5), composed of 22,236.93 linear feet of aquatic stream habitat by 100 feet of adjacent upland habitat;
- 0.17 acre at the unnamed creek at Gate 12C.5, composed of 255 linear feet of aquatic stream habitat by 30 feet of adjacent upland habitat;
- 0.11 acre at the unnamed creek at Gate 16.5, composed of 162.90 linear feet of aquatic stream habitat by 30 feet of adjacent upland habitat;
- 0.29 acre at the unnamed creek at Gate 17B.3, composed of 426.67 linear feet of aquatic stream habitat by 30 feet of adjacent upland habitat; and
- 1.13 acres at Doud Creek (Gate 18B), composed of 1,233.83 linear feet of aquatic stream habitat by 40 feet of adjacent upland habitat.

The total Baseline area for the California red-legged frog at the Enrolled Property is 107.62 acres.

Table 4. California red-legged frog Baseline Habitat.

Stream/Name	Linear Feet of Stream	Width of Adjacent Uplands (feet)	Area of Baseline Habitat (acres)
Wildcat Creek	2,342.09	100	5.37
Malpaso Creek	9,862.60	150	33.17
Gate 1	296.08	20	0.14
Gate 4.3	5,439.49	115	14.27
Gate 6.2	1,097.89	20	0.50
Gate 6.4	2,288.76	40	2.10
Soberanes Creek	22,236.93	100	50.37
Gate 12C.5	255.00	30	0.17
Gate 16.5	162.90	30	0.11
Gate 17B.3	426.67	30	0.29
Doud Creek	1,233.83	40	1.13
Total			107.62

5.0 MANAGEMENT ACTIVITIES

The Parties have developed this Agreement to identify activities DPR can implement to promote the conservation and recovery of the Covered Species. DPR has implemented several habitat restoration and enhancement projects on the Enrolled Property, such as: removing non-native vegetation and replanting with native vegetation; installing fencing to reduce user access to undisturbed coastal scrub areas; and installing fencing to support and maintain oatgrass prairie grasslands.

For the purposes of this Agreement, a visitor is any person present within the Enrolled Property for recreational or other purposes not directly affiliated with DPR activities. For the purposes of this Agreement, an employee is any person present within the Enrolled Property associated with DPR or DPR activities.

5.1 Beneficial Management Activities

These management activities would be beneficial to the Covered Species because they would maintain, enhance, and/or restore habitat for the Covered Species, and contribute to the recovery of the Covered Species. Existing habitat for the Covered Species will be maintained. In addition, habitat will be enhanced and restored as resources and funding are available to DPR.

Implementing activities to enhance and restore coastal scrub and coastal bluff scrub that increase density and distribution of seacliff buckwheat would be beneficial to the Smith's blue butterfly. Controlling and removing non-native vegetation, and revegetating these areas with native plants would support an increase in the number and distribution of seacliff buckwheat that would benefit the Smith's blue butterfly. Enhancing the existing aquatic stream habitat and riparian and wetland habitats by eliminating existing wet-crossings at Soberanes Creek and Doud Creek would be beneficial to California red-legged frogs by reducing Park visitor disturbances to these habitats. Restoration opportunities in certain areas of the Enrolled Property will be limited because habitat conditions at those areas are already favorable for the Covered Species.

DPR agrees to carry out the following management activities at the Enrolled Property:

- Maintain existing intact Smith's blue butterfly habitat. DPR will maintain the Baseline area of seacliff buckwheat (See Figure 3) for the 15-year period of the Agreement, which will allow the potential for the Smith's blue butterfly to persist and increase in number at the Enrolled Property.
- Close non-system user-made trails. Within 10 years after the signing of the Agreement, DPR plans to close 3.7 miles of non-system user-made trails that traverse coastal scrub west of Highway 1 and close or rehabilitate eroded trail sections east of Highway 1, as funding and resources are available. Trail closures will enable native plant species to colonize old trails, allow opportunities for DPR to revegetate closed areas with native plants (including seacliff buckwheat), support the maintenance of existing seacliff

buckwheat colonies, and encourage an increase in the number of seacliff buckwheat at the Enrolled Property.

- Control visitor access. Visitor access occurs in areas supporting seacliff buckwheat, including areas where the Smith's blue butterfly is known to occur. Where off-trail use is observed to be affecting seacliff buckwheat and/or its habitat (e.g., trampling of plants, alteration of other coastal scrub vegetation, or erosion) DPR will install barriers, such as posts and cables, signs, or other measures, to discourage off-trail visitor use within 10 years after the signing of the Agreement. During trail closure activities, DPR may also install temporary barriers, such as posts and cables, signs, or other measures, to discourage off-trail visitor use until trail closure measures are complete.
- Remove invasive, non-native plant species. The coastal scrub and grassland areas that support seacliff buckwheat within the Enrolled Property will be managed to benefit the Smith's blue butterfly for the 15-year period of the Agreement. DPR will initiate recommendations related to the control and removal of invasive, non-native plant species within habitat supporting seacliff buckwheat at the Enrolled Property, as funding and resources allow. For example, west of Highway 1, approximately 3.5 acres of invasive non-native plants growing within and adjacent to habitat supporting seacliff buckwheat have been identified as an area suitable for removal and control (DPR 2013).
- Plant native species. Within 5 years after the signing of the Agreement, DPR will plant seacliff buckwheat to increase its abundance and distribution to benefit the Smith's blue butterfly, as resources and funding are available. DPR will collect seed from seacliff buckwheat for the purpose of seeding and/or planting seacliff buckwheat to enhance and/or expand habitat for Smith's blue butterfly. Plantings will occur along closed trails, degraded areas, and in areas where invasive, non-native plant species have been removed.
- Maintain existing California red-legged frog habitat. DPR will maintain the Baseline area of California red-legged frog suitable habitat at the Enrolled Property for the 15-year period of the Agreement (see Figure 4).
- Install free span bridges over Soberanes Creek and Doud Creek. DPR will maintain the area of California red-legged frog suitable habitat in Soberanes Creek and Doud Creek (see Figure 4) for the 15-year period of the Agreement. DPR will encourage an increase in the number of individuals and distribution of California red-legged frogs by reducing potential recreational user conflicts by installing free-spanning trail crossings at Soberanes Creek and at Doud Creek within 10 years after the signing of the Agreement. The installation of these bridges will remove the existing wet crossings and benefit the California red-legged frog and its habitat by reducing disturbances to the aquatic and adjacent habitat. DPR will enhance habitat at these two locations by removing invasive, non-native plant species that grow within the aquatic area (e.g., removal of calla lily) and upland areas (e.g., Cape ivy). Additionally, if aquatic habitat for the California red-legged frog is created outside of the species' Baseline area, DPR will maintain this aquatic habitat within the Enrolled Property and maintain connectivity to upstream resources, as deemed appropriate by the Parties, and as resources and funding are

available.

- Enhance seasonal pond next to Rocky Ridge Trail. Within 10 years after the signing of the Agreement, DPR will develop and implement a plan to enhance the seasonal pond along Rocky Ridge Trail to allow a 6-month inundation of the pond, and thus provide suitable breeding habitat for California red-legged frog. Because heavy equipment cannot access the pond, work would be done by hand crews and with hand tools. This pond enhancement will be planned and implemented as resources and funding are available.
- Implement bullfrog control. If bullfrogs or any other non-native species that may prey on any life stage of California red-legged frogs are detected within the Enrolled Property, DPR will develop and implement an eradication strategy to remove/reduce the threat of predation within 1 month of detection, in coordination with the Service. Bullfrog or other non-native species control measures will be implemented as resources and funding are available.
- Interpretation and Education. To increase public knowledge and awareness of listed species conservation and to increase public knowledge about native and listed species that occur on the Enrolled Property, DPR will provide interpretive materials on the habitats where these species occur, and what actions visitors can do to benefit these species, as resources and funding are available. These activities could occur multiple times over the 15-year duration of the Agreement.

5.2 Other Management Activities

These management activities relate to activities associated with the continued use of the Enrolled Property for park, open space, natural resource conservation, and recreation, provided these activities would not reduce DPR's ability to maintain the Baseline conditions. DPR's park maintenance, trail construction, and park, open space, and natural resource conservation activities would be conducted in a way that would not interfere with the implementation of the Beneficial Management Activities described in Section 5.1. DPR would be covered in this Agreement for the following activities, provided such activities are consistent with the intent of this Agreement and are not contrary to the beneficial activities in this Agreement.

- Maintenance and associated activities, including: creation, closure, and maintenance of trails associated with recreational activities such as hiking; fence installation and maintenance; and fire clearance, as required by the County of Monterey and/or the California Department of Forestry and Fire Protection (CalFire).
- Management of the Enrolled Property for park, open space, and natural resources conservation.
- Visitor use, recreation, and associated activities, such as hiking on trails. Public access to the Enrolled Property is currently limited to pedestrians.

- Development of coastal trails as part of the DPR coastal trail improvement project, which specifies the closure of 3.7 miles of non-system trails and designation of 3.0 miles of trail as Class I or II coastal trail and 0.9 mile of Class III or IV trail (DPR 2012, Coastal Development Permit from Monterey County, dated September 11, 2013). Most of both the trails that would be developed and those that would be closed occur within areas supporting seacliff buckwheat. Trail closure, coupled with habitat restoration that specifies the establishment of additional seacliff buckwheat plants, would result in the net gain of seacliff buckwheat and thus, an increase in habitat for the Smith's blue butterfly. Assuming on average that a 2-foot wide trail bed area is restored, the project could result in a gain of 1 acre of habitat supporting seacliff buckwheat, which coincides with a 1-acre increase in habitat for the Smith's blue butterfly in addition to the Baseline area for the species.

5.3 Avoidance and Minimization Measures

DPR agrees to implement the following avoidance and minimization measures:

- DPR will avoid or reduce construction and maintenance activities in the coastal scrub and oatgrass prairie grassland where seacliff buckwheat plants occur during the Smith's blue butterfly flight season, mid-June to early September, so as to not disrupt butterfly behavior.
- DPR will route trails to avoid the removal of seacliff buckwheat to the greatest extent feasible. If seacliff buckwheat plants are cut for trail construction or maintenance, the cut material will be placed on/near other live buckwheat plants to allow butterfly larvae, if present, to relocate to live plants. DPR will have an appropriate person survey the work area to identify seacliff buckwheat.
- DPR will conduct visual surveys for California red-legged frogs in Soberanes and Doud Creeks no more than 48 hours prior to disturbance for construction of the foot bridges. If California red-legged frogs are observed within the work site, a Service-approved biologist will capture and relocate the frogs to other suitable habitat upstream of the work area. The Service-approved biologist will monitor the initial ground disturbance and vegetation removal. The results of this monitoring, including whether any California red-legged frogs were observed or heard, and the species of all amphibians detected, will be reported to the Service.
- DPR will not intentionally introduce fish species into aquatic habitat within the Enrolled Property.
- During any maintenance activities, DPR, or other personnel associated with DPR, will exercise due diligence to avoid negative effects to listed species.
- DPR will implement Best Management Practices (as described in DPR 2013) for any maintenance activities associated with roads or trails.

- To avoid and minimize effects to the Covered Species, DPR will ensure that all education and interpretation activities will not disturb the Covered Species or their habitats, or any other listed species or their habitats.
- DPR will ensure that all visitors and DPR employees will be informed of the presence of any federally listed species that occur on the Enrolled Property and will be informed of areas that provide habitat for listed species. Visitors and DPR employees will be instructed to avoid disturbing listed species and their habitat.

DPR is committed to supporting listed species and their habitats at the Enrolled Property and will manage and maintain the property to provide benefits to native plants and wildlife. DPR has shown this commitment through the enhancement and restoration activities that have been completed and their management of the Park to protect open space and natural resource values for public benefit. The Service recognizes that DPR has demonstrated its capability and commitment to implementing activities associated with the conservation and recovery of listed species. The Enrolled Property is likely to provide long-term conservation and recovery benefits to listed species.

6.0 INCIDENTAL TAKE OF COVERED SPECIES

As used in this Agreement, incidental take refers to the unintentional or unavoidable harassment, killing, or injuring of individuals of the Covered Species in the course of carrying out otherwise lawful activities. Section 3(19) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that 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. Nothing in this Agreement authorizes DPR to deliberately kill, injure, or harass any such species.

Safe harbor agreements are written in anticipation that take of the Covered Species and their progeny could occur at some point in the future. Any take that occurs as a result of a reduction in the quality and/or quantity of the established Baseline on the Enrolled Property is not authorized. Under this Agreement, incidental take could occur as a result of the Management Activities described in Part 5 of this Agreement, the surveys and monitoring described in Part 8 of this Agreement, and as a result of the potential return to Baseline at the termination of the Agreement and its associated Permit. DPR may conduct these activities, even if such use results in the incidental take of individual California red-legged frogs and Smith's blue butterflies covered under this Agreement and as authorized in the Permit.

The Beneficial Management Activities have been developed with intent to increase the number and distribution of individuals of the Covered Species occurring at the Enrolled Property, while the Other Management Activities are not anticipated to impede these beneficial contributions to

the status of each of the Covered Species. As the populations of the Covered Species increase, individuals of the Covered Species may disperse and/or migrate outside of the areas of suitable habitat, which coincide with the Baseline areas in Part 4 of this Agreement. The Permit would authorize DPR, and persons associated with DPR, to incidentally take individuals of the Covered Species and their progeny at the Enrolled Property within the established Baseline area, as a result of the Beneficial Management Activities and the Other Management Activities. Incidental take of individuals within the established Baseline area must not reduce the quality and/or quantity of the established Baseline area. Such incidental take of the Covered Species could occur as a result of activities associated with restoration; Park management and maintenance; trail development, closure, and maintenance; visitor use and recreation; and other covered activities as outlined in Part 5 of this Agreement.

Incidental take of Smith's blue butterflies on the Enrolled Property could occur as a result of: maintaining, enhancing, and restoring habitat and associated activities; Park management and maintenance and associated activities; trail development, closure, and maintenance and associated activities; visitor use and recreation; damage and direct loss of its host plant, seacliff buckwheat; temporary habitat loss; disturbance and displacement; and conducting maintenance activities. As a result of these activities, incidental take could occur in the form of direct mortality or injury of eggs, larvae, pupae, and/or adults through exposure; digging, planting, cutting, collection, distribution, and sowing of seed from host plants; trampling by DPR or persons associated with DPR; and trampling by visitors. Incidental take of Smith's blue butterflies could also occur as a result of lawful recreational and associated activities such as hiking on trails. Service biologists will also be authorized to incidentally take Smith's blue butterflies while conducting the above activities under the Permit to assist DPR in the implementation of the Agreement. The Permit would provide DPR incidental take coverage for Smith's blue butterflies occupying and associated with a certain number of its host plants (seacliff buckwheat) that could be taken as a result of the Management Activities at the Enrolled Property, on a per year basis over the 15-year duration. Incidental take coverage would be provided in this manner because detecting dead or injured individual Smith's blue butterflies in the various life stages would be difficult due to their small size and cryptic nature; however, damage to and/or loss of a host plant would be detectable. Therefore, the Permit would authorize DPR to incidentally take all Smith's blue butterflies, in any life stage, occupying and associated with the below number of its host plants (seacliff buckwheat), that could be killed or injured as a result of damage to and/or loss of its host plant. The Permit would further differentiate the authorized incidental take provided to DPR into two subsets: authorized incidental take within the Baseline area; and authorized incidental take outside of the Baseline area. Within the Baseline area, the Permit would authorize the incidental take of the following number of Smith's blue butterfly host plants (seacliff buckwheat) per year, and all Smith's blue butterfly individuals in any life stage occupying and associated with those lost or damaged host plants, over the 15-year duration: one hundred (100) seacliff buckwheat plants. Within the Baseline area, we anticipate that injury or mortality to Smith's blue butterflies would most likely occur as a result of damage to host plants during trail development, operation, and maintenance. The total area of host plants is 1,453.58 acres. The proposed California Coastal Trail project would occur within 2.35 acres of the 1,453.58-acre Baseline area, which represents 0.1 percent (%) of the Baseline area. Currently, 1,300 seacliff buckwheat plants occur within this 2.35-acre area along the proposed California Coastal Trail route. Although the precise number of seacliff buckwheat

plants that occur within the entire Baseline area is not known, the 1,300 plants located along the proposed California Coastal Trail route are anticipated to be a small percentage of the total number of seacliff buckwheat plants that occur within the entire Baseline area. Over the 15-year duration of the Agreement, some of these plants could be damaged or lost during: the development and operation of the California Coastal Trail; the retiring of other park trails; and trail improvement and maintenance. Outside of the Baseline area, the Permit would authorize the incidental take of the following number of Smith's blue butterfly host plants (seacliff buckwheat) per year, and all Smith's blue butterfly individuals in any life stage occupying and associated with those lost or damaged host plants, over the 15-year duration: five (5) seacliff buckwheat plants. Outside of the Baseline area we anticipate that injury or mortality to Smith's blue butterflies would most likely occur as a result of damage of host plants during maintenance activities.

Incidental take of California red-legged frogs on the Enrolled Property could occur as a result of: maintaining, enhancing, and restoring habitat and associated activities; construction of foot bridges over Soberanes and Doud Creeks; and conducting maintenance activities. As a result of these activities, incidental take could occur in the form of direct mortality or injury or indirect harassment to juveniles and/or adults through exposure; digging, planting, cutting, or trampling by DPR or persons associated with DPR; during bridge construction; and trampling by visitors. Service biologists will also be authorized to incidentally take California red-legged frogs while conducting the above activities under the Permit to assist DPR in the implementation of the Agreement. The Permit would provide DPR incidental take coverage for a certain number of California red-legged frogs that could be taken as a result of the Management Activities at the Enrolled Property, on a per-year basis over the 15-year duration. Within the Baseline area, the Permit would authorize the incidental take of the following number of California red-legged frogs per year, in the identified life stage, over the 15-year duration: two (2) adults or juveniles or combination thereof. Outside of the Baseline area, the Permit would authorize the incidental take of the following number of California red-legged frogs per year, in the identified life stage, over the 15-year duration: one (1) adult or juvenile. Outside of the Baseline area we anticipate that injury or mortality to California red-legged frogs would most likely occur as a result of exposure or trampling during maintenance activities.

Incidental take of Smith's blue butterflies and California red-legged frogs could occur as a result of conducting survey and monitoring activities at the Enrolled Property. As a result of surveys and monitoring, incidental take of Smith's blue butterflies and California red-legged frogs could occur in the form of harassment, injury, or mortality to all life stages through trampling by DPR or persons associated with DPR. Service biologists will also be authorized to incidentally take Smith's blue butterflies and California red-legged frogs while conducting survey and monitoring activities under the Permit to assist DPR in the implementation of the Agreement. Additionally, during these survey and monitoring activities, Service biologists may capture and handle any Smith's blue butterflies and any California red-legged frogs, in any life stage, for identification purposes.

The Permit would authorize DPR, and persons conducting activities on behalf of DPR, to incidentally take individuals of the Covered Species and their progeny as a result of activities associated with the return to Baseline conditions. Because the Baseline for each of the Covered

Species on the Enrolled Property has been determined as an area of suitable habitat, which coincides with the Baseline areas in Part 4 of this Agreement, activities that would result in a return to Baseline could include those activities that would reduce or remove any additional suitable habitat that has developed over the term of the Agreement, in addition to the Baseline areas. Such activities could include bulldozing, mowing, discing, and/or compacting soil. Incidental take of California red-legged frogs and Smith's blue butterflies could occur, as a result of the return to Baseline conditions on the Enrolled Property, in the form of direct mortality or injury of eggs, larvae, juveniles, pupae, or adults through exposure, habitat loss, cutting or removal of breeding or foraging habitat, disturbance, displacement, or trampling by the DPR, persons associated with DPR, or other authorized personnel. The Permit would authorize the incidental take of all California red-legged frogs and/or all Smith's blue butterflies outside of their respective Baseline areas that could result from activities associated with the return to Baseline. The Permit would not authorize incidental take of California red-legged frogs or Smith's blue butterflies within their respective Baseline areas based on activities associated with the return to Baseline.

The Parties expect that the maximum level of take authorized under this Agreement and Permit will never be realized because DPR will implement the Avoidance and Minimization Measures in Part 5 of this Agreement to reduce the likelihood that take would occur. Additionally, the maximum level of take is not expected to be realized because, as identified in Part 8 of this Agreement, DPR is required to notify the Service of any planned activity that DPR reasonably anticipates will result in take of the Covered Species on the Enrolled Property, including a return of the Enrolled Property to the Baseline conditions, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected. Incidental take of California red-legged frogs and Smith's blue butterflies could occur in the form of capture as a result of these activities. The Permit would authorize Service biologists to capture the Covered Species for such activities.

Certain activities by DPR outside of the identified Baseline areas, which will not be considered a limitation on any other activity DPR desires to engage in, that may result in incidental take of the Covered Species are: (1) emergency actions; (2) maintenance of drainages; (3) remedial actions to protect property from erosion; and (4) activities associated with fire prevention, suppression, and response. Incidental take resulting from these activities will be covered under the authorization in the Permit, as discussed above.

7.0 NET CONSERVATION BENEFIT

In accordance with the Service's Safe Harbor Policy (64 FR 32717), "net conservation benefit" means that management activities that are part of the Agreement are expected to provide an increase in the Covered Species' population or distribution, and/or the enhancement, restoration, or maintenance of Covered Species habitat. The net conservation benefit will be sufficient to directly or indirectly contribute to recovery of the Covered Species.

Implementation of activities to enhance aquatic and adjacent upland habitats, and to reduce visitor contact with aquatic habitats within the Enrolled Property would be beneficial to the

California red-legged frog. Controlling non-native vegetation within the coastal scrub and supporting an increase in number and distribution of seacliff buckwheat would be beneficial to the Smith's blue butterfly. DPR will carry out activities, as identified in Part 5 of this Agreement, to benefit the Covered Species within the Enrolled Property.

DPR has developed a management plan for the habitats and Covered Species at the Enrolled Property (DPR 2013). Under this plan, areas supporting seacliff buckwheat within the Enrolled Property will be managed in a manner to benefit the Smith's blue butterfly. Reducing the threat of the reduction in suitable habitat for Smith's blue butterfly as a result of non-native invasive plants out-competing its host plant and other native coastal scrub vegetation is beneficial to the Smith's blue butterfly. Additionally, controlling non-native invasive vegetation can promote the recognition of host plants by Smith's blue butterflies and increase their identification of sites for ovipositing of eggs. Although the Permit would authorize the incidental take of Smith's blue butterflies via the damage or loss of up to 100 host plants within the Baseline area per year over the 15-year period, the area of suitable habitat for the Smith's blue butterfly, which coincides with the Baseline area for the species, would not be reduced in quality or quantity even if the maximum number of plants were lost each year. The Enrolled Property contains several hundred thousand host plants within the Baseline area. Management activities in this Agreement are anticipated to increase the abundance and distribution of host plants by reducing competition with non-native plants, and once trails are closed and revegetated, the area occupied by host plants is anticipated to expand, thus increasing the area of suitable habitat for the Smith's blue butterfly at the Enrolled Property. Over the duration of this Agreement, the increase in abundance and distribution of host plants is anticipated to be greater than any loss of host plants that would be authorized in the Permit. The authorized incidental take in the Permit would not interfere with achieving a net conservation benefit for the Smith's blue butterfly.

DPR's management plan (DPR 2013) also includes the removal of two existing unimproved creek crossings that will benefit the California red-legged frog. The implementation of construction and maintenance BMPs will avoid and minimize effects to California red-legged frogs and their habitat. Implementation of the trail improvements and closure of user-made trails will benefit the California red-legged frog by removing visitor access to the species' habitat and reducing the likelihood of disturbance of California red-legged frogs or their habitat by a visitor. Although the Permit would authorize the incidental take of two (2) adult or juvenile California red-legged frogs within the Baseline area per year over the 15-year period, the area of suitable habitat for the red-legged frog, which coincides with the Baseline area for the species, would not be reduced in quality or quantity.

The status of the Enrolled Property as an area dedicated to open space and conservation of natural resources, and thereby protected from development, provides a benefit to listed species and other native plant and wildlife species. DPR will maintain the Park in a natural state where the native habitats will be maintained and remain mostly undisturbed over the long-term, thereby serving as a refuge for the Covered Species where suitable habitat exists. The restoration and enhancement of listed species habitats within areas dedicated to open space and conservation of natural resources further promotes the conservation and recovery of these species by providing future areas for each of these species to expand its current range once habitat has been restored or enhanced.

The Beneficial Management Activities described in Part 5 of this Agreement have been developed to support the conservation and recovery of the Covered Species. The securing of land and protection from development, the control and removal of non-native species, the maintenance of suitable habitat, the restoration and enhancement of habitat, and conducting education activities are recovery actions for the California red-legged frog and Smith's blue butterfly, as identified in their respective recovery plans (Service 2002 and 1984). Therefore, management activities associated with this Agreement would benefit the California red-legged frog and Smith's blue butterfly by contributing to their conservation and recovery. The Service anticipates that implementation of these management activities will produce a net conservation benefit to the Covered Species by:

1. Providing areas where existing suitable habitat for the Covered Species will be maintained or increased in quantity and quality.
2. Providing areas where suitable habitat for the Covered Species will remain relatively undisturbed.
3. Providing habitat for the Covered Species to increase in population numbers or distribution.
4. Maintaining movement corridors and habitat connectivity for the Covered Species.

Therefore, management activities associated with this Agreement at the Enrolled Property benefit the Covered Species and contribute to their conservation and recovery. These activities will result in habitat protection and insurance against the loss of the Covered Species on the Enrolled Property. DPR will manage the Enrolled Property in a manner that is beneficial to the Covered Species while conducting park maintenance and other activities. The net conservation benefit to the Covered Species from this Agreement, and thus contribution to recovery, will remain in place for at least 15 years, as identified in Part 9 of this Agreement.

8.0 RESPONSIBILITIES OF THE PARTIES

In addition to carrying out the management activities described in Part 5, DPR agrees to:

1. Notify the Service at least 60 days in advance of any planned activity that DPR reasonably anticipates will result in take of any individual of the Covered Species on the Enrolled Property, including a return of the Enrolled Property to Baseline, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected.
2. Conduct habitat assessment surveys in areas identified as containing suitable habitat for the California red-legged frog as follows. Due to DPR funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Part 12.D of this Agreement.

- a. Surveys will be conducted during the year following the signing of this Agreement and then once every 5 years.
 - b. Surveys will include habitat assessment monitoring of the Baseline conditions for the California red-legged frog described in Part 4.2 of this Agreement. Photo stations of California red-legged frog habitat within the Enrolled Property will be established during the initial habitat assessment.
 - c. If additional suitable habitat for the California red-legged frog is established, surveys will be conducted in any such area, as described above.
 - d. The results of these surveys, including whether any California red-legged frogs were observed, will be reported to the Service in the annual report.
3. Conduct visual surveys for California red-legged frogs along the accessible portions of streams within the Enrolled Property (e.g., along Soberanes Creek east and west of Highway 1, and along Doud Creek west of Highway 1) as follows. Due to DPR funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Part 12.D of this Agreement.
- a. Surveys will be conducted during the year following the signing of this Agreement and then once every 5 years.
 - b. Surveys will be conducted according to Service guidance and recommendations, and will include nighttime visual surveys.
 - c. During these surveys, Service biologists may capture and handle any California red-legged frogs, in any life stage, for identification purposes.
 - d. If California red-legged frogs are observed in other areas of the Enrolled Property, surveys will be conducted in such areas, as described above.
 - e. The results of these surveys, including whether any California red-legged frogs were observed, will be reported to the Service in the annual report.
4. Conduct surveys for Smith's blue butterflies in areas identified as containing suitable habitat and being occupied by Smith's blue butterfly (see Figure 3) as follows. Due to DPR funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Part 12.D of this Agreement.
- a. Surveys for Smith's blue butterflies will be conducted during the year following the signing of this Agreement and then once every 3 years, or more frequently if DPR has funding and resources available.

- b. Surveys will be conducted according to Service guidance and recommendations.
 - c. Surveys for Smith's blue butterflies will consist of a Service-approved biologist walking trails within or adjacent to suitable habitat to look for adult butterflies. Surveys will be conducted under suitable weather conditions (at least 64 degrees Fahrenheit and winds of 6 miles per hour or less).
 - d. During these surveys, Service biologists may capture and handle any Smith's blue butterflies, in any life stage, for identification purposes.
 - e. Surveys will include habitat assessment monitoring of the Baseline conditions for the Smith's blue butterfly described in Part 4.1 of this Agreement.
 - f. Photo stations of suitable butterfly habitat within the Enrolled Property will be established within 1 year of the approval of this Agreement. Photos will be taken of areas slated for trail closure and/or habitat restoration such that the establishment of seacliff buckwheat plants at these areas can be monitored annually for 5 years after restoration then every 3 years afterwards. To quantify the increase in seacliff buckwheat, the number and age class of seacliff buckwheat plants growing within the restored areas will be recorded during each monitoring session.
 - g. If additional suitable habitat for the Smith's blue butterfly is established after restoration work has been completed, surveys will be conducted beginning 5 years after restoration in the newly established habitat as described above, and then every 3 years after.
 - h. The results of these surveys, including whether any Smith's blue butterflies were observed, will be reported to the Service in the annual report.
5. Monitor the implementation and progress of the management activities described in Part 5 of the Agreement, as projects and/or trail work is implemented, and provide the Service with the status of these activities in an annual report.
 6. Allow reasonable access by the Service or another agreed-upon party onto the Enrolled Property for purposes related to this Agreement, including verification of the identification of species using voluntarily established or enhanced habitats, and capture and relocation of California red-legged frogs and Smith's blue butterflies.
 7. Notify the Service 60 days prior to the transfer of ownership so that the Service can attempt to contact the new owner, explain the Baseline responsibilities applicable to the Enrolled Property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit the Covered Species on the Enrolled Property.
 8. Report to the Service any dead, injured, or ill specimens of the Covered Species observed on the Enrolled Property. Upon locating a dead or injured Covered Species, DPR will

notify the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California, 93003; (805) 644-1766) by telephone within 3 working days of its finding. The verbal notification must include the date, time, location, cause of injury or death if known, and any other pertinent information. An email message or written report containing the details from the verbal notification must be sent to the Ventura Fish and Wildlife Office with this information and, if possible a photograph, within 3 weeks of its finding. The person to whom the message will be sent, and corresponding email address if applicable, would be determined at the time of the phone call.

9. Provide the Service with an annual report (Attachment 1), due November 1 of each year for the prior calendar year. The report will include the results from any monitoring or surveys conducted and describe any habitat restoration activities and any substantial change in condition of previously established habitat for the Covered Species that occurred during the previous year, any observations of the Covered Species by DPR during the previous year, the status of implementation of the management activities described in Part 5 (and number 5 above), and any incidental take of a Covered Species that has occurred.

In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue a Permit to DPR, authorizing incidental take of the Covered Species, as a result of lawful activities on the Enrolled Property in accordance with the terms of such Permit. The duration of the Agreement will be 15 years. The Permit may extend for an additional 2 years beyond the 15-year duration of the Agreement, so long as prior to or upon expiration of the Agreement, the Service determines that the conservation actions identified in the Agreement have been implemented and DPR need not perform additional conservation activities on the property. If extended under the conditions above, the duration of the Permit will be 17 years.
2. As appropriate, within 1 year of the expiration of the Agreement, provide DPR with a determination that they have satisfied the conservation measures described in the Agreement.
3. Provide DPR with technical assistance when requested, and provide information on Federal funding programs for habitat improvement including those for threatened and endangered species.
4. Monitor for the Covered Species in existing suitable habitat or in enhanced, restored, or created habitats, if the Service determines that such monitoring is needed.

9.0 AGREEMENT AND PERMIT DURATION

This Agreement becomes effective upon issuance of the Permit by the Service. The Agreement will be in effect for 15 years. The Permit authorizing incidental take of the California red-legged

frog and Smith's blue butterfly will also be in effect for 15 years from the effective date of the Permit. If the Service determines that the conservation actions identified in the Agreement have been implemented and completed, then DPR need not perform additional conservation activities on the property and the Permit may continue in effect following termination of the Agreement for an additional 2 years. The additional duration of the Permit following termination of the Agreement will continue Permit coverage for DPR for 2 years to allow a return of the Enrolled Property to its Baseline condition. Both the duration of the Agreement and the Permit may be extended upon mutual agreement among the Parties.

10.0 ASSURANCES TO DPR REGARDING TAKE OF COVERED SPECIES

This Agreement will provide DPR with assurances that efforts to promote conservation and recovery of the Covered Species on the Enrolled Property will not result in additional restrictions on the use of their property.

The Permit will authorize DPR to take the Covered Species incidental to the Management Activities identified in Part 5 of this Agreement, the surveys and monitoring described in Part 8 of this Agreement, and as discussed in Part 6 of this Agreement, provided that such take is consistent with maintaining the Baseline conditions identified in Part 4 of this Agreement. Additionally, the Permit will authorize DPR to take the Covered Species incidental to the return of Enrolled Property to Baseline conditions, as discussed in Part 6 of this Agreement.

The Permit provides incidental take authorization only to DPR staff, persons authorized by DPR to conduct DPR related activities identified in this Agreement, and visitors. Any visitor present within the Enrolled Property for recreational or other purposes that is not abiding by DPR regulations will not be covered under the Permit nor will such visitor be provided incidental take coverage.

11.0 MODIFICATIONS

A. Modification of the Agreement. Either Party may propose amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of the Agreement. As provided for in the Service's Safe Harbor Policy (64 FR 32717), DPR may terminate the Agreement for circumstances beyond DPR's control. In such circumstances, DPR may return the Enrolled Property to Baseline conditions even if the net conservation benefit activities have not been fully implemented, provided that DPR gives the Service the notification required by Part 8 of this Agreement prior to carrying out any activity likely to result in the taking of the Covered Species. Upon return to Baseline under these circumstances, the Permit will terminate. If DPR terminates the Agreement for any other reason,

the Permit referenced in Part 8 of this Agreement shall immediately cease to be in effect.

C. Permit Suspension or Revocation. The Service may suspend or revoke the Permit referred to in Part 8 of this Agreement in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to any of the Covered Species (50 CFR 13.28(a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the Permit.

D. Baseline Adjustment. The Baseline conditions set forth in Part 4 of this Agreement may, by mutual agreement of the Parties, be adjusted if, during the term of the Agreement and for reasons beyond the control of DPR, the utilization of the Enrolled Property by the Covered Species or the quantity or quality of habitat suitable for or occupied by the Covered Species is reduced from that present at the time the Agreement was negotiated.

12.0 OTHER MEASURES

A. Remedies. Each Party shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no Party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. Succession and Transfer. As provided in Part 11 of the Service's Safe Harbor Policy (64 FR 32717), if DPR transfers their interest in the Enrolled Property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as DPR, if the new owner or manager agrees to become a party to the Agreement in place of DPR.

D. Availability of Funds. Implementation of this Agreement by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service 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.

E. Applicable Laws. All activities undertaken pursuant to this Agreement and its associated Permit must be in compliance with all applicable State, Federal, tribal, and local laws and regulations.

F. Relationship to the Act and other Authorities. The terms and conditions of this Agreement shall be governed by and construed in accordance with the Act and applicable Federal law. In

particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the Act. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government.

G. No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

H. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

I. Other Listed Species, Candidate Species, and Species of Concern. There is the possibility that other listed, proposed, or candidate species, or species of concern may occur in the future on the Enrolled Property as a direct result of the management actions specified herein. In the event that a non-covered species that may be affected by covered activities becomes listed under the Act, DPR and the Service will work together either to amend this Agreement, and the Permit described in Part 8 of this Agreement, to cover such other species or otherwise to confer upon DPR similar assurances with respect to such other species as are described above for the Covered Species.

J. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the person at the address listed below:

U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003
Attn: Field Supervisor

K. Pursuant to Section 22, Title 41, United States Code, it is further mutually agreed that no member of or delegate to Congress or resident commissioner, after their election or appointment, and either before or after they have qualified and during their continuance in office, shall be admitted to any share or part of the Agreement, or to any benefit to arise thereupon; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

LITERATURE CITED

- Arnold, R.A. 2010. Presence-absence surveys for Smith's blue butterfly at proposed trail improvement project, Garrapata State Park. Prepared for California Department of Parks and Recreation, Monterey, CA.
- Bulger, J.B., N.J. Scott Jr., and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. *Biological Conservation* 110:85-95.
- [DPR] California Department of Parks and Recreation. 2012. Coastal habitat restoration and coastal trail improvement project, Garrapata State Park, initial study and mitigated negative declaration. DPR, Monterey District, Monterey California.
- [DPR] California Department of Parks and Recreation. 2013. Garrapata State Park SHA covered species habitat management guidelines. DPR, Monterey District, Monterey California.
- Fellers, G. 2005. *Rana draytonii* Baird and Girard, 1852b California red-legged frog. Pages 552-554 in M. Lannoo (editor). Amphibian declines the conservation status of United States species. University of California Press. Berkeley, California.
- Hayes, M.P., and M.R. Jennings. 1988. Habitat correlates of distribution of the California red-legged frog (*Rana aurora draytonii*) and the foothill yellow-legged frog (*Rana boylei*): implications for management. Pages 144-158 in R. Sarzo, K. E. Severson, and D. R. Patton (technical coordinators). Proceedings of the symposium on the management of amphibians, reptiles, and small mammals in North America. United States Department of Agriculture, Forest Service, Rocky Mountain Range and Experiment Station, Fort Collins, Colorado. General Technical Report (RM-166): 1-458.
- Hemingway, V. and A. D'Amore. 2008. Final report for amphibian management and monitoring at Palo Corona Regional Park, Monterey County, California. Nov. 2008.
- Monterey County 2013. Final local action notice, coastal development permit PLN 100309, Garrapata State Park coastal habitat restoration and coastal trail improvement project, September 11, 2013.
- Nedeff, N. 2004. Garrapata Creek watershed assessment and restoration plan, riparian element. Unpubl. report prepared for the Garrapata Creek Watershed Council, Dec. 1, 2004.
- Semlitsch, R.D. 2002. Critical elements for biologically based recovery plans of aquatic-breeding amphibians. *Conservation Biology* 16:619-629.
- [Service] U.S. Fish and Wildlife Service. 1984. Smith's blue butterfly recovery plan. U.S. Fish and Wildlife Service, Portland, Oregon. 87 pp.

[Service] U.S. Fish and Wildlife Service. 2002. Recovery plan for the California red-legged frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.

[Service] U.S. Fish and Wildlife Service. 2006. Smith's blue butterfly (*Euphilotes enoptes smithi*) 5-year review: summary and evaluation. Sacramento, California. 26 pp.

DRAFT

Figure 1. Garrapata State Park – Enrolled Property

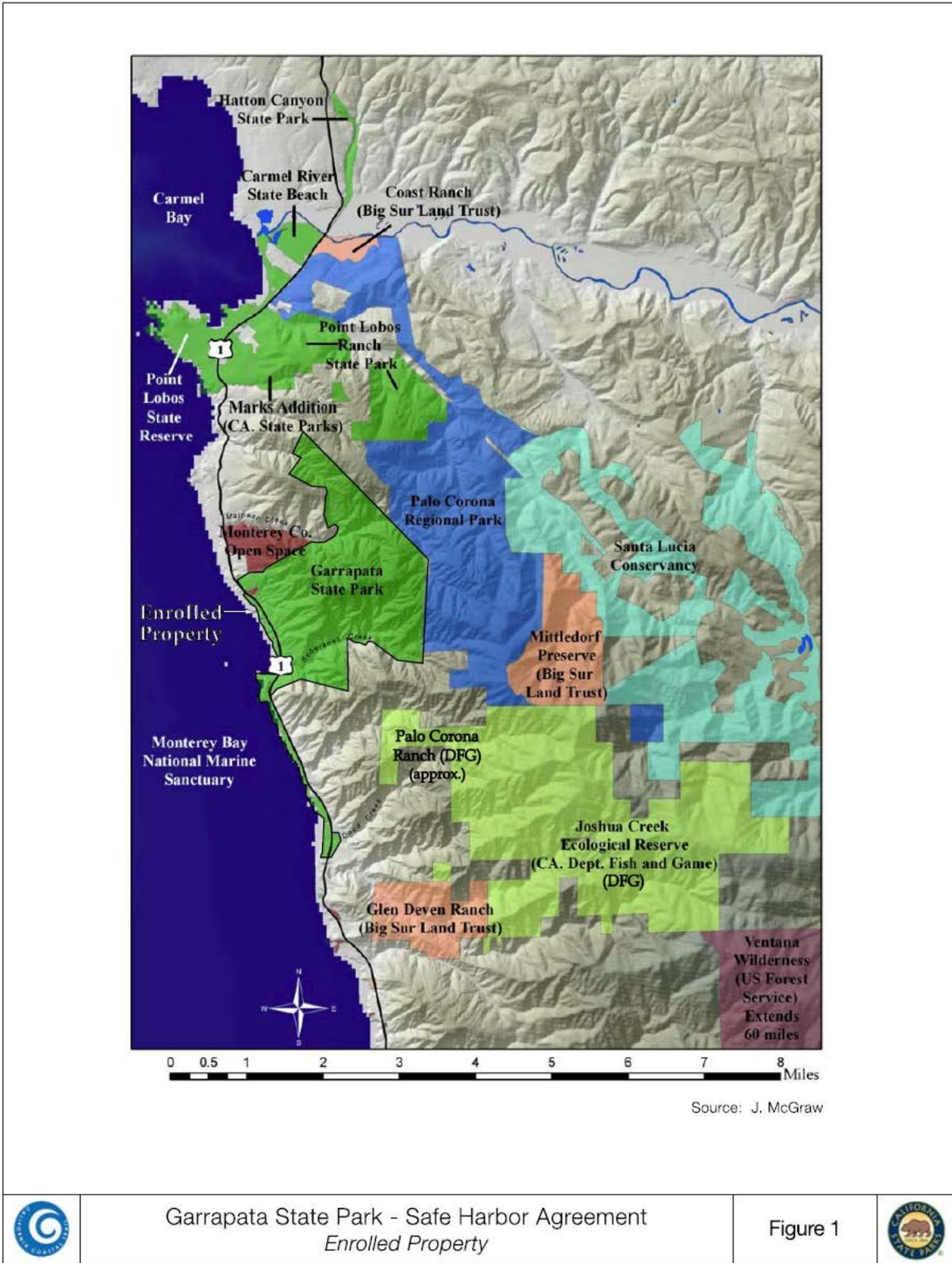


Figure 2. Garrapata State Park – USGS Topo Map

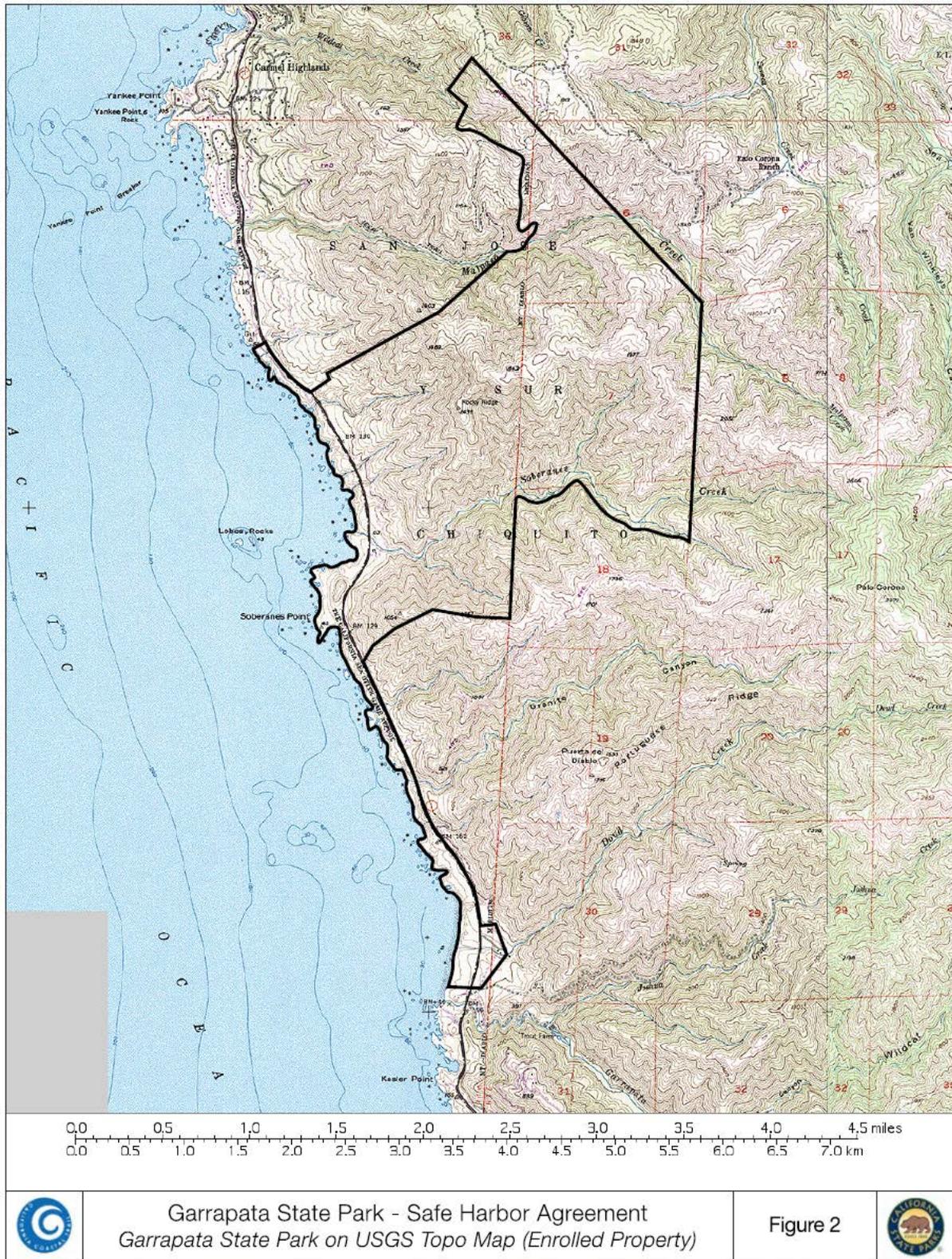


Figure 3. Extent of Seacliff Buckwheat

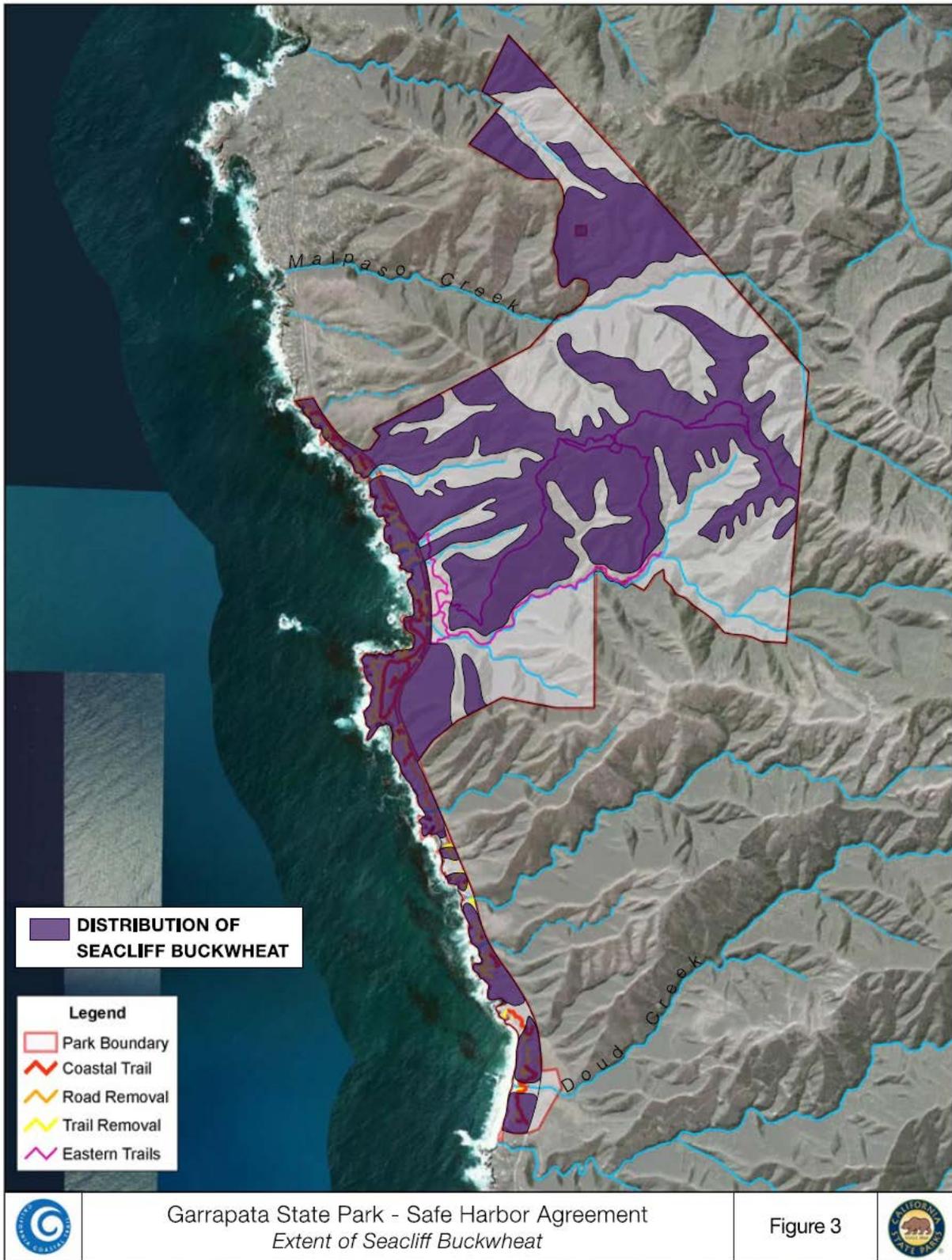


Figure 4. Streams with Riparian and Wetland Habitat



Attachment 1. Annual Monitoring Report

Safe Harbor Agreement between the U.S. Fish and Wildlife Service and California Department of Parks and Recreation, Monterey District

Permittee's Name: California Department of Parks and Recreation, Monterey District

Permit Tracking Number: [TBD]

Location: Garrapata State Park, Monterey County, California

Agreement Approved by: Ventura Fish and Wildlife Office

Species: California red-legged frog and Smith's blue butterfly

Monitoring Program: Describe in general terms the monitoring program for the current year pursuant to Part 8 of the Safe Harbor Agreement. Annual reports are designed to provide information to the Service concerning the effects and effectiveness of the Agreement's conservation actions for the Permitted Species, as well as to determine if the conservation actions the Permittee undertakes meet the Service's Safe Harbor Policy "standard." The monitoring report will document any changes in the condition of individuals of the Permitted Species or their habitat over time and will denote whether the data provided is from the Permittee, a professional scientist, or other specific individual or entity. Photographs are helpful but may not be required.

Date Annual Report is Due: On or before November 1, for the prior calendar year.

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer: _____

Management and Conservation Actions: Please write a summary of the actions taken to date and the results of the actions taken on each of the management and conservation actions (attach additional pages if necessary).