

Appendix A:

2/21/96 Draft HMP

Implementing/Management Agreement



HMP IMPLEMENTING/MANAGEMENT AGREEMENT

This IMPLEMENTING/MANAGEMENT AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 199-, by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), the UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM"), both Agencies of the Department of the Interior of the United States of America, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ("CDPR"), both Subdivisions of the Resources Agency of the State of California, the FORT ORD REUSE AUTHORITY ("FORA") and its member agencies, the UNIVERSITY OF CALIFORNIA ("UC") and the CALIFORNIA STATE UNIVERSITY ("CSU") and other PARTICIPATING ENTITIES to this Agreement collectively called the "Parties."

AGREEMENT

Based upon the recitals, definitions, mutual covenants and obligations, and other provisions set forth below, and other valuable consideration, the Parties agree as follows:

1.0 RECITALS

1.1 Fort Ord, California is a former United States military base in Monterey County that was closed pursuant to the Defense Base Closure and Realignment Act of 1990. It comprises a land area of approximately 28,000 acres in the territory of three general purpose agencies of government, the City of Seaside, the City of Marina and the County of Monterey.

1.2 Because the U.S. Department of the Army's ("Army") closure and disposal of Fort Ord is considered a major federal action potentially affecting several species listed as threatened or endangered under the federal Endangered Species Act ("ESA") (16 U.S.C. §§ 1531-1544), the Army consulted with the USFWS under Section 7 of the ESA.

1.3 As a result of Section 7 Consultation between the Army and the USFWS, the USFWS issued a biological opinion finding that no jeopardy to federally listed Smith's blue butterfly, western snowy plover, and sand gilia would result from closure, disposal, and reuse of Fort Ord provided that a habitat management plan that minimized the loss of individuals and habitat of these species be developed and implemented. In the biological opinion, the USFWS also made the conservation recommendation that the Army consider all proposed and candidate species for federal listing in the habitat management plan.

1.4 With input from federal, state, local and private agencies and organizations concerned with the natural resources and reuse of Fort Ord, the Army developed the *Installation-Wide Multispecies Habitat Management Plan for Fort Ord, California* ("HMP") for the disposal and reuse of the base. The HMP describes a cooperative federal, state, and local program of

conservation for plant and animal species and habitats of concern known to occur at Fort Ord as listed in Exhibit A of this Agreement ("HMP Resources").

1.5 The species and habitats of concern, which include federally listed species, state listed species, unlisted species and habitats of concern, are found in or may use or inhabit portions of Fort Ord and as a consequence, base reuse and future urban growth may result in a diminution of habitat and a "taking" of individuals of these HMP Resources incidental to the normal course of urban development.

1.6 The HMP establishes a long-term program for the protection, enhancement and management of all HMP Resources with a goal of no net loss of HMP populations while acknowledging and defining an allowable loss of such resources through the land development process. The HMP establishes the conditions under which the disposal of Fort Ord lands to public and private entities for reuse and development may be accomplished in a manner that is compatible with adequate preservation of HMP Resources to assure their sustainability at Fort Ord in perpetuity.

1.7 The HMP is intended to establish a regional conservation program for the HMP Resources and to thereby obviate the need for review of individual projects by the USFWS and CDFG and for project-specific mitigation measures to protect the HMP Resources. Consequently, successful implementation of the HMP requires cooperation among all recipients of land within the HMP Planning Area which is all the land area within the boundaries of the former Fort Ord military installation (Exhibit B).

1.8 The HMP will be implemented by the Parties to meet the requirements of the ESA, the California Endangered Species Act ("CESA"), the California Native Plant Protection Act ("CNPPA"), the Natural Communities Conservation Planning Act of 1991 ("NCCP Act"), the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") for HMP Resources. The HMP together with this Agreement establish the conditions under which the Parties, for the benefit of themselves and of public and private landowners and other development project proponents within the HMP Planning Area will receive from the USFWS and the CDFG certain long-term permits and authorizations to allow for the taking of HMP Resources incidental to development and other lawful land uses.

1.9 All HMP Species addressed in the HMP are included in the state and federal take authorizations to provide certainty that permitted activities may proceed in the event unlisted HMP Species become listed pursuant to ESA or CESA.

1.10 This Agreement defines the respective rights and obligations of the Parties and identified beneficiaries of this Agreement with respect to the implementation of the HMP. Specifically, this Agreement will:

A. Ensure implementation of the conservation measures outlined in the HMP;

B. Contractually bind each Party to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the HMP and this Agreement; and,

C. Provide remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in the HMP and this Agreement.

1.11 This Agreement is based on the following facts:

A. FORA is a public corporation of the State of California and is authorized to prepare, adopt, finance, and implement a plan for the future use and development of the territory occupied by the Fort Ord military base in Monterey County. The Plan includes a conservation element that provides for the preservation, development, use and management of habitat of or for exceptional flora or fauna. Pursuant to the provisions commencing with Section 67650 of the Government Code, the governing board of FORA is also authorized to enter into agreements and contracts to determine the conservation of property or to mitigate the impacts of the reuse of Fort Ord on rare and endangered species of flora and fauna including arrangements for the long-term management, biological monitoring, and financing.

B. The County of Monterey, a legal subdivision of the State of California vested with corporate powers, and the Cities of Monterey, Del Rey Oaks, Marina, and Seaside, each a municipal corporation located within the County of Monterey, are authorized to enter into this Agreement pursuant to statutes and the Constitution of the State of California, including without limitation of Article 11 thereof, authorizing them to regulate the use of land, approve open space and conservation easements, create assessment districts, enact conservation and open space elements for general plans, preserve natural resources, including plants and wildlife, and exercise general planning and zoning powers, and enter into contracts and take other actions to conserve wildlife and plant resources and reconcile such concerns with economic development. See Government Code Sections 50060.5, 51205, 51070, 50575, 65302, 65560, 65864.

C. The California Department of Parks and Recreation (CDPR) is a subdivision of the California Resources Agency responsible for acquiring, preserving, developing, and managing the natural, cultural and recreational resources in the State Park System. Under the provisions of Section 5003 of the Public Resources Code, CDPR is mandated to protect, develop, and interpret the property under its jurisdiction. Properties include the administration and management of state reserves and natural preserves that have distinct or unique features such as rare and endangered plant and animal species and their supporting ecosystems.

D. The University of California (UC) is a public trust governed by the Board of Regents (Regents). Under the provisions of Article 9 of the Constitution of the State of California, and Section 92000 of the Education Code, the Regents have full power of organization and government, including the authority to take and hold property by purchase, donation, or gift for the benefit of the University or incidental to its benefit. Under the Bylaws and Standing Orders passed by the Board of Regents, the Natural Reserve System was established to provide for the acquisition of lands that provide for research and teaching opportunities.

E. California State University (CSU) is a public trust governed by a Board of Trustees (Board). Under the provisions of section 89000, et seq. of the Education Code, the Board may accept gifts, including property, enter into agreements, acquire easements, or purchase interest in real property. Education Code section 81600 also provides for the control and management of lands under the control of CSU.

F. The Bureau of Land Management (BLM) is a subdivision of the U.S. Department of Interior. Under the provisions of the Federal Land Policy Management Act of 1976, (43 U.S.C. section 1712-1784) ("FLPMA") the Bureau is responsible for and authorized to acquire, develop, and maintain federal public lands for compatible recreational and resource uses, including the management of fish and wildlife habitat. Under the provisions of FLPMA the Bureau of Land Management is also empowered to provide for the enforcement of regulations that implement management, use, and protection of federal lands.

G. The California Department of Fish and Game (CDFG) is a subdivision of the California Resources Agency authorized and empowered by the State of California to enforce the terms of the California Endangered Species Act, California Fish and Game Code Sections 2050-2098, and to issue management authorizations to allow the take of endangered, threatened and other sensitive species pursuant to the terms of section 2081 and 2835 of the California Fish and Game Code). CDFG is also a trustee agency pursuant to the California Environmental Quality Act (Cal. Public Resources Code §§21000 - 21177), as amended.

H. The United States Fish and Wildlife Service (USFWS) is a subdivision of the U.S. Department of Interior authorized and empowered by Congress to enforce the terms of the Endangered Species Act, 16 U.S.C. section 1531 et seq. (ESA) and to issue permits to allow the incidental take of endangered and threatened species pursuant to the terms of Section 10 of the ESA. The Service is authorized to enter into this Agreement pursuant to the ESA, Fish and Wildlife Coordination Act, 16 U.S.C. Section 661 et seq., and the Fish and Wildlife Act of 1956, 16 U.S.C. section 742f.

1.12 The Parties enter into this Agreement in a spirit of cooperation and mutual understanding of the value and importance of the resource conservation and protection measures

in the HMP and this Agreement and of each Participating Entity's need for certain assurances in planning for reuse and development within the HMP Planning Area. All Parties to this Agreement acknowledge the common goals of resource protection and economic reuse and development of Fort Ord, recognize that these goals are not mutually exclusive and commit to work together to achieve these goals for as long as this Agreement remains in effect.

2.0 DEFINITIONS

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

- 2.1 "Agreement" means this HMP Implementing/Management Agreement.
- 2.2 "Baseline Studies" means those vegetation and wildlife surveys conducted by the Army at Fort Ord to support its NEPA and ESA obligations relative to base closure, disposal and reuse.
- 2.2 "BLM" is the U.S. Bureau of Land Management, an agency of the United States Department of the Interior.
- 2.3 "Caltrans" means the California Department of Transportation
- 2.4 "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency.
- 2.5 "CDPR" means the California Department of Parks and Recreation, a subdivision of the California Resources Agency.
- 2.6 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 - 21177), including all regulations promulgated pursuant to that Act.
- 2.7 "CESA" means the California Endangered Species Act (California Fish and Game Code Sections 2050 - 2098), including all regulations promulgated pursuant to that Act.
- 2.8 "CNPS" means the California Native Plant Society, a state-wide, non-profit organization concerned with California's native plant resources.
- 2.9 "Coordinated Resource Management Planning" or "CRMP" means a resource planning, problem solving and management program that deals with natural resources management in a given planning area. CRMP was recommended by the HMP and has been established as a practical means of coordinating base-wide resource management and planning at Fort Ord.

- 2.10 "CSU" means the California State University system.
- 2.11 "Effective Date" means the date when all of the Parties to this Agreement have signed this Agreement.
- 2.12 "ESA" means the federal Endangered Species Act (16 U.S.C. Sections 1531 - 1544), including all regulations promulgated pursuant to that Act.
- 2.13 "Fort Ord Reuse Authority" or "FORA" is the public corporation of the State of California that was established in May 1994, via Senate Bill 899 ("SB 899"), to prepare, adopt, finance, and implement plans for the Fort Ord land designated for transfer to the communities of Monterey County.
- 2.14 "Habitat Conservation Areas" means lands within the HMP Planning Area that are given priority for conservation and protection from development impacts because they support important habitat for HMP Resources.
- 2.15 "Habitat Corridors" means lands within the HMP Planning Area that maintain connections and ecological integrity between Conservation Areas.
- 2.16 "Habitat Management Plan" and "HMP" mean the Installation-Wide Multi-Species Habitat Management Plan for Fort Ord, California prepared by the United States Army and dated February, 1994.
- 2.17 "HMP Planning Area" consists of the land area within the boundaries of the former Fort Ord military base, as depicted on Exhibit B.
- 2.18 "HMP Resources" means the plant and animal species and rare natural communities listed in Exhibit A that are addressed by the HMP for purposes of their conservation, preservation, management, enhancement and protection.
- 2.19 "HMP Species" means the plant and animal species listed in Exhibit A attached to this Agreement, the Incidental Take/Management Take of which shall be authorized under Sections 7 and 10(a) of the ESA and/or a Management Authorization pursuant to CESA and/or the NCCP Act in accordance with this Agreement.
- 2.20 "Incidental Take" means the take of any HMP Species where such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.
- 2.21 "Management Authorization" means the document issued by CDFG under CESA (specifically, California Fish and Game Code Sections 2081 and 2090) and/or the NCCP Act (specifically, California Fish and Game Code Sections 2825(c) or 2835), to allow the

Incidental Take/Management Take of a species listed under CESA as threatened or endangered, or of a species which is a candidate for such a listing, or of a species listed as an identified species under Section 2835.

2.22 "Management Take" means the Take of any HMP Species, where such take is for management purposes in accordance with the HMP, this Agreement and a related Management Authorization.

2.23 "Member Agency" means one of the voting members of FORA. Voting member agencies include the County of Monterey, the City of Carmel, the City of Del Rey Oaks, the City of Marina, the City of Sand City, the City of Monterey, the City of Pacific Grove, the City of Salinas and the City of Seaside.

2.24 "Natural Lands" means those lands within the HMP Planning Area that were undeveloped and that supported native plant communities and wildlife habitat at the time of base closure.

2.25 "NCCP Act" means the California Natural Communities Conservation Planning Act of 1991, enacted by Chapter 765 of the California statutes of 1991 (A.B. 2172) (codified in part at California Fish and Game Code Section 2800, et seq.).

2.26 "NCCP Plan" means an area-wide natural community conservation plan in accordance with the NCCP Act (California Fish and Game Code, §§2800-2840), as amended, including all regulations promulgated pursuant to that Act. NCCP Plans extend potential protection measures to a broad array of plant and animal species while allowing compatible land use and appropriate development and growth.

2.27 "NEPA" means the National Environmental Policy Act (42 U.S.C. §4321 et seq.), as amended, including all regulations promulgated pursuant to that Act.

2.28 "Participating Entity," "Party" and "Parties" means any of the agencies, institutions, local governments or other organizations which enter into this Agreement as signatories.

2.29 "Permittee" shall mean any Party to this Agreement which would otherwise require authorization from the USFWS and/or the CDFG for Take of HMP Species.

2.30 "Section 7 Consultation" means the consultation process required under Section 7 of the ESA, between a federal authorizing agency and the USFWS resulting in a biological opinion from the USFWS that determines the potential for jeopardy to the continued existence of a federally-listed species from a proposed federal or federally-funded action.

2.31 "Section 10(a)(1)(B) Permit" means the permit issued to a non-federal entity by the USFWS under Section 10(a)(1)(B) of the ESA (16 U.S.C. Section 1539(a)(1)(B)) to allow for Incidental Take.

2.32 "Take" and "Taking" mean to harass, harm, pursue, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct involving an HMP Species. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

2.33 "Take Authorization" means authorization for Take of HMP Species pursuant to Section 7 Consultation and/or issuance of a Section 10(a)(1)(B) Permit and/or a Management Authorization pursuant to CESA and/or the NCCP Act.

2.34 "UC" means the University of California system

2.35 "UC NRS" means the University of California Natural Reserve System, which operates as an independent branch of the Office of the President of the UC system and supports university-level teaching, research, and public service at UC-protected natural areas throughout California.

2.36 "Unforeseen Circumstances" refers generally to a significant adverse change, not foreseen or foreseeable by the Parties as of the Effective Date, in the populations of the HMP Species, or in the habitat or natural resources of lands preserved pursuant to the HMP and this Agreement, or in the anticipated impacts of future development in the HMP Planning Area, or other factors upon which the HMP is based. The actual existence and effect of "Unforeseen Circumstances" shall be governed by the more specific definition contained in Section 7.7 of this Agreement.

2.37 "USFWS" or "Service" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

3.0 HABITAT MANAGEMENT PLAN

The installation-wide multispecies habitat management plan for Fort Ord establishes the guidelines for the conservation and management of wildlife and plant species and habitats that largely depend on Fort Ord land for survival. The HMP was developed with input from federal, state, local and private agencies and organizations concerned with the natural resources and reuse of Fort Ord. Implementation of the HMP will assist in the orderly disposal and reuse of Fort Ord.

A general goal of the HMP is to promote preservation, enhancement and restoration of habitat and populations of HMP species while allowing implementation of a community-based reuse plan that promotes economic recovery after closure of Fort Ord. As an installation-wide plan, all land areas to be disposed of by the Army are addressed in the HMP and are considered in achieving HMP goals. However, management guidelines and specifications for reuse vary from parcel to parcel based on future plans for the parcel associated with the HMP and overall reuse plan.

The HMP addresses impacts resulting from predisposal, disposal, and reuse actions at Fort Ord via specific land use guidelines and area-specific restrictions for new land recipients. Some land areas planned for development have no restrictions or management guidelines required by the HMP. Other land areas will have development designated as the primary use, but the recipients will be obligated to implement certain management guidelines and/or preserve specific areas. Other parcels are designated as habitat preserves or habitat corridors and have specific management guidelines and restrictions on land development and uses.

Implementation of the HMP is intended to simplify future regulatory compliance by providing a basis for recipients of Fort Ord lands to obtain Take Authorizations with little or no additional mitigation. Also, because the HMP addresses several unlisted species, the document will serve as a prelisting conservation agreement between the USFWS, the CDFG and Parties to this Agreement.

The HMP and each of its provisions are intended to be, and by this reference are, incorporated fully herein. The terms of this Agreement and the terms of the HMP shall be interpreted to be supplementary to each other, but in the event of any direct contradiction between the terms of this Agreement and the HMP, the terms of this Agreement shall control.

Under the terms and conditions of this Agreement, the HMP will qualify as an HCP and will be considered suitable mitigation for HMP Resources. Compliance with the HMP and the terms of this Agreement will enable the USFWS to authorize take of HMP Species by Participating Entities as required. Also, because the HMP addresses several unlisted species, the HMP and this Agreement will preclude the need to develop additional mitigation measures should any of the HMP Species become federally listed as endangered or threatened after the Effective Date.

Under the terms and conditions of this Agreement, the HMP will qualify as an NCCP Plan, allowing the CDFG to issue Take Permits/Management Authorizations as appropriate to allow the Incidental Take and Management Take of endangered and threatened species within the HMP Planning Area. Because the HMP addresses several unlisted species, the HMP and this Agreement will also preclude the need to develop additional mitigation measures should any of the non-state-listed HMP species become listed as endangered or threatened by the State of California. Additionally, the CDFG will take into account the conservation measures set forth in the HMP when considering CEQA requirements for sensitive species and habitat types. The CDFG will consider the conservation program for the HMP species and their habitats in the

HMP as adequate mitigation for CEQA compliance for those natural resources during the implementation of land reuse and development planning at Fort Ord.

4.0 FEDERAL LEGAL AUTHORITY

The USFWS enters into this Agreement pursuant to the ESA. Section 9 of the ESA prohibits any taking of listed species. Anyone who engages in a take would be subject to prosecution under section 9 of the Act. An exception to the Federal prohibition against take of listed species may be authorized by the Service pursuant to Section 7 or through a Section 10(a) permit, as mandated in the ESA. If a project has federal involvement, authorization pursuant to section 7 can be obtained by the federal agency consulting with the USFWS on the project. Section 10(a) permits may be issued under section 10(a)(1)(A) of the ESA for research projects involving listed species and section 10(a)(1)(B) of the ESA for an area in which several projects will occur, for activities connected to a single project, or for takings as small as a single specimen when no federal connection to the project(s) exists.

Federal agencies have the responsibility to review their proposed activities and determine whether any threatened or endangered species will be affected. If a threatened or endangered species may be affected by a federal agency action, that agency has the responsibility of initiating formal consultation pursuant to Section 7 of the Act with the USFWS. Informal consultation may be used to exchange information and resolve conflicts with respect to threatened or endangered species prior to initiating formal consultation. During the consultation process, the USFWS would develop a biological opinion to determine if the project would jeopardize the continued existence of the species. If the project would do this, the USFWS would then recommend reasonable and prudent alternatives that would eliminate the jeopardy. If the project would not jeopardize the continued existence of the species, the USFWS would then develop reasonable and prudent measures that would minimize incidental take and authorize a certain level of incidental take.

A federal agency is required to confer with the USFWS when the action is likely to jeopardize the continued existence of any proposed species. Conferences, which are informal discussions between the USFWS and the federal agency, are designed to identify and resolve potential conflicts between an action and proposed species at an early point in the decision-making process. USFWS makes recommendations, if any, on ways to minimize or avoid adverse effects of the action. These recommendations are advisory because the jeopardy prohibition of Section 7(a)(2) does not apply until the species is listed. If the proposed species is listed, the federal agency determines whether or not formal consultation is required. The conference process fulfills the need to alert federal agencies of possible steps that an agency might take at an early stage to adjust its actions to avoid jeopardizing a proposed species.

To qualify for the section 10(a)(1)(B) permit, the project proponent presents a habitat conservation plan (HCP) that shows how the impacts, including incidental take, on the listed

species would be minimized, what alternatives to take were considered, how the impacts on the species would be mitigated, and how implementation of the HCP program would be funded. The general purpose of an HCP is to minimize and mitigate, to the maximum extent practicable, the impacts of the proposed incidental take on the species. The Service must comply with the National Environmental Policy Act of 1969 (NEPA), as amended and the regulations of the Council on Environmental Quality regarding the issuance of permits and the development of HCPs. NEPA requires that the Service conduct an environmental analysis or review of the effect of any incidental take permit and accompanying conservation plan.

Sections 7(b)(4) and 7(o)(2) of the ESA do not apply to the incidental take of endangered or threatened plant species. Nevertheless, protection of listed plants is provided to the extent that the ESA requires a federal permit for the removal or possession of listed plants from areas under federal jurisdiction, or for any action that would remove, cut, dig up, damage, or destroy any such plant on any other area in knowing violation of any regulation of any State or in the course of any violation of a State criminal trespass law.

The Secretary, of the Interior's August 11, 1994 "Assurances Policy", attached hereto as Exhibit E, provides that the USFWS will not seek additional mitigation for newly listed species that requires the expenditure of money or land set asides from HCP proponents if those species were fully considered in the in the HCP. The Assurances Policy also assures plan proponents that if an approved HCP is implemented as proposed, the USFWS will not seek additional land or financial compensation if "unforeseen" or "extraordinary" circumstances should later arise with respect to either listed or unlisted species.

5.0 STATE LEGAL AUTHORITY

The CDFG enters into this Agreement as the state agency responsible for implementing the California Endangered Species Act (California Fish and Game Code §§2050 - 2098) as amended, the California Native Plant Protection Act (California Fish and Game Code §1900 et. seq.) and the California Natural Communities Conservation Planning Act (California Fish and Game Code §§2800 et seq.). CDFG also enters into this Agreement as a trustee agency pursuant to the California Environmental Quality Act (Cal. Public. Resources Code §§21000 - 21177), as amended.

CESA (California Fish and Game Code §2080) prohibits any Take of a state-listed endangered or threatened species. Exceptions to the state prohibition against Take of a listed species may be authorized by the CDFG pursuant to §2081, §2084, §2091, §2830, and §2835 of the Fish and Game Code.

CESA (California Fish and Game Code §2081 and §2084) authorizes the CDFG to issue permits or to enter into memoranda of understanding for the Management Take of any state-listed threatened or endangered species, or any candidates for such status. Sections 2090 and 2091 of

the Code expressly require state lead agencies to consult with CDFG to determine whether their proposed projects will jeopardize endangered or threatened species, and to determine and specify reasonable and prudent measures that are necessary and appropriate to minimize the adverse impacts of Incidental Take on such species, thereby allowing such Take for a state lead agency.

Section 2835 of the Fish and Game Code authorizes the CDFG to authorize the taking of any state-listed or candidate threatened or endangered species or any other plant or animal species whose conservation and management is adequately provided for in an NCCP plan.

Under CEQA, the CDFG is a "trustee agency" with jurisdiction by law over California's animals, designated rare or endangered plants, game refuges, ecological reserves, and other areas administered by the Department (CEQA Guidelines §15386). As such, the CDFG is required to consult with lead and responsible agencies through the CEQA process and shall provide, as available, the requisite biological expertise to review and comment upon environmental documents and impacts arising from project activities. CEQA lead agencies often rely on CDFG to assist in determining the significance of project impacts on rare, threatened and endangered species and other sensitive biological resources. Adequate mitigation, satisfactory to CDFG, for identified significant impacts on biological resources is typically required in order for a project to be approved by the CEQA lead agency.

6.0 LEGAL REQUIREMENTS

In order to fulfill the legal requirements that allow the USFWS and the CDFG to issue Take Permits/Management Authorizations for HMP Resources pursuant to the ESA, the CESA, and the NCCP Act, the HMP sets forth measures that are intended to ensure that any Take occurring within the HMP Planning Area will be incidental to the carrying out of otherwise lawful activities; that the impacts of the Take will, to the maximum extent practicable, be minimized and mitigated; and that the Take will not appreciably reduce the likelihood of the survival and recovery of HMP Resources in the wild.

The USFWS finds that the HMP as implemented pursuant to this Agreement does provide such measures, and that, since development of the HMP was a reasonable and prudent measure of the biological opinion for base closure, it does satisfy the legal requirements necessary for the USFWS to issue follow-on administrative Section 7 authorizations and Section 10(a) Permits as necessary. Likewise, the CDFG finds that the HMP satisfies the legal requirements necessary for it to issue Take Permits/Management Authorizations for HMP Resources. Furthermore, CDFG finds that the HMP as implemented pursuant to this Agreement will provide adequate mitigation to satisfy CEQA for impacts to HMP Resources that may result from planned development within the HMP Planning Area.

7.0 MUTUAL ASSURANCES

7.1 The primary purpose of this Agreement is to provide for the long-term reconciliation of base reuse and development within the HMP Planning Area with the conservation and protection of the HMP Resources. Based on and in consideration of this Agreement and the HMP, the Parties hereby agree, and USFWS and CDFG hereby assure FORA, its successors, member agencies and the other Participating Entities to this Agreement, including Third Party Beneficiaries, that:

A. Compliance with the terms of this Agreement and the HMP constitutes compliance with the provisions of the ESA, the CESA, the CNPPA and the NCCP, as well as the following California laws as they relate to the CDFG responsibilities for HMP Resources: CEQA, California Planning and Zoning Law and the Subdivision Map Act.

B. Implementation of this Agreement and the HMP will adequately conserve and protect the HMP Resources in the HMP Planning Area.

C. Except as otherwise required by law and barring Unforeseen Circumstances, no further mitigation, enhancement or compensation to provide for conservation or protection of HMP Resources will be required by USFWS or CDFG pursuant to the ESA, the CESA, the CNPPA or CEQA with respect to base reuse and new development permitted within the HMP Planning Area, providing that such reuse and new development conforms to the stipulations and guidelines set forth in the HMP and the terms and conditions of this Agreement.

D. The USFWS and the CDFG shall not seek additional mitigation for an HMP Resource for which, on the Effective Date, protection measures were deemed adequately addressed under the guidelines of the HMP and the terms of this Agreement, and the criteria for evaluating a successful and satisfactory conservation program for the species in question, as originally set forth in the HMP, have been or are being met.

E. If the USFWS and/or the CDFG subsequently determine that additional mitigation measures are necessary to provide for the conservation of an HMP Resource for which, on the Effective Date, protection measures were determined to be adequately addressed under the guidelines of the HMP and the terms of this Agreement, and the original criteria for evaluating a successful and satisfactory conservation program for the species in question have been or are being met, then the primary obligation for such additional mitigation shall not rest with the recipients of the Take Permits/Management Authorizations issued pursuant to the HMP and this Agreement.

F. The Parties to this Agreement acknowledge that Permittees participating in the policy and procedures set forth in the HMP may be subject to permit requirements of agencies not Parties to this Agreement. Except as otherwise required by law and barring any Unforeseen Circumstances, the Parties agree that participation in the policy and

procedures set forth in the HMP, as provided in this Agreement, shall constitute the full extent of mitigation required for Take of HMP Resources incidental to the otherwise lawful development of land within the HMP Planning Area. Except as provided in this Section, the USFWS and the CDFG agree that they will not seek to impose additional mitigation requirements directed specifically at the protection and conservation of HMP Resources on Permittees within the HMP Planning Area through any other agency approval process whether or not such agency is a party to this Agreement.

The intent of the foregoing provision is to preclude recommendations and requirements for additional mitigation measures directed at HMP Resources. The provision does not preclude recommendations or requirements directed at species and natural communities not addressed in the HMP or this Agreement.

7.2 The intent of the HMP is to provide permanent habitat conservation areas and habitat corridors to mitigate in advance any Take of HMP Resources incidental to development activities within the HMP Planning Area. Based on and in consideration of this Agreement and the HMP, the Parties hereby agree, and FORA, its successors, its member agencies, other Participating Entities in this Agreement, and any Third Party Beneficiaries hereby assure the USFWS and the CDFG that:

A. Reuse and development within the HMP Planning Area will not occur unless FORA, its successors, its member agencies, other Participating Entities in this Agreement, and any Third Party Beneficiaries establish and maintain sources of funding for the management and monitoring activities associated with implementation of the HMP under the terms and conditions of this Agreement;

B. FORA, its successors, its member agencies, other Participating Entities in this Agreement, and any Third Party Beneficiaries agree to establish and maintain plans, policies, procedures and programs to implement the HMP under the terms and conditions of this Agreement.

7.3 To the extent permitted by the A, the USFWS shall consider the implemented and/or scheduled implementation of the HMP and this Agreement in any future determination by the USFWS with regard to the listing of one or more of the HMP Resources (including federal proposed, candidate, or other non-federally listed species) as an endangered or threatened species pursuant to the ESA.

7.4 To the extent permitted by the CESA, the CDFG shall consider the implemented and/or scheduled implementation of the HMP and this Agreement in any future determinations and recommendations by the CDFG with regard to the listing of one or more of the non-state-listed HMP Resources as an endangered or threatened species pursuant to the CESA. Also, to the extent permitted by CEQA, the CDFG shall consider the implemented and/or scheduled

implementation of the HMP and this Agreement in any future determinations and recommendations by the CDFG with regard to CEQA compliance for HMP Resources.

7.5 In the event that one or more of the HMP Resources become listed after the Effective Date as endangered or threatened pursuant to the ESA, the HMP shall be considered adequate documentation to support application for appropriate Take Authorizations to allow for the Incidental Take of the newly listed species. After review and comment on the application for a Take Authorization, and a determination that all biological and procedural requirements have been met on the basis of the HMP and this Agreement, the USFWS shall issue, as soon as possible, the appropriate Take Authorization allowing the Incidental Take of the newly listed species.

7.6 In the event that one or more of the HMP Species become listed after the Effective Date as endangered or threatened or as a candidate endangered or threatened species pursuant to the CESA, the HMP and this Agreement shall be considered adequate documentation and no amendments to previously issued Take Authorizations will be required to allow for the Incidental and/or Management Take of the newly listed species.

7.7 For the purposes of this Agreement, a finding of Unforeseen Circumstances by the USFWS or CDFG shall be based on one or more of the following:

- (1) The impacts of base reuse and new land development activities on the HMP Resources in the HMP Planning Area are significantly worse than those anticipated in the HMP;
- (2) A species known from the HMP Planning Area that was not considered an HMP Resource is subsequently listed as threatened or endangered under the ESA, or as threatened or endangered, or as a candidate for such status under the CESA;
- (3) Information develops subsequent to the Effective Date which indicates that the implementation of Fort Ord reuse plans pursuant to the conservation program set forth in the HMP and this Agreement will jeopardize the continued existence of such species as described in scenario (2) above;
- (4) Information relevant to Fort Ord reuse plans and/or to other factors upon which the HMP are based, and that was not anticipated by the Parties as of the Effective Date, reveals (1), (2), and/or (3) above;
- (5) Fort Ord reuse planning is subsequently modified in a manner that was not anticipated in the HMP and causes an adverse effect on the HMP Resources.

A finding of Unforeseen Circumstances shall be governed by the "Assurances Policy" released by the Secretaries of the Interior and Commerce dated August 9, 1994, a copy of which is

attached hereto as Exhibit (), which further defines the factors to be considered in the determination of whether extraordinary circumstances exist such that a finding of "unforeseen circumstances" is warranted. At least sixty (60) days prior to making a finding of Unforeseen Circumstances, the USFWS and/or CDFG shall meet with the other Parties to this Agreement to discuss the proposed Unforeseen Circumstances finding and provide the other Parties with an opportunity to submit information to rebut the proposed finding.

8.0 IMPLEMENTATION RESPONSIBILITIES OF THE PARTIES

8.1 Parcel-by-parcel HMP implementation responsibilities for new recipients of disposed Fort Ord lands as anticipated in the HMP are summarized in Exhibit C.

8.2 In addition to the requirements listed in Exhibit C, all new Fort Ord land recipients with obligations specified by the HMP will:

A. Enter into separate memoranda of agreement (MOAs) with the Army prior to land transfer. The MOAs will define roles, obligations, authorities, responsibilities, liabilities, benefits, rights, and privileges of all the signatories. Appropriate HMP guidelines will be included in each MOA. Acceptance of land designated as conservation areas and/or habitat corridors (with appropriate covenants) and execution of the MOA binds those recipients to a commitment to manage the land for habitat purposes in perpetuity. The MOAs will contain a reversion clause that states that the land will be returned to the federal government should the land recipient fail to comply with MOA provisions and the HMP guidelines.

B. Submit to the USFWS and CDFG, through the Coordinated Resource Management Planning ("CRMP") program, a plan for implementation of both short-term and long-term habitat management and protection measures for all natural lands, including consideration of funding sources, legal mechanisms and a time table to provide for prompt implementation of HMP requirements along with the following actions to prevent degradation of habitat:

1. Control of off-road vehicle use in all undeveloped natural land areas.
2. Prevention of any unauthorized disturbance in all undeveloped natural land areas, but especially in designated conservation areas and habitat corridors.
3. Prevention of the spread of non-native, invasive species that may displace native habitat.

C. Monitor activities that affect all undeveloped natural lands, including, but not limited to conservation areas and habitat corridors as specified and assigned in the HMP and further described in Section 11 of this Agreement.

D. Restrict all development and associated activities to the specifications presented in the HMP and this Agreement.

E. Strive to minimize losses to HMP Resources to the extent feasible during all project planning, base reuse and development.

8.3 In addition to its HMP implementation responsibilities, as summarized in Section 8.2 above and in Exhibit C, the BLM will also:

A. Monitor the implementation of the HMP and the activities thereunder, including but not limited to, the management, operation and maintenance of the Habitat Conservation Areas and Corridors in order to insure compliance with the HMP and this Agreement.

B. Submit to the USFWS and CDFG an annual implementation monitoring report specifying the status of each HMP implementation action item and providing other information as described in Section 11.0 of this Agreement.

C. Initiate actions, in consultation with the USFWS and CDFG, for title reversion to the federal government should individual jurisdictions or other land recipients fail to implement the requirements of the HMP. Such actions shall not be initiated until after all other remedies as specified in Section 12.0 of this Agreement have failed to result in compliance, and until after consultation with the CRMP members has also failed to establish a satisfactory remedy.

D. Manage and oversee the CRMP program at Fort Ord and work within the CRMP program to encourage cooperative and collaborative implementation of the HMP. The BLM agrees to address all HMP implementation issues within the forum of the Fort Ord CRMP and to seek CRMP membership concurrence prior to initiating actions to implement specific HMP requirements.

E. Remain available on a cost-reimbursable or other mutually agreed upon basis to provide guidance and expertise to FORA and its member agencies and other recipients of undeveloped natural lands for the management of those lands in a manner consistent with the requirements and recommendations of the HMP and this Agreement.

8.4 In addition to its HMP implementation responsibilities, as summarized in Section 8.2 above and in Exhibit C, the University of California, mostly through the UC NRS, will:

A. Implement a directed program for the conservation of the sand gilia population on University lands in the vicinity of the former Fritzsche Army Airfield (now the Marina Municipal Airport). Conservation measures will include preservation and active management of key gilia habitat areas on UC NRS lands in conformance with the HMP and restoration of sand gilia habitat on an approximately seven (7) acre disturbed site south of the air field within UC NRS lands. The University of California will consult with the CDFG throughout the design and implementation of this program.

8.5 In addition to their HMP implementation responsibilities, as summarized in Section 8.2 above and in Exhibit C, FORA, its successors and each of its member agencies shall:

A. Maintain a continuing active role in the Fort Ord CRMP program through allocation of adequate staff and other resources to the program.

B. Coordinate monitoring and reporting as specific development proposals are being considered that may affect any HMP Resources to demonstrate how those development proposals conform with the requirements of the HMP and how remaining FORA implementation responsibilities will be or are being implemented, including consideration of funding sources, time tables and legal mechanisms.

C. Agree to enforce, through legally-binding mechanisms such as deed restrictions, transfer MOAs, development agreements or other similar means, all HMP management and compliance requirements associated with specific land areas as such areas are transferred to subsequent landowners.

9.0 FUNDING RESPONSIBILITIES OF THE PARTIES

9.1 Federal and state agencies and institutions and other entities acquiring lands with HMP requirements will be obligated to fund the costs of habitat management activities on those lands. Such agencies, institutions and other entities shall seek funding to implement their respective obligations pursuant to the HMP and this Agreement prior to implementing other projects associated with those lands.

9.2 If funding constraints prevent federal or state agencies, institutions or other entities from satisfactorily implementing the HMP, then this Agreement may be suspended and its Mutual Assurances (Section 7.0) may become null and void until such time as the USFWS and CDFG determine that HMP implementation is satisfactory. HMP implementation shall be considered satisfactory if actions specified under 8.2(B) have commenced along with annual documentation that habitat management, restoration and enhancement measures specified by the HMP and this Agreement are in progress.

9.3 FORA, its successors and each of its member agencies shall be responsible for implementing the HMP within their respective jurisdictions according to the requirements in the HMP and this Agreement. Each jurisdiction shall have the flexibility to develop its own funding mechanism, however the specific funding mechanism shall be subject to the review of the USFWS and CDFG.

9.4 Other direct recipients of lands with HMP management or compliance requirements, including non-profit organizations, special districts, schools and others shall be responsible for funding the costs of habitat management and compliance on those lands. Such entities shall have the flexibility to develop their own funding mechanisms, however the specific funding mechanism shall be subject to the approval of the USFWS and CDFG.

9.5 Any agency, institution, local government or authority, special district, school, non-profit organization, Third Party Beneficiary or any other recipient of Fort Ord lands with HMP requirements failing to implement the HMP as required by covenant, deed restriction, transfer MOA or other means shall be subject to reversion of said lands back to the federal government, and each such entity shall bear all costs incurred by any parties who successfully petition for the reversion of such lands.

10.0 ISSUANCE OF THE TAKE AUTHORIZATIONS

10.1 Findings - USFWS The USFWS has found that (a) the taking of HMP Resources in the HMP Planning Area will be incidental to the carrying out of otherwise lawful activities; (b) the HMP and this Agreement will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; (c) the funding responsibilities discussed herein will allow adequate funding for the HMP to be provided; (d) the taking of HMP Resources will not appreciably reduce the likelihood of the survival and recovery of the HMP Resources in the wild; (e) the HMP and this Agreement will satisfy and fulfill all measures required by the USFWS as being necessary or appropriate for the purposes of the HMP (including any measures determined by the Parties to be necessary to deal with Unforeseen Circumstances).

10.2 Issuance of Take Authorizations - USFWS

A. As a result of the findings specified in Section 10.1 above, the USFWS has issued a non-jeopardy biological opinion on the disposal and reuse of Fort Ord pursuant to Section 7 of the ESA authorizing the Incidental Take of federally-listed HMP Resources, subject to the terms of the HMP and this Agreement. Further consultation with federal agencies sponsoring activities within the HMP Planning Area that may be required pursuant to the ESA will rely on the previous biological opinion as long as those activities are consistent with the HMP and this Agreement.

B. The USFWS will issue, as necessary, administrative Section 10(a) Permits to FORA and its member agencies and the other Participating Entities in this Agreement, allowing for the Incidental Take of federally-listed HMP Resources in the HMP Planning Area as long as permitted activities are consistent with the HMP and this Agreement. The Take Authorizations will consider the HMP an HCP and will be effective for 50 years.

C. USFWS Take Authorizations issued pursuant to this Agreement will also allow the take of the non-federally listed HMP Resources should they become listed. Authorization for the take of any such species will become effective on the date that it is listed as endangered or threatened pursuant to the ESA.

10.3 Findings- CDFG The CDFG has found that the HMP and this Agreement satisfy all legal requirements necessary for the CDFG to issue a Take Permit/Management Authorization for HMP Species.

10.4 Issuance of Take Permit/Management Authorization As a result of the findings specified in Section 10.3, above, concurrent with the Effective Date the CDFG will issue a Take Permit/Management Authorization to FORA and its member agencies and other Participating Entities in this Agreement which authorizes the Incidental and/or Management Take of HMP Resources, subject to the terms of the HMP, this Agreement, and the Take Permit/Management Authorization. The Take Permit/Management Authorization will be effective for 50 years. The Take Permit/Management Authorization may be renewed absent a material breach of this Agreement or the HMP by any Party and absent any Unforeseen Circumstances.

11.0 MONITORING AND ANNUAL REPORTING

11.1 Three primary types of monitoring will be used to evaluate the successful implementation of the HMP: land use status monitoring, HMP compliance monitoring and biological monitoring.

A. Land Use Status Monitoring Each recipient of Fort Ord land with any natural lands identified by the baseline studies shall continuously monitor, within the geographic limits of its jurisdiction in the HMP Planning Area, the amount (in acres) and location of natural land (by habitat type) remaining undeveloped and the amount (in acres) and location of natural land (by habitat type) disturbed by development since the date of land transfer, for as long as this Agreement remains in effect. Results of such monitoring shall be presented to the BLM by November 1 of each year. The methods and format for land use status monitoring and reporting are attached as Exhibit().

B. HMP Compliance Monitoring Each recipient of Fort Ord land with HMP resource conservation and/or management requirements shall provide documentation to

the BLM demonstrating compliance with those requirements since the date of land transfer. Initial documentation shall be provided no later than November 1 of the year of transfer and shall continue to be provided on that date on an annual basis for the effective term of this Agreement. For natural land areas with partial or no HMP resource conservation or management requirements, but which remain undeveloped, recipients shall annually (by November 1) provide the BLM evidence of successful implementation of interim habitat protection measures as specified in Section 8.2(B) of this Agreement. The methods and format for HMP compliance monitoring are attached as Exhibit().

C. Biological Monitoring The Parties agree that biological monitoring to provide both qualitative and quantitative data on HMP Species and habitats, is necessary to assess the success of resource conservation efforts and compliance with the HMP. The Parties further agree that all recipients of lands with specific HMP resource conservation requirements should contribute to the biological monitoring effort so that the general quality and abundance of HMP Species and habitats compared to the baseline studies can be readily determined. Biological monitoring of HMP Resources will be conducted on an ongoing basis and coordinated through the CRMP Program. Two broad types of biological monitoring will occur:

1. Habitat Monitoring Recipients of lands with HMP resource conservation requirements shall report overall changes in habitat characteristics from the original baseline studies using aerial photographs and ground reconnaissance. Habitat quality shall be determined by gathering percent cover data for perennial plant species following the methods presented in Exhibit E or other methods approved through CRMP. Wildlife habitat values may be determined through directed field survey, but unless otherwise required by the HMP, wildlife habitat values may be assessed using previous baseline data and wildlife habitat relationship assumptions. Habitat abundance may be determined through ground measurements, aerial photographic interpretation, computerized base mapping systems or other means approved through CRMP. Reports shall be provided to the BLM a minimum of every five years from the date of land transfer. However, a catastrophic event (e.g. fire, landslide, other successional change) or active restoration activities will require annual reporting as species composition rapidly changes. Reports shall be submitted to the BLM by November 1 of the year of monitoring.

2. Species Monitoring Recipients of lands with HMP resource conservation requirements shall conduct annual, seasonally-timed monitoring for annual plants included on the List of HMP Resources (Exhibit A) at all known sites for populations of these species. Potentially suitable habitat for these species on such lands shall be evaluated for these species presence or absence periodically, but no less than once every three years. Monitoring and survey techniques for these annual plant species shall follow the methods presented in Exhibit E or other methods approved through CRMP. Data regarding the distribution and abundance of perennial plant species

included on the list of HMP Resources shall be provided through the habitat monitoring procedures discussed above in Section 11.1 (C) 1.

11.2 If monitoring indicates that any federal, state or local jurisdiction or other Party to this Agreement is failing to implement the plans and actions designated by the HMP and this Agreement, then the provisions for Take outlined in this document shall be void for that jurisdiction until such time as the failure to implement these actions has been rectified.

11.3 Annual Reporting. The BLM, in cooperation with the CRMP program members, shall prepare and submit to the USFWS and the CDFG by March 1 of each year a single annual report which describes (a) the amount of natural lands (by habitat type) remaining undeveloped within the HMP Planning Area; (b) the amount of natural lands (by habitat type) disturbed by development within the HMP Planning Area; (c) the status of HMP resource conservation and habitat management activities for the HMP Planning Area; (d) the status of interim habitat protection measures on lands with only partial or no habitat management requirements; and (e) the results of biological monitoring activities for the previous year. Other information may be included in the annual report at the discretion of the BLM and the CRMP program members.

11.4 Annual Meeting The Fort Ord CRMP shall include in its annual January meeting each year a comprehensive review of the draft Annual Report described in Section 11.3 above for the purposes of evaluating the implementation of the HMP during the preceding year and the overall progress being made towards reaching the conservation goals of the HMP. While the BLM shall retain responsibility for the final content of the report, the report shall include a summary of the CRMP discussions with particular emphasis on any divergent viewpoints. Parties to this Agreement shall cooperatively seek to identify means to rectify any failure to implement the HMP.

The Fort Ord CRMP shall include in its May meeting each year a review of any USFWS and CDFG responses to the Annual Report. To the extent the USFWS and the CDFG determine that overall progress is not sufficient, the USFWS, the CDFG, and all other Parties to this Agreement shall work cooperatively through the CRMP program to develop specific proposals for correcting any HMP implementation deficiencies identified in the final Annual Report or the regulatory agency responses.

12.0 REMEDIES AND ENFORCEMENT

12.1 Remedies in General. Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the relevant USFWS and CDFG Take Authorizations, and to seek remedies and compensation for any breach thereof, consistent with and subject to the following:

A. None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act without existence of this Agreement. This provision shall not be interpreted to affect the authority and responsibility of the USFWS or the CDFG to invoke the penalties under the ESA or the CESA, or of other federal or state law, for violations of the ESA, the CESA, or the Take Authorizations issued pursuant to this Agreement.

B. The Parties acknowledge that the HMP Resources are unique and that their loss as natural resources would result in irreparable damage to the environment; and that therefore, injunctive and temporary relief may be appropriate in certain circumstances involving a breach of this Agreement.

12.2 Revocation of Take Authorizations

A. Suspension of Take Permits/Management Authorizations. In the event of any significant violation or breach of any issued Take Authorization or of this Agreement, the USFWS and/or the CDFG may suspend the Take Authorization of any signatory agency; provided, however, that except where the USFWS and/or the CDFG determine that emergency action is necessary to protect the HMP Resources, the USFWS and/or the CDFG will not suspend a Take Authorization without first: (1) requesting said violator to take appropriate remedial actions; and (2) providing said violator written notice of the facts or conduct which may warrant the suspension, followed by an opportunity for said violator to demonstrate why suspension is not warranted.

B. Reinstatement of Take Permits/Management Authorizations. In the event the USFWS and/or the CDFG suspends a Take Authorization issued pursuant to this Agreement, the USFWS and/or the CDFG shall confer as soon as possible, but no later than thirty (30) days after such suspension, with said violator about how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the USFWS and/or the CDFG shall determine the specific actions necessary to effectively redress the violation or breach. In making this determination, the USFWS and/or the CDFG shall consider the requirements of the ESA and/or the CESA, regulations issued thereunder, the conservation needs of the HMP Resources, the terms of the relevant Take Authorization and of this Agreement, and any comments or recommendations received during the conferring process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS and/or the CDFG shall send said violator written notice of the actions necessary to effectively redress the violation or breach. Upon full performance of such necessary actions, the USFWS and/or the CDFG shall immediately reinstate the relevant Take Authorization. It is the intent of the Parties that in the event of any suspension of a Take Authorization issued pursuant to this

Agreement, all Parties shall act expeditiously and cooperatively to reinstate the Take Authorization.

C. Permit Revocation or Termination

1. The USFWS agrees that it will revoke or terminate a Take Authorization for any violation or breach of the terms and conditions of the authorization or of this Agreement only if the USFWS determines that: (a) such violation cannot be effectively redressed by other remedies or enforcement actions; and (b) revocation or termination is required to fulfill a responsibility of the USFWS under the ESA.
2. The CDFG agrees that it will revoke or terminate a Take Authorization of any individual signatory agency for violation or breach of the terms and conditions of the authorization or of this Agreement only if the CDFG determines that: (a) such violation cannot be effectively redressed by other remedies or enforcement actions; and (b) revocation or termination is required to fulfill a responsibility of the CDFG under the CESA, the NCCPA or the CNPPA.
3. The USFWS and the CDFG agree not to revoke or terminate a Take Authorization without first: (a) requesting said violator to take appropriate remedial action; and (b) providing said violator notice in writing of the facts or conduct which warrant the revocation or termination, and a reasonable opportunity, but not less than forty-five (45) days, to demonstrate or achieve compliance with the terms and conditions of the Take Authorization and this Agreement.

12.3 Severability Any violation of the Take Authorizations pursuant to this Agreement by a Permittee with respect to any one or more projects within the HMP Planning Area shall not adversely affect or be attributed to, nor shall it result in the loss or diminutions of any right, privilege or benefit under this Agreement of, any non-responsible Permittee.

13.0 THIRD PARTY BENEFICIARIES

This Agreement is for the sole benefit of the people of the State of California.

14.0 ENVIRONMENTAL REVIEW

14.1 Issuance of Take Authorizations by the USFWS to the FORA and its member agencies and the other Participating Entities in this Agreement are actions subject to NEPA review. However, the USFWS, as an agency with special expertise under NEPA and jurisdiction by law over federally-listed threatened and endangered species, has already reviewed the Army's final Environmental Impact Statement ("FEIS") and issued a non-jeopardy biological opinion for

the disposal and reuse of Fort Ord. Compliance with the HMP and this Agreement will enable the USFWS to prepare simplified "administrative" Environmental Assessments, incorporating by reference previous NEPA documentation as further Take Authorizations are required within the HMP Planning Area.

14.2 Implementation of the HMP is an action subject to CEQA review. Pursuant to CEQA, the CDFG will take into account the conservation measures set forth in the HMP and this Agreement when considering requirements for HMP Resources. The CDFG will consider the conservation program for HMP Resources in the HMP and this Agreement as adequate mitigation pursuant to CEQA for HMP Resources during base reuse planning, CEQA environmental review and development at Fort Ord.

15.0 COOPERATIVE EFFORT

In order that each of the legal requirements summarized in Section 6.0 of the Agreement are fulfilled, each of the Parties to this Agreement must perform certain specific tasks. The HMP thus describes a cooperative program by federal, state and local agencies to conserve the Covered Species and their habitats,

16.0 TERMS USED

Terms defined and utilized in the HMP, the ESA, the CESA, the CNPPA and the NCCP Act shall have the same meaning when utilized in this Agreement, except as specifically noted.

17.0 EFFECTIVE TERM OF AGREEMENT

17.1 This Agreement shall be immediately effective upon execution by the Parties.

17.2 The Take Authorizations issued by the USFWS to the Parties to this Agreement, including FORA, its successors, its member agencies and the other Participating Entities to this Agreement shall be effective for a period of 50 years.

17.3 The Take Authorizations issued by the CDFG to the Parties to this Agreement, including FORA, its successors, its member agencies and the other Participating Entities to this Agreement shall be effective for a period of 50 years.

17.4 This Agreement takes effect on the Effective Date, and shall remain in full force and effect for a period of 50 years, or until termination of the issued Take Authorizations, whichever occurs sooner.

17.5 Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once HMP Resources have been taken and/or their habitat modified within the HMP Planning Area, such Take and/or habitat modification will be permanent. The Parties, therefore, agree that maintenance of compensation habitat and active management for the HMP Resources shall likewise be permanent and extend beyond the term of this Agreement.

18.0 AMENDMENTS

18.1 The USFWS may allow the HMP to be modified from time to time as a result of more site-specific planning within the HMP Planning Area, changes in land ownership or habitat management guidelines, findings of Unforeseen Circumstances or other reasons. Such modifications and their effects on this Agreement shall be documented by the USFWS in a letter to the Chair of the CRMP program which will, in turn, be distributed to the Parties to this Agreement. In the event that the modifications and/or their effects on this Agreement are unacceptable to any of the Parties, a letter so notifying the USFWS shall be prepared by the subject Party or Parties and submitted to the USFWS through the Chair of CRMP within 60 days of receipt of USFWS notification. The USFWS shall consider the merits of any position against HMP modification before rendering a final determination which shall be provided to the Chair of CRMP for distribution to the Parties.

18.2 Except as otherwise set forth herein, or in the event that the HMP is modified as described above in Section 18.1, this Agreement may be amended only with the written consent of each of the Parties.

18.3 Provided that provisions described in Sections 18.1 and 18.2 have been met, the list of HMP Resources, attached as Exhibit A, may be amended to exclude certain resources and/or include additional resources as new information becomes available concerning the population and distribution of such resources and the protection afforded such resources by the HMP and/or this Agreement.

19.0 MISCELLANEOUS PROVISIONS

19.1 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the HMP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

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

19.3 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below and shall be deemed given five (5) days after deposit in

the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

United States Fish and Wildlife Service)
Assistant Regional Director
911 Northeast 11th Avenue
Portland, Oregon 97232-4181

United States Fish and Wildlife Service
Field Supervisor
2493 Portola Road, Suite B
Ventura, California 93003

Director, California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

Chair, Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, California 93933

19.4 Entire Agreement. This Agreement supersedes any and all other Agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

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

19.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this
Implementing/Management Agreement to be in effect as of the date last signed below.

By _____ Date _____
Regional Director
United States Fish and Wildlife Service
Portland, Oregon

By _____ Date _____
State Director
United States Bureau of Land Management
Sacramento, California

By _____ Date _____
Director
California Department of Fish and Game
Sacramento, California

By _____ Date _____
Director
California Department of Parks and Recreation
Sacramento, California

By _____ Date _____
Office of the President
University of California
Oakland, California

Date _____
Office of the President
California State University
Long Beach, California

By _____ Date _____
Chair
Fort Ord Reuse Authority
Marina, California

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

By _____ Date _____
[**County, City, or Participating Entity**]

Exhibit A: HMP Resources

Common Name	Scientific Name	Status Federal/State/Other
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Plants

Sand gilia	<i>Gilia tenuiflora</i> ssp. <i>arenaria</i>	E/T/CNPS 1B
Monterey spineflower	<i>Chorizanthe pungens</i> var. <i>pungens</i>	T/--/CNPS 1B
Robust spineflower	<i>Chorizanthe robusta</i> var. <i>robusta</i>	PE/--/CNPS 1B
Seaside bird's-beak	<i>Cordylanthus rigidus</i> var. <i>littoralis</i>	C1/E/CNPS 1B
Toro manzanita	<i>Arctostaphylos montereyensis</i>	C2/--/CNPS 1B
Sandmat manzanita	<i>Arctostaphylos pumila</i>	C2/--/CNPS 1B
Monterey ceanothus	<i>Ceanothus rigidus</i>	C2/--/CNPS 4
Eastwood's ericameria	<i>Ericameria fasciculata</i>	C2/--/CNPS 1B
Coast wallflower	<i>Erysimum ammophilum</i>	C2/--/CNPS 1B
Yadon's piperia	<i>Piperia yadoni</i>	C1/--/CNPS 1B
Hooker's manzanita	<i>Arctostaphylos hookeri</i>	--/--/CNPS 1B

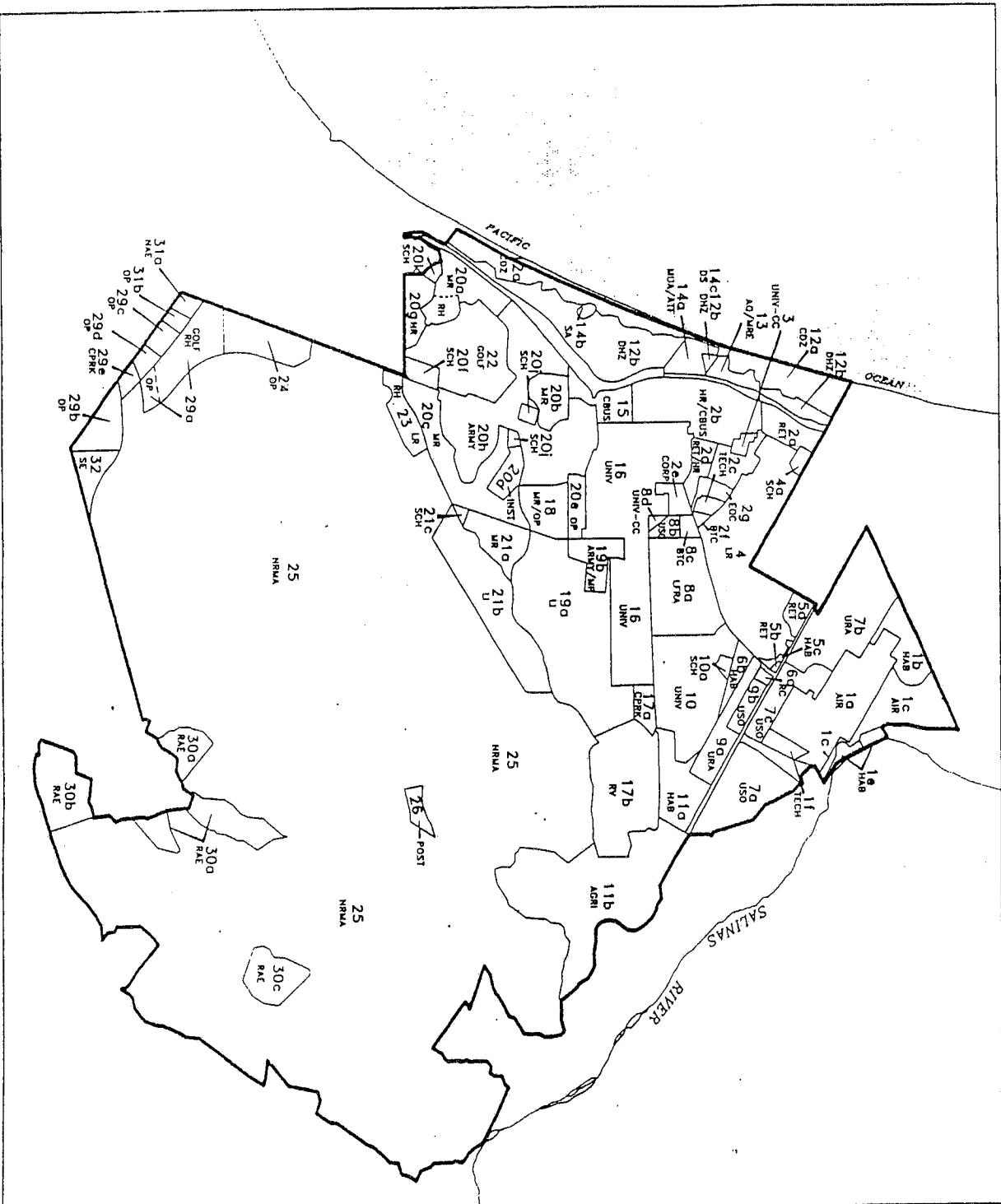
Animals

Smith's blue butterfly	<i>Euphilotes enoptes smithi</i>	E/--/--
California linderiella	<i>Linderiella occidentalis</i>	no status
California red-legged frog	<i>Rana aurora draytoni</i>	PE/CSC/--
California tiger salamander	<i>Ambystoma tigrinum californiense</i>	C1/CSC/--
California black legless lizard	<i>Anniella pulchra nigra</i>	PE/CSC/--
Western snowy plover	<i>Charadrius alexandrinus nivosus</i>	T/CSC/--
Monterey ornate shrew	<i>Sorex ornatus salarius</i>	C2/--/--

Rare Natural Communities

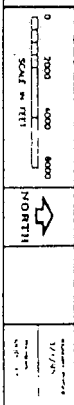
Maritime chaparral		--/--/CEQA
Native coastal strand		--/--/CEQA
Dune scrub		--/--/CEQA

Exhibit B: HMP Planning Area



- LEGEND**
- FORT ORD BOUNDARY
 - LAND USE POLYGONS
 - 1a AIR LAND USE IDENTIFICATION

SOURCE: REIMER ASSOCIATES
FORT ORD - CALIFORNIA



1. Status Explanations

Federal	
E	= listed as endangered under the federal Endangered Species Act
T	= listed as threatened under the federal Endangered Species Act
PE	= proposed for federal listing as endangered under the federal Endangered Species Act
C1	= Category 1 candidate for federal listing. Category 1 includes species for which the USFWS has on file enough substantial information on biological vulnerability and threats to support proposals to list them.
C2	= Category 2 candidate for federal listing. Category 2 includes species for which the USFWS has some biological information indicating that listing may be appropriate but for which further biological research and field study are usually needed to clarify the most appropriate status.
--	= no designation
State	
E	= listed as endangered under the California Endangered Species Act
T	= listed as threatened under the California Endangered Species Act
CSC	= California Department of Fish and Game species of special concern
--	= no designation
Other	
CNPS 1B	= California Native Plant Society list 1B: plants listed as rare, threatened or endangered in California and elsewhere
CNPS 4	= California Native Plant Society list 4: plants of limited distribution in California - a watch list
CEQA	= resources with no formal listing that are considered sensitive by CDFG through the CEQA review process
--	= no designation

Exhibit C

HMP IMPLEMENTATION REQUIREMENTS

Responsible Party	Parcel	Species Present	Permanent Conservation Areas	Habitat Management Requirements	Success Criteria	Additional Concerns
Army	FM1	1, 2, 4, 5, 7, 8, 9, 15+	None	Federal agency subject to review pursuant to Section 7 of the ESA for all future actions; Best management practices to protect existing natural resources	None	
Department of Justice	FM2	2, 4, 7, 17+	None	Federal agency subject to review pursuant to Section 7 of the ESA for all future actions; BLM to manage natural resources; Range fans will be determined and access restriction will be set in FR1 as necessary; Responsible for firebreaks and fire suppression for any fire in or originating from parcel	None	
FBI	FM3	2, 8, 15+, 17+	None	Federal agency subject to review pursuant to Section 7 of the ESA for all future actions; Best management practices to protect existing natural resources	None	May contract a qualified agency to manage parcel, subject to USFWS and CDFG approval
BLM	FR1	1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15+, 16+, 17+	Maintain a Natural Resource Management Area (NRMA) within the inland range, including areas after UXO removal	Develop a burn plan to facilitate UXO removal and promote maritime chaparral and Covered Species habitat; Monitor recovery and succession of maritime chaparral; Study establishment, persistence, and habitat requirements of sand gilia, Monterey spineflower, and Seaside bird's beak; Develop management procedures for Covered Species; Enhance degraded maritime chaparral	Restored areas will be naturally regenerating maritime chaparral that become a functioning part of the entire managed habitat; Covered Species habitat value will be maintained at maximum value; Special effort to promote habitat for sand gilia, Monterey spineflower, and Seaside bird's-beak	
California 7th District Agriculture Association	SM8	5, 7, 8, 9, 15+	None	Site all structures behind firebreaks; Construct a barrier to prevent access to FR1, include emergency access gates with keys to BLM and other appropriate agencies; Minimize erosion by controlling storm runoff; Create interpretive display on natural resources	None	
California 7th District Agriculture Association	SM9	2, 3, 5, 7, 8, 15+	None	Same as SM8	None	

California State University	SMS	2, 5, 7, 8, 9, 15+, 17+	Preserve habitat where possible within and near development areas	Coordinate with UC NRS regarding foot, bike, and vehicle access to SR2, SR3, LR1, and LR2 parcels	None	
CalTrans	SR8	2, 5, 7, 8, 9, 15+	Preserve existing habitat	Preserve existing habitat patches consistent with future expansion, maintenance, etc.; Restore and/or enhance habitat wherever possible	None	
CalTrans with BLM and Monterey County	SR9	1, 2, 4, 5, 6, 7, 12+, 17+	BLM will conserve HMP habitats during SR 68 study	CalTrans will construct SR 68 with minimum impacts to natural habitats; No impact to vernal pools and their watersheds	None	Money not spent on SR 68 should be used for other mitigation projects within Fort Ord boundaries, subject to USFWS and CDFG approval
CDPR	SM6	2, 9	Preserve Covered Species and their habitats where possible	Minimize impacts to sand gilia, Smith's blue butterfly, and Western snowy plover; Design, site, and manage facilities to be sensitive to natural resources	None	If Asilomar-type Facility is developed, USFWS- and CDFG-approved mitigation measures are required
CDPR	SM7	None	None	Regulated access to parcel	None	Preferred public access options specified in HMP
CDPR	SN1	2, 15+	Preserve habitat where possible within and near development areas	None	None	
CDPR	SR5	1, 2, 9, 11+, 15+	Covered Species habitat restoration and preservation; Construct visitor service areas	Restore native dune vegetation and Covered Species habitat; Use minimum grading and guide railing for any trails constructed; Create interpretive signs; Restrict access to Smith's blue butterfly populations, sand gilia locations, medium to high density Monterey spineflower occurrences, and Western snowy plover breeding sites	Average yearly population size of 14-18,000 sand gilia and high density Monterey spineflower covering 375-475 acres; Restored dune habitat will cover about 70 acres, 250 acres should be restored within 7 years of land transfer	

CDPR	SR6	1, 2, 9, 11, 15, 16+	Covered Species habitat restoration and preservation; Pedestrian beach access provided	Restore native dune vegetation and Covered Species habitat in suitable areas; Create and site boardwalks with interpretive signs (with design and placement sensitive to Covered Species); Restricted access during Western snowy plover breeding	None
City of Del Rey Oaks	LM4	2, 5, 7, 8, 15+	None	Control and prevent erosion and siltation within the ephemeral drainage	None
City of Del Rey Oaks	LM6	2, 5, 7, 8	None	Control and prevent erosion and siltation within the ephemeral drainage; Construct firebreaks at NAE boundary; Construct a vehicle barrier to prevent access to NAE	None
City of Marina	LM10	5, 15+	None	Use native vegetation for landscaping; Install a permanent interpretive display	None
City of Marina	LM15	1, 2, 4, 5, 7, 8, 15+	None	Construct a barrier to prevent SR4 access; Construct firebreaks at boundary with SR4; Prevent drainage into SR4	None
City of Marina	LM16	2, 5, 7, 8, 15+	None	Construct a barrier to prevent SR4 access; Construct firebreaks at boundary with SR4; Prevent drainage into SR4	None
City of Marina	LM17	2, 15+, 17+	Preserve habitat where possible within and near development areas	Restrict development to area above the bluffs along the Salinas River	None
City of Marina	LM18	1, 2, 15+, 17+	Preserve habitat where possible within and near development areas	Restrict development to area above the bluffs along the Salinas River	None
City of Marina	LM19	1, 2, 5, 7, 8, 9, 15+, 17+	Preserve habitat where possible within and near development areas	Construct a barrier to prevent SR4 access; Construct firebreaks at boundary with SR4; Prevent drainage into SR4	None
City of Marina	LM22	2, 5, 7, 15+	None	Construct a barrier to prevent SR4 access; Construct firebreaks at boundary with SR4; Prevent drainage into SR4	None
City of Marina	LN3	2	None	None	None
City of Marina	LR4	2, 13+, 17+	Preserve existing habitat	Maintain existing habitat values	None
					May contract a qualified agency to manage parcel, subject to USFWS and CDFG approval

City of Marina	LR5	2, 15+	Preserve remaining habitat after construction of FAA facilities and proposed road	Construct barriers along access roads to prevent off-road vehicles from entering; Maintain existing habitat values	None	May contract a qualified agency to manage parcel, subject to USFWS and CDFG approval
City of Marina	LR6	1, 2, 5, 7, 8, 9, 10, 15+	Preserve Yadon's piperia population; Preserve other habitat where possible	Prohibit vehicle access and drainage flow into parcel	None	
City of Seaside	LM20	2, 5, 7, 8, 15+, 17+	Preserve habitat where possible within and near development areas	Construct a barrier to prevent FR1 access; Construct firebreaks at boundary with FR1; Prevent drainage into FR1	None	
City of Seaside	LM21	5, 7, 8, 15+	None	Construct a barrier to prevent FR1 access; Construct firebreaks at boundary with FR1; Prevent drainage into FR1	None	
Monterey County	LM1	2, 4, 6, 15+, 17+	Preserve habitat where possible within and near development areas	Construct a barrier to prevent LR2 and FR1 access; Construct firebreaks at boundaries with LR2 and FR1; Prevent drainage into FR1; Prohibit interference with water flow or water quality to vernal pools in FR1	None	
Monterey County	LM2	2, 4, 5, 6, 7, 8, 15+, 17+	Preserve habitat where possible within and near development areas	Construct a barrier to prevent FR1 access; Construct firebreaks at boundary with FR1; Prevent drainage into FR1; Before land is transferred, construct a permanent BLM approved firebreak around entire parcel perimeter	None	
Monterey County	LM3	2, 5, 7, 8, 15+	None	Control and prevent erosion and siltation within the ephemeral drainage	None	
Monterey County	LM5	2, 4, 5, 7, 8, 15+	None	Construct a barrier to prevent access to FR1, include emergency access gates with keys to BLM and other appropriate agencies; Construct firebreaks at boundaries with LM23 and FR1; Prevent drainage into FR1; Control and prevent erosion and siltation within the ephemeral drainage	None	
Monterey County; City of Seaside	LM7	1, 2, 5, 7, 8, 9, 11+, 14+, 15+	None	Construct a barrier to prevent access to FR1, include emergency access gates with keys to BLM and other appropriate agencies; Construct firebreaks at boundary with FR1; Prevent drainage into FR1	None	Compliance with Section 4 of the Clean Water Act required for wetland habitat area

Monterey County	LM8	2, 5, 15+, 17+	Preserve habitat where possible within and near development areas	Construct a barrier to prevent LR2 access; Construct firebreaks at boundary with LR2; Prevent drainage into LR2	None	
Monterey County	LM9	2, 17+	None	Use best management practices to minimize effects on LR2; Use native vegetation for landscaping; Install a permanent interpretive display	None	
Monterey County	LM11	2, 5, 7, 8, 15+	None	Use native vegetation for landscaping; Install a permanent interpretive display; Prevent and control erosion and siltation within the ephemeral drainage	None	
Monterey County	LRI	1, 2, 17+	Preserve existing habitat for the Covered Species	Maintain existing habitat values for the Covered Species, including small disturbed areas of sandy soil for sand gilia and Monterey spineflower; Maintain as a functional habitat corridor as specified	None	
Monterey County	LR2	2, 5, 17+	No Covered Species will be removed for development; Maintain existing habitat outside campground	Maintain as a functional habitat corridor; Develop a land management plan as specified (management will include monitoring, controlled burning, firebreak construction, vehicle access controls, erosion control, and regular patrols); Create interpretive signs as specified; If Monterey ornate shrews are present, prohibit firewood collection and leave tree trunks in place if tree cutting is necessary; Use only native species for landscaping; Coordinate management activities with the CDFG and the California Department of Forestry and Fire Protection	None	Future expansion is subject to USFWS and CDFG approval; May contract a qualified agency to manage, subject to USFWS and CDFG approval
Monterey County	LR3	2, 4, 5, 6, 7, 8, 17+	Development will not exceed 200 acres and will have less than 30% slope; Impacts to the Covered Species will be minimized and all remaining natural habitat will be retained	Develop a land management plan as specified (management will include monitoring, controlled burning, firebreak construction, vehicle access controls, erosion control, and regular patrols); Limit development as much as possible to within existing East Garrison and Ammo Supply Point; Coordinate management activities with the CDFG and the California Department of Forestry and Fire Protection	None	May contract a qualified agency to manage, subject to USFWS and CDFG approval
Monterey County Parks	LM12	None	None	Maintain grass and take other measures as necessary to prevent erosion damage in FR1; Construct a firebreak inside perimeter of parcel to protect FR1; Post signs prohibiting off-road vehicle use; Inspect nearby stock pond for impacts after each public event	None	Take actions as necessary to prevent impacts to stock pond

Monterey County Parks	LM13	1, 4, 6, 7, 11, 14, 17+	Breeding pond that supports California linderella and California tiger salamander will be preserved	Maintain grass and take other measures as necessary to prevent erosion damage in FRI; Construct a firebreak inside perimeter of parcel to protect FRI; Post signs prohibiting off-road vehicle use; Inspect pond habitat for impacts after each public event	None	Take actions necessary to prevent impacts to breeding pond
Monterey County Parks	LM14	17+	None	Maintain grass and take other measures as necessary to prevent erosion damage in FRI; Construct a firebreak inside perimeter of parcel to protect FRI	None	Construct a vehicle barrier if off-road vehicles do enter FRI
Monterey Peninsula College	LN2	2, 5, 7	None, but area planned as an outdoor lab so habitat is likely to be preserved	None	None	
Monterey Peninsula Regional Parks	LR7	2, 3, 5, 7, 8	None, but Regional Parks District intends to preserve natural habitat	Allow CNPS access to existing plant reserve for research and other purposes	None	
Monterey Peninsula Unified School District	LM24	None	None	Best management practices will be used to minimize effects to the adjacent SR2 parcel	None	
Monterey Peninsula Unified School District	LN1	None	None	None	None	
Transportation Agency of Monterey County	LN4	1, 2, 4, 5, 7, 8, 9, 15+, 17+	None	None	None	
UC	SM1	2, 15+, 17+	Preserve habitat where possible within and near development areas	Use native vegetation for landscaping purposes and develop a landscaping plan that maintains a habitat corridor to the extent possible for Covered Species in the adjacent SR ("URA") parcels	None	
UC	SM2	1, 2, 5, 7, 9, 15+, 17+	Preserve habitat where possible within and near development areas	Use clustered development to avoid sand gilia and other Covered Species and their habitats. Use native vegetation for landscaping purposes and develop a landscaping plan that maintains a habitat corridor to the extent possible for Covered Species in the adjacent SR ("URA") parcels	None	
UC	SM3	1, 2, 4, 5, 7, 8, 9, 15+, 17+	Preserve habitat where possible within and near development areas	Same as SM2	None	
UC	SM4	1, 2, 5, 7, 15+, 17+	Preserve habitat where possible within and near development areas	Same as SM2	None	

UC	SR7	2, 5, 9, 11+, 15+	Preserve existing Smith's blue butterfly habitat	Restrict development to existing treatment plant and abandoned ponds; Prohibit disturbance to Smith's blue butterfly populations; Install a barrier to prevent vehicles from entering undeveloped areas; Establish comprehensive erosion control measures	None	
UC NRS	SR1	1, 2, 4, 5, 7, 8, 9, 15, 17+	Development (for teaching and research purposes) will not affect more than 1% of the total existing natural habitat	Actively manage natural resources, with an emphasis on maintaining viable species populations and natural communities; Conduct site-specific natural resource inventories and mapping, with emphasis on relevant Covered Species; Design and implement an on-going environmental monitoring program for abiotic and biotic components of parcel; Foster targeted research to address rare species and habitat management issues	None	Consultation with adjacent land owners proposing projects that may impact the Covered Species and/or their habitats on UC managed lands is a CEQA requirement
UC NRS	SR2	1, 2, 4, 5, 7, 8, 9, 15+, 17+	Same as SR1	Same as SR1	None	Same as SR1
UC NRS	SR3	1, 2, 5, 7, 9, 15+, 17+	Same as SR1, but no conservation measures necessary in landfill areas	Same as SR1	None	Army to coordinate completion of landfill mitigation
UC NRS	SR4	1, 2, 5, 7, 8, 15+	Same as SR1	Same as SR1; In addition, all artificially created landscape features will be removed and sand hill maritime chaparral will be restored in those areas	None	
The York School	LM23	2, 4, 5, 6, 7	Preserve habitat where possible within and near development areas	Construct firebreaks at boundary with FRI	None	
Army, Monterey County, City of Marina, City of Seaside, Monterey Peninsula Unified School District, City of Marina Community College, Monterey Peninsula Community College	LN5	1, 2, 4, 5, 6, 7, 8, 15+, 17+	Preserve habitat where possible within and near development areas	None	None	

Unknown at this time	LM25	None	None	Construct a barrier to prohibit vehicle access to coastal dune habitats within the SR6 parcel; Take measures to minimize erosion problems within parcel and nearby parcels	None
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¹Covered Species Addressed in the HMP:

Plants

- 1) Sand gilia
- 2) Monterey spineflower
- 3) Seaside bird's-beak
- 4) Toro manzanita
- 5) Sandmat manzanita
- 6) Hooker's manzanita
- 7) Monterey ceanothus
- 8) Eastwood's ericameria
- 9) Coast wallflower
- 10) Yadon's piperia

Animals

- 11) Smith's blue butterfly
- 12) California linderiella
- 13) California red-legged frog
- 14) California tiger salamander
- 15) California black legless lizard
- 16) Western snowy plover
- 17) Monterey ornate shrew

+ - Not detected, but the parcel contains potential habitat for this species

FORT ORD HABITAT MANAGEMENT PLAN
LAND USE STATUS MONITORING

POLYGON # _____ REPORTING YEAR _____

LEGAL JURISDICTION _____

TOTAL POLYGON ACRES _____

ACRES OF HABITAT IDENTIFIED IN ARMY EIS

Maritime Chaparral _____
Coastal Dunes _____
Native Coastal Strand _____
Coastal Shrub _____
Coastal Oak Woodland _____
Inland Oak Woodland _____
Oak Savanna _____
Annual Grassland _____
Valley Needlegrass Grassland _____
Blue Wildrye Grassland _____
Mixed Riparian Forest _____
Oak Riparian _____
Vernal Pool _____
Ponds & Freshwater Marsh _____

HABITATS AFFECTED BY DEVELOPMENT DURING PAST FEDERAL FISCAL YEAR
(acres) (October 1 to September 30)

Maritime Chaparral _____
Coastal Dunes _____
Native Coastal Strand _____
Coastal Shrub _____
Coastal Oak Woodland _____
Inland Oak Woodland _____
Oak Savanna _____
Annual Grassland _____
Valley Needlegrass Grassland _____
Blue Wildrye Grassland _____
Mixed Riparian Forest _____

FORT ORD HABITAT MANAGEMENT PLAN
HMP COMPLIANCE MONITORING

POLYGON # _____

REPORTING YEAR _____

LEGAL JURISDICTION _____

TOTAL POLYGON ACRES _____

INTERIM MANAGEMENT ACTIONS TAKEN:

Control of Off-Road Vehicles:

Actions Taken:

Problems Identified:

Unauthorized Disturbances:

Actions Taken:

Problems Identified:

Invasive Species Control:

Actions Taken:

Problems Identified:

Name of Individual(s) Conducting Inspection of Property:

Dates of Inspections:

HMP IMPLEMENTATION ACTIONS TAKEN:

(THIS PORTION OF THE FORM WILL BE INDIVIDUALLY PREPARED BY BLM FOR EACH PARCEL - EACH FORM WILL LIST THE HMP IMPLEMENTATION REQUIREMENTS FOR THAT PARCEL)

example: (Parcel LM-21)

Fire Break Construction:	Completed	YES	NO
Progress in last fiscal year:			

Vehicle Barrier Construction:	Completed	YES	NO
Progress in last fiscal year:			

Vehicle Barrier Maintenance:			
Progress in last fiscal year:			

Stormwater Runoff Control:	Completed	YES	NO
Progress in last fiscal year:			

Exhibit

HMP MONITORING REQUIREMENTS

Responsible Party	Parcel	Species Present	Monitoring Requirements
Army	FM1	1, 2, 4, 5, 7, 8, 9, 15+	None
Department of Justice	FM2	2, 4, 7, 17+	None
FBI	FM3	2, 8, 15+, 17+	None
BLM	FRI	1, 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15+, 16+, 17+	Assist Army (during UXO clearance) with monitoring the recovery and succession of maritime chaparral over short and long term periods; Assist Army with study of the establishment, persistence, and habitat requirements of sand gilia, Monterey spineflower, and Seaside bird's-beak populations and habitat; Measure the success of maritime chaparral restoration as specified in the HMP; Monitor and test maritime chaparral enhancement techniques; Monitor all populations of Covered Species and conduct population viability studies when and where appropriate; Maintain records of the location, timing, intensity, and extent of fires (wild and controlled) and monitor post fire recovery and succession of maritime chaparral
California 7th District Agriculture Association	SM8	5, 7, 8, 9, 15+	None
California 7th District Agriculture Association	SM9	2, 3, 5, 7, 8, 15+	None
California State University	SM5	2, 5, 7, 8, 9, 15+, 17+	None
CalTrans	SR8	2, 5, 7, 8, 9, 15+	None
CalTrans with BLM and Monterey County	SR9	1, 2, 4, 5, 6, 7, 12+, 17+	None
CDPR	SM6	2, 9	None
CDPR	SM7	None	None
CDPR	SN1	2, 15+	None
CDPR	SR5	1, 2, 9, 11+, 15	Identify potential dune habitat restoration sites (recording the location, physical condition, and biological condition of each site); Monitor restoration success with specific monitoring of the establishment and persistence of sand gilia and Monterey spineflower populations; Data collected will be used to guide species and habitat management programs
CDPR	SR6	1, 2, 9, 11, 15, 16+	Same as SR5
City of Del Rey Oaks	LM4	2, 5, 7, 8, 15+	None
City of Del Rey Oaks	LM6	2, 5, 7, 8	None
City of Marina	LM10	5, 15+	None
City of Marina	LM15	1, 2, 4, 5, 7, 8, 15+	None
City of Marina	LM16	2, 5, 7, 8, 15+	None
City of Marina	LM17	2, 15+, 17+	None
City of Marina	LM18	1, 2, 15+, 17+	None

City of Marina	LM19	1, 2, 5, 7, 8, 9, 15+, 17+	None
City of Marina	LM22	2, 5, 7, 15+	None
City of Marina	LN3	2	None
City of Marina	LR4	2, 13+, 17+	None
City of Marina	LR5	2, 15+	None
City of Marina	LR6	1, 2, 5, 7, 8, 9, 10, 15+	None
City of Seaside	LM20	2, 5, 7, 8, 15+, 17+	None
City of Seaside	LM21	5, 7, 8, 15+	None
Monterey County	LM1	2, 4, 6, 15+, 17	None
Monterey County	LM2	2, 4, 5, 6, 7, 8, 15+, 17+	None
Monterey County	LM3	2, 5, 7, 8, 15+	None
Monterey County	LM5	2, 4, 5, 7, 8, 15+	None
Monterey County;	LM7	1, 2, 5, 7, 8, 9, 11+, 14+, 15+	None
City of Seaside	LM8	2, 5, 15+, 17+	None
Monterey County	LM9	2, 17+	None
Monterey County	LM11	2, 5, 7, 8, 15+	None
Monterey County	LR1	1, 2, 17+	None
Monterey County	LR2	2, 5, 17+	Relevant Covered Species monitoring (as specified in the resources management plan to be developed and reviewed by the USFWS and the CDFG); Survey for Monterey ormate shrews, and if found, then management practices will be implemented to preserve known and potential habitats
Monterey County	LR3	2, 4, 5, 6, 7, 8, 17+	Relevant Covered Species monitoring
Monterey County Parks	LM12	None	None
Monterey County Parks	LM13	1, 4, 6, 7, 11, 14, 17+	None
Monterey County Parks	LM14	17+	None
Monterey Peninsula College	LN2	2, 5, 7	None
Monterey Peninsula Regional Parks	LR7	2, 3, 5, 7, 8	None
Monterey Peninsula Unified School District	LM24	None	None
Monterey Peninsula Unified School District	LN1	None	None
Transportation Agency of Monterey County	LN4	1, 2, 4, 5, 7, 8, 9, 15+, 17+	None
UC	SM1	2, 15+, 17+	None
UC	SM2	1, 2, 5, 7, 9, 15+, 17+	None

Exhibit

Monitoring Methods and Frequencies for HMP Covered Species (post baseline)

Species	Status Federal/State/Other	Methods	Output	Frequency	Timing	Spatial Application	Comments
Plants							
Sand gilia	E/T/CNPS 1B	Total counts: A. Along all open trails B. Wandering all open spaces	Numbers of individuals per parcel and number of populations (small, medium, and large)	Annual	Late March to early June	All actual or expected habitat in habitat conservation areas	Surveys are required prior to development on other parcels to assess expected losses
Monterey spineflower	T/--/CNPS 1B	Location of populations; Estimation of population sizes	Number and sizes of populations	Annual	Late March to early June		
Robust spineflower	PE/--/CNPS 1B	Location of populations; Estimation of population sizes	Number and sizes of populations	Annual	Late March to early June		
Seaside bird's-beak	C1/E/CNPS 1B	Location of populations; Estimation of population sizes	Number and sizes of populations	Annual	Late June to late August		
Toro manzanita	C2/--/CNPS 1B	A. Line intercept B. Coverage estimates by classes or point	Absolute Coverage	Five year intervals	NA		
Sandmat manzanita	C2/--/CNPS 1B	A. Line intercept B. Coverage estimates by classes or point	Absolute Coverage	Five year intervals	NA		
Monterey ceanothus	C2/--/CNPS 4	A. Line intercept B. Coverage estimates by classes or point	Absolute Coverage	Five year intervals	NA		
Eastwood's ericameria	C2/--/CNPS 1B	A. Line intercept B. Coverage estimates by classes or point	Absolute Coverage	Five year intervals	NA		
Coast wallflower	C2/--/CNPS 1B	Location of populations; Estimation of population sizes	Numbers of individuals per parcel	Annual	Early February to early June		
Yadon's piperia	C1/--/CNPS 1B	Location of populations; Estimation of population sizes	Number and sizes of populations	Annual	Mid June to late July		
Hooker's manzanita	--/--/CNPS 1B	A. Line intercept B. Coverage estimates by classes or point	Absolute Coverage	Five year intervals	NA		
Animals							
Smith's blue butterfly	E/--/--	Direct counts in selected areas		Annual			
California linderiella	no status			Annual			

California red-legged frog	PE/CSC/--	Evening surveys with head lamps in selected, wet areas		Annual	Winter to late spring	Ponds suitable for breeding	Numbers will be indices based on calling males
Western snowy plover	T/CSC/--	Direct counts		Annual			
California black legless lizard	PE/CSC/--	A. Coverboards B. Manual searches	Number and color of individuals	A. Annual B. Five year intervals	March to June especially		
California tiger salamander	C1/CSC/--	Walking transects during late afternoon (standard)	Number seen per hour and per transect length	Annual	Breeding season (November to March?)		
Monterey ornate shrew	C2/--/--	Drop cans	Number per can-day	Five year intervals	Spring		Cans MUST be monitored at all times when open and checked every 3-4 hours

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- C1 = Category 1 candidate for federal listing. Category 1 includes species for which the USFWS has on file enough substantial information on biological vulnerability and threats to support proposals to list them.
- C2 = Category 2 candidate for federal listing. Category 2 includes species for which the USFWS has some biological information indicating that listing may be appropriate but for which further biological research and field study are usually needed to clarify the most appropriate status.
- = no designation

State

- E = listed as endangered under the California Endangered Species Act
- T = listed as threatened under the California Endangered Species Act
- CSC = California Department of Fish and Game species of special concern
- = no designation

Other

- CNPS 1B = California Native Plant Society list 1B: plants listed as rare, threatened or endangered in California and elsewhere
- CNPS 4 = California Native Plant Society list 4: plants of limited distribution in California - a watch list
- CEQA = resources with no formal listing that are considered sensitive by CDFG through the CEQA review process
- = no designation

UC	SM3	1, 2, 4, 5, 7, 8, 9, 15+, 17+	None
UC	SM4	1, 2, 5, 7, 15+, 17+	None
UC	SR7	2, 5, 9, 11+, 15	None
UC NRS	SR1	1, 2, 4, 5, 7, 8, 9, 15, 17+	Detailed baseline inventory and mapping of relevant natural resources, with emphasis on Covered Species and their habitats; Design and implement a long-term biotic and abiotic environmental monitoring program (data will be used to guide species and habitat management programs); Adjacent land use monitoring pursuant to CEQA
UC NRS	SR2	1, 2, 4, 5, 7, 8, 9, 15+, 17+	Same as SR1
UC NRS	SR3	1, 2, 5, 7, 9, 15+, 17+	Same as SR1
UC NRS	SR4	1, 2, 5, 7, 8, 15+	Same as SR1
The York School	LM23	2, 4, 5, 6, 7	None
Army, Monterey County, City of Marina, City of Seaside, Monterey Peninsula Unified School District, City of Marina Community College, Monterey Peninsula Community College Unknown at this time	LN5	1, 2, 4, 5, 6, 7, 8, 15+, 17+	None
	LM25	None	None

¹Covered Species Addressed in the HMP:

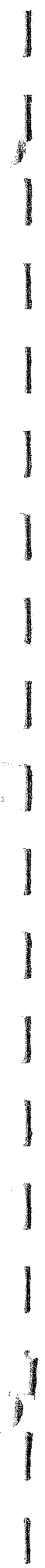
Plants

- 1) Sand gilia
- 2) Monterey spineflower
- 3) Seaside bird's-beak
- 4) Toro manzanita
- 5) Sandmat manzanita
- 6) Hooker's manzanita
- 7) Monterey ceanothus
- 8) Eastwood's ericameria
- 9) Coast wallflower
- 10) Yadon's piperia

Animals

- 11) Smith's blue butterfly
- 12) California lindertella
- 13) California red-legged frog
- 14) California tiger salamander
- 15) California black legless lizard
- 16) Western snowy plover
- 17) Monterey ornate shrew

+ - Not detected, but the parcel contains potential habitat for this species



08/09/94

APPENDIX A E

NO SURPRISES

ASSURING CERTAINTY FOR PRIVATE LANDOWNERS IN ENDANGERED SPECIES ACT HABITAT CONSERVATION PLANNING

"The Committee intends that the Secretary may utilize this provision [on HCPs] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

"It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances."

H. Rep. No. 835, 97th Cong., 2d Sess. 30-31 (1982)

PURPOSE:

The purpose of this policy is to provide assurances to non-federal landowners participating in Endangered Species Act Habitat Conservation Planning (HCP) that no additional land restrictions or financial compensation will be required for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances.

SUPPLEMENTARY INFORMATION:

The HCP process promotes endangered species conservation and habitat protection within the context of land use or development. Ideally, HCPs contribute to the long-term conservation of federally listed and unlisted species, while providing predictability and economic stability for non-federal landowners.

Species receive a variety of benefits under a properly functioning HCP. Private financial resources supplement limited federal funding, essential habitat areas are often preserved, and comprehensive conservation programs are developed and promptly implemented. Although landowners must ultimately demonstrate that a species has been covered adequately under an HCP, the major benefit from the HCP process from the perspective of the development community is certainty. In exchange for adherence to long-term conservation commitments, an HCP permittee is provided assurance that development may move forward despite the incidental taking of protected species.

Significant development projects often take many years to complete, therefore adequate assurances must be made to the financial and developmental communities that an HCP permit will remain valid for the life of the project. In authorizing the HCP process, Congress recognized that permits of 30 years or more may be necessary to trigger long-term private sector funding and land use commitments for species conservation. Congress also recognized that circumstances may change over time, generating pressure to reconsider the mitigation commitments in an HCP agreement. Often referred to as "unforeseen" or extraordinary circumstances, Congress intended that additional mitigation requirements not be imposed upon an HCP permittee who has fully implemented his or her conservation commitments except as may be provided for under the terms of the HCP itself.

POLICY:

In negotiating "unforeseen circumstances" provisions for HCPs, the FWS shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, FWS shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances.

A. General Assurances Provided to Landowners

- * If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the primary obligation for such measures shall not rest with the HCP permittee.
- * FWS shall not seek additional mitigation for a species from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that particular species and contained measurable criteria for the biological success of the HCP which have been or are being met.
- * If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall limit changes to the original terms of the HCP to the maximum extent possible and shall be limited to modifications within Conserved Habitat areas or to the HCP's operating conservation program for the affected species. Additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels of land available for development under the original terms of the HCP without the consent of the HCP permittee.

B. Determination of Extraordinary Circumstances.

- * FWS shall have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. FWS findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.
- * In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from an HCP permittee, the FWS shall consider, but not be limited to, the following factors:
 - the size of the current range of the affected species
 - the percentage of range adversely affected by the HCP
 - the percentage of range conserved by the HCP
 - the ecological significance of that portion of the range affected by an HCP
 - the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP
 - whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP
 - whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild

C. ADDITIONAL CONSERVATION AUTHORITY

- * Nothing in this policy shall be construed to limit or constrain FWS or any other governmental agency from taking any additional actions at its own cost with respect to the conservation or enhancement of a species which is included under an HCP.