

## **10.1 Introduction**

This chapter discusses the assurances requested by the Permittees that will accompany the ESA Section 10(a)(1)(B) permits issued by USFWS and NMFS and the NCCP permit issued by CDFG. This chapter also outlines the process for changing or amending the Plan.

## **10.2 Assurances Requested by Permittees**

The Permittees are requesting the following assurances from the Wildlife Agencies. Assurances specific to state or federal agencies are described in Sections 10.2.3 (NMFS and USFWS) and 10.2.7 (CDFG).

### **10.2.1 Changed and Unforeseen Circumstances**

#### **Changed Circumstances**

Changed circumstances are defined in the federal No Surprises Regulation<sup>1</sup> and for the state of California in the NCCP Act<sup>2</sup>. The federal No Surprises Regulation defines changed circumstances as those circumstances affecting a species or geographic area covered by the HCP that can be reasonably anticipated by the applicant or wildlife agency and to which the parties can plan a response. Similarly, state regulation defines changed circumstances as those circumstances that are reasonably foreseeable and could affect a covered species or geographic area covered by the plan. Accordingly, these regulations require that potential changed circumstances be identified in the Plan along with responsive actions that would be taken to address these changes. The changed circumstances that could arise in the Plan area have been identified and are described below.

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<sup>1</sup> 63 Federal Register 35 (1998) (amending 50 C.F.R.17.22(b)(5), and 222.307(g)).

<sup>2</sup> California Fish and Game Code § 2805(c).

If a changed circumstance occurs within the Plan area as defined by these sections, the PCA will implement the prescribed responsive actions. If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures are not provided for in the PCCP, the Wildlife Agencies will not require any conservation and mitigation measures in addition to those provided for in the PCCP, without the Permittees' consent, provided the PCCP is being properly implemented. Properly implemented means the Permittees have been implementing the plan in accordance with the terms and conditions of the Implementing Agreement.

## Unforeseen Circumstances

Unforeseen circumstances are defined by federal regulation (50 CFR §17.3) as:

changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and the USFWS at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

The NCCPA (California Fish and Game Code Section 2805[jj]) defines unforeseen circumstances as:

changes affecting one or more species, habitat, natural community, or the geographic area covered by a conservation plan that could not reasonably have been anticipated at the time of plan development, and that result in a substantial adverse change in the status of one or more covered species.

New or changed conditions or circumstances that are not identified as changed circumstances in the PCCP are unforeseen circumstances for purposes of the assurances provided by the Wildlife Agencies. The Wildlife Agencies will not require the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the covered species in the PCCP without the consent of the Permittees. If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, the Wildlife Agencies may require additional measures of the Permittees even where the PCCP is being properly implemented, but only if such measures are limited to modifications within the Reserve System, if any, or to the PCCP's conservation program for the affected species, and maintain the original terms of the PCCP to the maximum extent possible. Any such additional conservation and mitigation measures will not involve the commitment of additional land, water, or other natural resources otherwise available for development or use under the original terms of the PCCP without the consent of the Permittees. As described in the No Surprises Regulation, it is the Wildlife Agencies' responsibility to

demonstrate the existence of unforeseen circumstances using the best scientific and commercial data available. For the purpose of this plan, “unforeseen” circumstances are circumstances that are highly unlikely and not reasonably foreseeable to occur. They represent the upper threshold for which remedial measures for changed circumstances will be funded.

The federal No Surprises Regulation does not limit or constrain the USFWS, NMFS, or any federal, state, local, or tribal government agency, or private entity, from taking additional actions at its own expense to protect or conserve covered species. The federal No Surprises Regulation also does not prevent USFWS and/or NMFS from asking the Permittees to voluntarily undertake additional mitigation on behalf of the affected species.

## **Changed and Unforeseen Circumstances Addressed by this Plan**

The PCCP is based on current conditions and reasonably foreseeable changes in conditions in the Plan Area. Through a combination of conservation strategy (Chapter 5) and adaptive management (Chapter 7) the Plan is intended to be able to meet objectives for covered species and covered communities under a range of changed circumstances. Changed circumstances may be classified as:

- Long term environmental trends: changes in climatic conditions (temperature and rainfall) and changes in nitrogen deposition.
- Catastrophic events: major flood or wildland fire.
- Land use change: changes in agriculture, such as changes in crops or agricultural practices, or changes in urban use and growth patterns or growth rate.
- Biological effects: New invasive species or new pathogens affecting covered species.

These effects will interact. For example, increased drought attributable to global climate change may increase the likelihood of wildfire or may lead to a reduction in rice cultivation due to reduced water supply. Changing climate may lead to introduction or spread of pathogens such as *Phytophthora ramorum* (the pathogen that causes sudden oak death), which would in turn increase risk of wildfire.

This chapter discusses possible changed and unforeseen circumstances recognized by this Plan and identifies the effects they may have on implementation of the Plan conservation strategy. The effects and the way the Plan will adapt are discussed in Chapter 7. Remedial actions to address changed circumstances are funded by the Plan and are also

described below (see Chapter 9 for funding strategy). A discussion of each follows.

- Covered species listed.
- Non-covered species listed.
- Global climate change
- Natural communities lost to fire.
- Natural communities lost to drought.
- Invasion of New or Existing Nonnative Species or Diseases.
- Destruction of Restoration Projects through Flooding.
- Vandalism of Reserves.

### **Covered Species Listed**

Each covered species in the PCCP has been treated as though it is listed under ESA and CESA. The Permittees anticipate that all listed and non-listed covered species will be covered under the permits. Take of listed plant species by non-federal entities is not prohibited under ESA and therefore will not be authorized by the Section 10 permit. The following plant species are proposed to be included on the federal permits in recognition of the conservation benefits provided for them under the Plan. These species would also receive No Surprises assurances under USFWS's No Surprises Regulation (63 FR 8859; see Section 10.2.3 in this chapter).

- Bogg's Lake hedge-hyssop (*Gratiola heterosepala*)
- Dwarf downingia (*Downingia pusilla*)
- Legenere (*Legenere limosa*)
- Ahart's dwarf rush (*Juncus leiospermus* var. *ahartii*)
- Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*)

The Permittees anticipate that the Section 10(a)(1)(B) permits will be effective for all covered species upon issuance. Should NMFS or USFWS list a covered species during the permit term, take coverage will become effective for that species at the time of listing. No changes to the terms and conditions of the PCCP or the Implementing Agreement will be required.

Under Section 2835 of the California Fish and Game Code, CDFG may issue take authorization for covered species (plants or wildlife), regardless of their listing status. As stated in the NCCP Act, "At the time of plan approval, the [California] department [of Fish and Game] may authorize by permit the taking of any covered species whose conservation and management is provided for in a natural community conservation plan approved by the department."

## Non-Covered Species Listed

Over the course of Plan implementation (50 years), the Wildlife Agencies may list as threatened or endangered under ESA or CESA species that are not covered under the Plan. If a non-covered species is listed, the following responsive actions will be taken.

- The potential impacts of covered activities on the newly listed species will be evaluated, including an assessment of the presence of suitable habitat in impact areas.
- The PCA will, in consultation with the relevant Wildlife Agency, develop guidance regarding the avoidance of impacts on the newly listed species and will provide the guidance to all Permittees.

Should a species not covered by the Plan be listed, proposed, or petitioned for listing, the Permittees may request that the Wildlife Agencies add the species to the Section 10(a)(1)(B) permit and NCCP permit. In determining whether or not to seek incidental take coverage for the species, the Permittees will consider, among other things, whether the species is present in the Plan area and if otherwise lawful activities could result in incidental take of the species. If incidental take coverage is desired, the Plan and permits could be modified or amended. Alternatively, the Permittees could apply for new and separate permits. Procedures for modifications and amendments to the Plan are outlined in Section 10.3, *Modifications to the Plan*, below.

## Climate Change / Global Warming

### *Under development*

The climate of the Plan area defined by temperature, insolation (sunshine), and the distribution of rainfall is a major factor establishing the composition of natural communities and defining habitat for covered species.

#### Landscape

- Species may not be able move through the landscape in response to changing abiotic features

#### Communities

- Changes in climatic factors could cause communities to shift in elevation and latitude. E.g., Between 1934 and 1996, the western edge of the distribution of ponderosa pine in the western Sierra (Placerville Quadrangle) has moved an average of 4.4 miles eastward and up 637 feet in elevation. Areas previously dominated by ponderosa pine are being replaced by oaks and other non-conifer species (Thorne 2006).

This shift was apparently caused by drought-stress mortality of seedlings with longer summer dry-season conditions.

- Wildfires may increase in frequency, duration, and size due to longer dry season
- Changes in temperature and precipitation in the Sierra Nevada will likely continue to cause a decrease in the fraction of total runoff occurring in the spring. (Over the past 100 years, the fraction of the annual runoff that occurs during April–July has decreased by 23% for the Sacramento basin.) If, as expected, the snowmelt season were to migrate to earlier times in the year as a result of global warming, it would reduce the amount of runoff that could be stored in man-made reservoirs for later use, because runoff would occur during times when flood control requirements mandate release of water from reservoirs to take into account the possibility of strong precipitation events late in the winter (wet) season (Moser et al. 2009).
- Disturbances created from the interaction of drought, pests, diseases, and fire are projected to have increasing impacts on forests and their future distributions (IPPC 2007).
- Climate change can influence land-use practices and patterns that, in-turn, impact habitats for species; e.g., changes in precipitation and evapotranspiration rates could make rice farming prohibitively expensive, causing a reduction in the availability of wetland habitats for migratory waterfowl, shorebirds, and the species that prey upon them (i.e., Peregrine falcon, a covered species)
- Changes in precipitation and temperature could alter the hydrological cycles in wetland and riverine habitats

#### Species

- Changes in climatic factors could cause species to shift in elevation and latitude
- Influence distribution and abundance of invasive species
- Climate change could influence the prevalence of infectious (including emerging infectious) diseases;
- Changes in phenology could disrupt species interactions (i.e., mutualism, parasitism, etc.) – e.g. plants could begin flowering before pollinators emerge.

### **Natural Communities Lost to Fire**

#### ***Under development***

Fire is a natural component of all Placer County ecosystems and vegetation types. Each vegetation type evolved under the influence of a natural fire regime that affected species' regeneration, flora and fauna and the landscape mosaic. The use of fire by Indians over 10,000 years had localized effects on the vegetation, particularly in those vegetation types that provided food and fiber for the Indians' sustenance. By far, the most dramatic impact on natural fire regimes has been the aggressive policy of fire prevention and suppression that has characterized the past 100 years. As a consequence of this policy, Placer County's vegetation types have ceased to have any significant natural fire regime.

Most of the woodland communities in the PCCP planning area have been classified as high to very high in terms of fire threat (i.e., the probability that a fire will occur). Generally, vernal pool grasslands are classified as moderate threat. The higher risk in the woodlands is attributable to higher fuel loads, relatively steep topography and limited access. Fires occur in the planning area on average once every two years. Most are small and quickly contained. Large fires (>100 acres) occur on average less than once a year (see map).

The PCA has anticipated the risk that wild fires will adversely affect conservation reserves. If recent fire history can be used to predict future fire events, it is reasonable to expect at least some conservation reserves will burn between now and 2060. Future fire frequency could be affected by changes in climate over the next few decades. It is uncertain whether or not fire frequency will increase or decrease in the future.

Vegetation types will respond differently to wild fire depending on the severity of the fire. Fire severity, in turn, depends on the weather, fuel loads, topography and other factors. In a worst-case scenario, a fire that affects a conservation reserve could have devastating effects on the vegetation and the site. These effects can actually be exacerbated by suppression actions such as use of bulldozers to create firebreaks, aerial application of fire retardant and back firing.

To reduce the potential impacts of wild fire on conservation reserves, the PCCP PCA has prepared guidelines for wild fire management (Appendix X). These guidelines emphasize management to reduce fuel loads and minimize potential for wild fire severity and spread. The guidelines also contain recommendations for minimizing the impacts of fire suppression on a conservation reserve if a fire occurs. All conservation reserves will have management plans that will contain a component on wild fire management.

Considering the fact that all of the PCCP vegetation types were historically adapted to fire, it is also proposed that once conservation reserves have achieved more fire resilient states (primarily through reducing fuel loads) that prescribed fire be used to maintain the conditions and re-introduce fire as a natural process (e.g., see

Conservation Action LM-8 in Chapter 5). This will not be feasible everywhere because of air quality and social constraints. In situations where prescribed fire cannot be used, surrogates such as use of grazing and browsing animals and hand or mechanical treatments will be used to maintain conservation reserves.

With implementation of wild fire management, it is possible for adverse impacts on conservation reserves can be avoided to a great extent. Nevertheless, there is always the potential for a large, severe fire to occur under dry, hot, windy weather conditions. Consequently, in addition to taking the steps necessary to reduce fire risk, it is also advisable to build redundancy into the conservation reserve system by acquiring sufficient habitat to compensate for losses due to wild fire.

### **Expansion of New or Existing Nonnative Species or Disease**

Nonnative species currently occur in the Plan area and will be present in the Reserve System. Additionally, there may be diseases that exist in the Plan area that have the potential to adversely affect the covered species and natural communities within the Reserve System. The conservation strategy includes measures to reduce existing and prevent future infestations of nonnative invasive species and diseases (see Chapter 5, Section 5.3.2). The monitoring program will identify and map existing nonnative species in the Reserve System so that new ones can be identified quickly and a control or eradication plan can be put into place. However, it is possible that a number of events could occur despite implementation of the conservation strategy and monitoring program.

- New and aggressive nonnative species could invade the Reserve System.
- Infestations of a yet unknown disease that affects covered or dominant species in the Plan area could have dramatic effects on the Reserve System.
- Existing nonnative species or diseases could expand to unprecedented levels in the Reserve System, perhaps due to changing climate.

For the purposes of this Plan, infestations of new diseases or new nonnative invasive species affecting Reserve System, or the spread of existing nonnative species or disease beyond baseline conditions in the Reserve System are considered unforeseen circumstances. There are a number of diseases and nonnative species that may affect or threaten covered species and the natural communities on which they depend. In general, the effects of diseases on the survival and reproduction of covered species is poorly known. The method of measurement of the extent of new diseases will be different for each disease (e.g., number of trees affected, proportion of species' range, and number of populations).

The list of invasive nonnative plants and animals is much more extensive. Non native animals include but are not limited to invasive mussels, bullfrogs, and introduced predatory fish such as northern pike. Non-native invasive plants include medusa head, yellow-star thistle, giant reed, and broom. These species currently occur in the Plan area, and conservation and monitoring actions to reduce or contain their occurrence within the Plan area have been developed.

When a new disease or nonnative species is detected or an existing disease or nonnative species begins aggressively to spread, the PCA will contact the Wildlife Agencies to collaborate on determining the best method of measuring, monitoring, and eradicating or controlling the disease before it spreads. Responsive actions that address the invasion of nonnative species or disease follow the steps listed below.

- Determine the best method for measurement and tracking extent.
- Prepare a damage-assessment report.
- Recommend and plan actions to address the threat.
- Respond through adaptive management in ways consistent with existing funding and permit obligations and with the consent of the Wildlife Agencies.

If the disease or nonnative invasive species results in substantial impacts on natural communities such that it cannot be addressed under the existing operating budget, the PCA will prepare a report identifying the problem and will include a cost analysis for funding a control program. This report will be submitted to the Wildlife Agencies for approval. The PCA will seek additional outside funding and partnerships from sources other than development fees to fund and implement the program to reduce or eradicate the nonnative invasive species or to control the disease. The feasibility of such programs will depend on the success of additional fundraising.

### **Destruction of Restoration Projects through Flooding**

Flooding is a natural event in stream systems. Floods along stream channels with new riparian plantings could destroy restoration sites and require substantial remediation. Flooding and remediation of restoration sites is an anticipated component of the restoration budget. However, repeated large floods are not anticipated.

Several major floods have been documented since European settlement of Placer County, most recently in 1983, 1986, 1995, 1997 and 2005. While a 100-year event is highly likely to occur during the 50-year permit term, the probability of flooding and the frequency of events is difficult to determine. Flooding probability is specific to each stream's capacity, the runoff potential of the stream's upper catchment, and rainfall patterns across the county. Given that urbanization has increased across the

county (increasing flood potential) and that local agencies have completed and continue to develop flood control projects to accommodate increased peak runoff (decreasing flood potential), past flood events do not reliably predict future flood probability. Because the flood control standard for local agencies is the 100-year event, all storms at or below the 100-year event are considered foreseeable events (i.e., a changed circumstance). Taking into account climate change, we must rely on predictive models in addition to historic trends. While there is a discrepancy over whether precipitation will increase or decrease in the Plan area, it is expected that storms at or below the 100-year event are reasonably likely within the permit term and could potentially increase in frequency in the county due to climate change (Hayhoe et al. 2004; Kim 2005).

Climate changes models also demonstrate clear trends towards earlier snowmelt accompanied by increased frequency of winter flooding (Dettinger et al 2004). These climate change predictions are most likely to impact the study later in the permit term, if at all, as the models predict more drastic hydrologic changes for the end of the century compared to mid-century. Responsive actions are funded by the Plan for flooding events at or below the 100-year event if they occur and if they damage or destroy riparian, wetland or stream restoration projects associated with the Conservation Plan. There is unlikely to be damage from flooding larger than a 100-year event (i.e., such damage is not reasonably foreseeable) within the first half of the permit term; and it is unlikely that there will be damage caused by flooding from more than two 100-year events in the second half of the permit term.

Following a flood event, the affected site within the Reserve System will be evaluated to determine appropriate responsive actions necessary to ensure that the habitat is restored through active management or natural processes. Responsive actions will be implemented within 1 year of the damage or failure.

### **Natural Communities Lost to Drought**

Drought is a natural part of a Mediterranean climate system to which species and natural communities have adapted. However, a prolonged drought could cause serious damage to the Reserve System, especially to new restoration plantings that have yet to become established. The following analysis was conducted to define droughts and estimate their expected frequency of occurrence in the Plan area. Droughts that occur within this expected frequency are considered a changed circumstance and are expected and funded over the course of Plan implementation; droughts outside this frequency are not considered reasonably foreseeable and would be treated as an unforeseen circumstance.

Numerous multiyear droughts have occurred in California last century: 1912-13, 1918-20, 1922-24, 1929-34, 1947-50, 1959-61, 1976-77, 1987-9, and 2006 to present. A drought is defined as two or more successive

water years with 75% or less of the median inflow. These data show that, on average, droughts of 2 years or more occurred 4.5 times over any 50-year period. DWR's state climatologist reported at the June 24, 2009 Extreme Weather Symposium that climate change will most likely result in more extreme events occurring, both drought and flooding, within the northern California area. Future precipitation patterns as a result of climate change will result in reduced Sierra snowpack over the long term.

However, while climate change is anticipated to result in increased drought potential, the extent of such change is not fully understood. Thus, the predicted drought potential during the permit term is conservative. No more than four droughts of 2 years (or more) are anticipated, and a higher frequency of droughts during the permit term is not likely and would be treated as an unforeseen circumstance.

The reserve management plans described in Chapter 5 will include drought monitoring and protection measures that will minimize the risk of losing mitigation plantings and restored habitats due to drought. Preventative measures are listed below.

- Monitoring natural inflow data in the Plan area to determine if the seasonal inflow at the end of March and April indicate a dry year (near 75% of median inflow).
- Monitoring mitigation sites that are beyond their establishment periods (i.e., no longer sustained by irrigation) for stress due to low soil moisture or high evapotranspiration rates.

Should damage or losses due to drought occur; the PCA will assess the drought damage and initiate the following responsive actions.

- Prepare damage assessment report.
- Recommend actions to improve effects on covered species (e.g., provision of temporary artificial water sources).
- Recommend actions to improve effects on restored habitat (e.g., supplemental irrigation).
- Implement measures through the Adaptive Management Program (see Chapter 7) in ways consistent with existing funding and permit obligations and with the consent of the PCA.

### **Vandalism of Reserves**

Structures in the Reserve System such as gates, fences, signs, recreational facilities, or administrative buildings could be vandalized during the permit term. Such damage is considered reasonably likely to occur during the permit term and is therefore considered a changed circumstance. Responsive actions will consist of the repair or replacement of structure or facilities damaged by vandalism.

## 10.2.2 Federal No Surprises

The federal *No Surprises Regulation* was established by the Secretary of the Interior on March 25, 1998. It provides assurances to Section 10 permit holders that no additional money, commitments, or restrictions of land or water will be required should unforeseen circumstances requiring additional mitigation arise once the permit is in place. The No Surprises Regulation states that if a Permittee is properly implementing an HCP that has been approved by USFWS and/or NMFS, no additional commitment of resources, beyond that already specified in the plan, will be required.

The Permittees anticipate regulatory assurances (No Surprises) for all covered species in the Plan. In accordance with No Surprises, the Permittees will be responsible for implementing responsive actions in response to any changed circumstances as described in this chapter. The Permittees will not be obligated to address unforeseen circumstances but will work with the Wildlife Agencies to address them within the funding and other constraints of the Plan should they occur.

## 10.2.3 Federal Section 7 Consultations

An important goal of the Plan is to provide a framework for ESA compliance for covered species for all covered activities in the Plan area. Whether a covered activity occurs under Section 7 or 10 of the ESA, the PCCP will provide the framework for future Section 7 consultations.

Projects that are subject to Section 7 of the ESA are evaluated under different standards than projects subject to Section 10. Non-federal projects must obtain a permit for take of listed species, while federal agencies must consult with USFWS or NMFS whenever their actions have the potential to affect a listed species. For example, the definition of “affect” differs slightly from that of “take” and may be applied differently, depending on the species and the project.

The PCCP is not intended to alter the obligation of a federal agency to consult USFWS or NMFS pursuant to Section 7 of the ESA. Unless otherwise required by law or regulation, USFWS and NMFS will ensure that the biological opinion for the proposed project covered by the Plan is consistent with the biological opinion issued for the Conservation Plan and the federal permit. Section 7 consultations only apply to federally listed species, so only those covered species that are federally listed at the time of the consultation need be included in the consultation. Unless otherwise required by law or regulation, USFWS will not impose measures on applicants for coverage under the PCCP in excess of those that have been or will be required by the Implementing Agreement, the Conservation Plan, and the permits. Before completing a Section 7 consultation for a covered activity in which USFWS or NMFS proposes to require a measure in excess of the requirements of the Implementing Agreement, the Conservation Plan, or the permits, USFWS or NMFS will

meet and confer with the Permittee with jurisdiction over the affected project to discuss alternatives to the imposition of the measures that would meet the applicable legal or regulatory requirements. USFWS or NMFS will process subsequent ESA consultations for covered activities in accordance with the established regulatory process and deadlines (50 CFR Section 402.14).

## 10.2.4 Federal Critical Habitat Designations

USFWS and NMFS acknowledge that this Plan provides a comprehensive, habitat-based approach to the protection of covered species by focusing on the lands and waters essential for the long-term conservation of the covered species and appropriate management of those areas. This approach is consistent with the overall purposes of the federal ESA to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved. ESA regulations specify that the criteria to be used in designating critical habitat include “those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.” (50 CFR. § 424.12(b).)

Critical habitat is currently designated for six of the covered species: vernal pool fairy shrimp, vernal pool tadpole shrimp, valley elderberry longhorn beetle, California red-legged frog, California tiger salamander, and Central Valley steelhead. Only three of these species have critical habitat that is within the plan area: the two shrimp and the steelhead.

Map \*\* depicts the area of critical habitat of the two fairy shrimp within the plan area, and Map \*\* depicts the three streams that are designated as critical habitat for the central valley steelhead (from north to south Bear River, Coon Creek, Auburn Ravine, and Dry Creek).

The Conservation Plan provides for the protection of “those physical and biological features essential to the conservation” of the covered species in a manner consistent with the ESA regulations concerning the designation of critical habitat.

## 10.2.5 State NCCP Assurances

The NCCP Act (Section 2820[f]) includes provisions ensuring that “if there are unforeseen circumstances, additional land, water, or financial compensation or restrictions on the use of land, water, or other natural resources shall not be required without the consent of the plan participants...” The NCCPA specifies that assurances for plan participants may be provided commensurate with long-term conservation assurances and associated implementation measures provided in the Habitat Plan. CDFG’s determination of the level of assurances and the time limits specified in the Implementing Agreement will be based on the overall knowledge of the species and natural communities, the strength of

the conservation strategy, and the size and duration of the Conservation Plan(Sections 2820[f][1][A–H]).

## **10.2.6 Conservation Contributions by State and Federal Agencies**

As described in Chapter 8, implementation of the mitigation portion of the Plan will be the responsibility of the Permittees. The Permittees will also be contributing funding and other resources to the conservation portion of the Plan (i.e., the portion that contributes to species recovery). It is anticipated that state and federal agencies, including the Wildlife Agencies, will also contribute to the conservation portion of the Plan. The Permittees recognize that state and federal funds cannot be guaranteed in advance of the approval of yearly budgets, nor can they be guaranteed by agency staff that does not have the authority to commit these funds. However, the Permittees seek assurance that the Wildlife Agencies will make every effort to assist the PCA in securing the funding outlined in Chapter 9 to contribute to species recovery and to help implement the conservation portion of the Habitat Plan.

## **10.2.7 Staffing Contributions by State and Federal Agencies**

Successful implementation of the Conservation Plan relies on the continued participation and feedback of representatives of the Wildlife Agencies. As described in Chapter 8, Wildlife Agency staff is expected to participate in PCA meetings and subcommittees as needed to evaluate and provide advice on Plan implementation. In particular, Wildlife Agency staff participation is critical to the success of the adaptive management and monitoring program. To ensure this participation, the Permittees request assurances that the Wildlife Agencies will provide staff to serve on all appropriate committees and will ensure, to the extent possible, staff participation in discussions and meetings to ensure that the implementation of the Conservation Plan is consistent with any findings upon which the permits are based.

## **10.2.8 Assurances to Private Landowners**

### **Take Authorization Assurances**

All covered activities described in the PCCP will receive take authorization according to the procedures and requirements described in the Plan (see Chapter 6, Section 6.3 and Chapter 8, Section 8.7). For projects conducted by private developers under the jurisdiction of one of the Permittees, once the take authorization has been provided, it will remain in effect for that covered activity, as long as the private developer fully complies with the conditions of the Plan, the Implementing

Agreement, the permits issued by the Wildlife Agencies to the Permittees, and the conditions imposed on the covered activity when take authorization was granted (see Chapter 6, Section 6.3).

## **Neighboring Landowner Assurances**

This Conservation Plan calls for the acquisition of land and coordinated management of a Reserve System for the benefit of covered species. As a result of the conservation strategy (Chapter 5), some populations of listed species are expected to increase in the reserves and elsewhere. Landowners adjacent to or near reserves may be concerned that populations of state- or federally listed species in the reserves may expand and colonize or use their lands, potentially restricting their land use activities.

The conditions on covered activities described in Chapter 6 include provisions defining avoidance and minimization of take of covered species and natural communities. A common feature in avoidance and minimization is spatial setback to separate occupied habitat from indirect effects of adjoining activity.

All PCA reserves are intended to be “self-buffering”, meaning that they will be designed and operated to include necessary setbacks or other protective features within their own boundaries. Landowners adjoining PCA reserves will not be subject to avoidance conditions that would otherwise be applied to a covered species occurrence; any consequential take of covered species is authorized under this permit.

The PCA will maintain a database of species and natural community status on PCA reserve lands. This information will be provided to the Permittees. Permittees will notify the PCA of activities that may take place adjacent to reserves so that the PCA can take additional protective measures, if appropriate. The information can be recorded on application materials and CEQA documents pertaining to neighboring landowners, subject to these protections, as well as signed certificates of inclusion returned by landowners. The PCA keep a record of potential take on lands adjoining reserves and will notify the Wildlife Agencies in its annual report.

## **Public Access to Conservation Easements Held by Private Landowners**

It is not the intent of the PCA to allow general public access to private lands included within the PCCP Reserve System, i.e., to lands included in the Reserve System by virtue of a conservation easement recorded on the lands, rather than acquisition of the lands themselves. Public access to private lands managed under the Conservation Plan could conflict with ongoing agricultural or other operations and could pose a safety risk to the public. Public access to lands under conservation easements could

also pose a risk of unwanted trespass onto adjacent privately held lands. Generally, the PCA will leave decisions regarding public access up to the landowner but will restrict access through the conservation easement where that access may conflict with the conservation goals of the site. All conservation easements will provide for access for PCA biologists to conduct management and biological monitoring necessary for compliance with the PCCP's adaptive management and biological monitoring program.

## 10.3 Modifications to the Plan

The Conservation Plan or incidental take permit can be modified in accordance with USFWS, NMFS, and CDFG regulations and the terms of the Implementing Agreement. Conservation Plan modifications are not anticipated on a regular basis. Modifications can be requested by a Permittee or by the permitting agencies. The categories of modification that are recognized, in order of significance, are administrative changes, minor modifications, and amendments, each of which is described below.

### 10.3.1 Administrative Changes

Administrative changes are internal changes or corrections to the Plan that do not require authorization from the Wildlife Agencies. Administrative changes will be made in writing and documented by the PCA. The Wildlife Agencies will be provided a summary of administrative changes in each Annual Report. Examples of administrative changes are listed below.

- Corrections of errors in the Plan that do not change the intended meaning or obligations.
- Minor changes to survey or monitoring protocols that are not proposed in response to adaptive management<sup>3</sup>.
- Day-to-day implementation decisions, such as modifying irrigation schedules for created/restored habitats on the basis of observed water needs of planted vegetation.
- Modifying the design of existing directed studies or implementing new studies.
- Conducting additional monitoring surveys.
- Modifying Conservation Plan monitoring protocols to align with Wildlife Agency monitoring protocols as they may be modified in the future.
- Adopting new monitoring protocols that may be promulgated by the Wildlife Agencies in the future.

<sup>3</sup> Such changes are subject to federal No Surprises regulations, state assurances, and local assurance provisions found in the Implementing Agreement.

- Annual adjustments to the Conservation Plan Development Fee to keep pace with the inflation of land values.
- Changes to the membership of the Governing Board, the Science Advisors, or any advisory committees to the Board without changing the representation of the Permittees, agencies, or organizations.

### **10.3.2 Minor Modifications**

Minor modifications are changes that do not affect the impact assessment or conservation strategy described in the Conservation Plan and do not affect the ability of the PCA to achieve the biological goals and objectives of the Habitat Plan. Minor modifications do not require an amendment to the permits or the Implementing Agreement, but they do require preapproval by the Wildlife Agencies before being implemented. Examples of minor modifications are listed below.

- Updates to the land cover map or to species occurrence data that are consistent with the predictions and expectations of the Conservation Plan.
- Minor changes to the biological goals or objectives in response to adaptive management.
- Modification of monitoring protocols for Conservation Plan effectiveness not in response to changes in standardized monitoring protocols from the Wildlife Agencies.
- Modification of existing or adoption of additional conservation measures that improve the likelihood of achieving covered species objectives.
- Discontinuing implementation of conservation measures if they are ineffective.
- Modification of BMP or LID protocol so long as the changes are equally effective and protective.
- Modification of existing or adoption of new performance indicators or standards if results of monitoring and research, or new information developed by others, indicate that the initial performance indicators or standards are inappropriate measures of success of the applicable conservation measures.
- Modification of existing or adoption of additional covered species or natural community objectives where such changes are consistent with achieving covered species, natural community, and overall Conservation Plan goals.
- Minor changes to the reporting protocol.
- Other changes that do not result in adverse effects on covered species beyond those analyzed in the Conservation Plan and the

associated biological opinion, and do not limit the ability of the PCA to achieve the biological goals and objectives of the Plan.

Changes in the land acquisition configuration of the Plan (see Chapter 5, Section 5.3.1) may be necessary to address changing land use patterns in the Plan area or a lack of willing sellers in key Conservation Analysis Zones. Changes in land acquisition requirements within a Zone that amount to less than 10% of the original acreage are considered minor modifications as long as all three of the conditions listed below are met.

- The overall target acquisition acreage of land cover type or habitat for covered species does not change within the Plan area (i.e., a decrease in land acquisition on one Zone is balanced by an increase in land acquisition in another Zone).
- The changes between Zones are biologically equivalent or biologically superior to the original Plan.
- The changes do not significantly affect the ability of the PCA to mitigate the impacts on covered species, contribute to the recovery of covered species, and meet the Plan's biological goals and objectives.

A minor change in land acquisition configuration may be needed, for example, to account for small differences in acreages of land cover type across Zones due to parcel boundary changes or overlap between Zones. Any change in land acquisition requirements that exceeds 10% of the original acreage requirement or that is inconsistent with the criteria above is considered a major amendment.

A change in the Conservation Plan area (either a decrease or an increase) in response to a change in the planning limit of urban growth or city limit is also considered a minor modification, as long as the change meets the four conditions listed below.

- It is compatible with the conservation goals and Reserve System configuration of the Plan.
- It is consistent with the urban development covered activities in the Plan as defined in Chapter 2.
- It is consistent with the impact analysis of the Plan (Chapter 4).
- It addresses activities that are already covered by the Plan.

All minor modifications must first be approved by the PCA Governing Board in a public meeting, and are subject to final approval by the Wildlife Agencies. To modify the Plan without amending the permits, the PCA Governing Board will submit to the Wildlife Agencies a written description of the proposed change and an explanation of why its effects are not believed to be significantly different from those described in the original Plan. If the Wildlife Agencies concur with the proposal, they will authorize the modification in writing, and the modification will be considered

effective on the date of the Wildlife Agencies' written authorization. If any Wildlife Agency does not respond to the proposal within 60 days, it will be deemed to have approved the proposal.

### 10.3.3 Amendments

An amendment is a change in the Plan that may affect the impact analysis or conservation strategy in the Plan. Amendments to the PCCP will also require an amendment to the incidental take permits through generally the same formal review process as the original Plan and permits, including NEPA/CEQA review, Federal Register notices, an internal Section 7 consultation with USFWS or NMFS (depending on which species are affected), and formal NCCP findings by CDFG. The PCA Governing Board will submit an amendment to the Wildlife Agencies in a report that includes a description of the need for the amendment, an assessment of its impacts, and any alternatives by which the objectives of the proposal might be achieved.

Examples of changes that would require an amendment include but are not limited to those listed below.

- Revisions of the permit area boundary that do not qualify for a minor modification.
- Addition of species to the covered species list.
- Increasing the allowable take limit of existing covered activities or adding new covered activities to the Plan.
- Modifications of any important action or component of the conservation strategy under the Habitat Plan, including funding, that may substantially affect levels of authorized take, effects of the covered activities, or the nature or scope of the conservation program.
- A major change in performance standards if monitoring or research indicates that performance standards are not attainable because technologies to attain them are either unavailable or infeasible.
- Extending the permit term beyond 50 years.

#### Amending the Section 10(a)(1)(B) Permits

To amend the Section 10(a)(1)(B) permits, the PCA Governing Board will submit a formal application to USFWS and NMFS. This application must include a revised Habitat Plan, a permit application form, any required fees, a revised Implementing Agreement, and the required compliance document under NEPA. The appropriate NEPA compliance process and document will depend on the nature of the amendment being proposed. Upon submission of a completed application package, USFWS and/or NMFS will publish a notice of the proposed application in the Federal Register, initiating the NEPA and HCP amendment review process. After

public comment, USFWS or NMFS will approve or deny the permit amendment application in accordance with the ESA and its implementing regulations..

### **Amending the NCCP Permit**

Procedures for amending the NCCP permit will be included in the Implementing Agreement and processed in accordance with applicable NCCP Act requirements. The NCCP permit amendment will be subject to the requirements of CEQA, including a public review period. At the conclusion of the public review period, CDFG will either approve or deny the permit amendment in accordance with the NCCP Act. To approve the permit amendment, CDFG must make appropriate NCCP Act and CEQA findings.

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