

**AGREEMENT BY AND BETWEEN
THE UNITED STATES BUREAU OF LAND MANAGEMENT AND
THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

A. STATEMENT OF PURPOSE

The Bureau of Land Management (BLM) and the California Department of Fish and Wildlife (CDFW) agree to work with each other to conserve biological and natural resources on federal public lands administered by the BLM within California. The BLM and CDFW have developed this agreement (Agreement) for the purpose of memorializing and making specific their cooperation and coordination to protect and conserve fish, wildlife, plants and their habitat within California. This Agreement supplements the MOU by and between the Bureau of Land Management and the California Department of Fish and Game, entered into by BLM and CDFW on November 27, 2012.

B. STATEMENT OF AUTHORITIES

The BLM and CDFW each have specific administrative responsibility or regulatory authority under Federal and state statutes. These statutes direct them, in part, to take into consideration biological and natural resources within the state, including certain species of concern and their habitats, and adverse effects resulting from federal, state, and private land use and development actions. These statutes include but are not limited to:

1. BLM. The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. § 1701 et seq.); the Omnibus Public Lands Management Act of 2009 (OPLMA), Pub. L. 111-11, March 30, 2009; the Consolidated Appropriations Act of 2012, Pub. L. 112-74, December 23, 2011; the Endangered Species Act of 1973, Sec. 2 (c)(1) and Sec. 7(a)(1) and (2) (ESA); the Sikes Act of 1974, 16 U.S.C. § 670g-o; the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA); Recreation and Public Purposes Act, 43 U.S.C. § 869, et seq. (RPPA); and 43 C.F.R. Part 24, Department of the Interior Fish and Wildlife Policy: State-Federal Relationships.
2. CDFW. The California Endangered Species Act, Fish and Game Code § 2050, et seq. (CESA); the Natural Community Conservation Planning Act, Fish and Game Code § 2800, et seq. (NCCPA); Fish and Game Code § 1600, et seq. (Section 1600), the Native Plant Protection Act, Fish and Game Code § 1900, et seq. (NPPA); Fish and Game Code §§ 3511, 4700, 5050, and 5515; Fish and Game Code §§ 3503, 3503.5, and 3513; Fish and Game Regulations, Title 14, Cal. Code Regs.; Fish and Game Code § 1802; and the California Environmental Quality Act, Public Resources Code § 21000, et seq. (CEQA).

C. PROCEDURES AND RESPONSIBILITIES OF THE BLM AND CDFW

1. BLM Conservation Lands. The BLM manages federal public land within California. Some of this land is managed under some form of conservation protection, including: (i) legislatively and legally protected areas, such as Wilderness Areas, Wilderness Study Areas, and Wild and Scenic River designations; (ii) lands designated as part of the National Landscape Conservation System (NLCS); and (iii) lands administratively designated as Areas of Critical Environmental Concern (ACECs) and Wildlife Allocations. Some lands are subject to overlapping designations for wildlife and non-wildlife conservation goals. Collectively, lands with these designations are referred to herein as “BLM Conservation Lands.”
2. CDFW Compensatory Mitigation Requirements. In administering CESA, the NCCPA, Section 1600, and CEQA, CDFW routinely imposes upon individual project permittees the requirement to provide compensatory mitigation for take of or impacts to fish, wildlife, plants, and their habitat. Typically, CDFW requires a permittee to provide for the permanent protection and management of habitat by either purchasing credits at a mitigation bank, purchasing a conservation easement on private land, or purchasing private land and protecting it with a conservation easement. Although compensatory mitigation is usually completed on private land, CDFW is committed to ensuring that permittees seeking to satisfy compensatory mitigation requirements identify and protect the highest quality habitat available, regardless of whether that occurs on private or public lands. In designing appropriate mitigation for any given project, CDFW also seeks to locate mitigation where it will best offset the specific types of adverse effects from the project, whether that is on public or private land.
3. Importance of BLM Conservation Lands to Conservation in California. Both the BLM and CDFW recognize that many BLM Conservation Lands include critically important habitat for CESA-listed species, fully protected species, and other species of special concern in California. BLM Conservation Lands often include areas essential for ecological connectivity between natural landscape blocks and between wildlife populations. BLM Conservation Lands can also serve to prevent habitat fragmentation and to contribute to the protection, enhancement, restoration, or expansion of natural landscape blocks to maintain functionality of habitats for the covered species and thus to contribute to the stability and long-term viability of wildlife populations.
4. Use of BLM Conservation Lands to Satisfy CDFW Compensatory Mitigation Requirements. Using BLM Conservation Lands to contribute toward satisfaction of compensatory mitigation requirements for projects permitted by CDFW benefits: (1) CDFW by facilitating its permitting process; (2) BLM by providing funding and staffing

for restoration and enhancement work on BLM Conservation Lands; and (3) both agencies by helping fulfill their mutual goal of protecting and conserving fish, wildlife, plants and their habitat within California.

a. Compensatory Mitigation Actions. Compensatory mitigation actions that may be undertaken on BLM Conservation Lands include, but are not limited to:

- i. Fencing highways, freeways, and primary county roads;
- ii. Removing, restoring, or rehabilitating closed roads;
- iii. Removing illegal dumps;
- iv. Removing or controlling invasive or exotic plant infestations;
- v. Predator control actions;
- vi. Improving habitat connectivity by increasing the size of existing culverts, increasing the number of culverts, or constructing alternative means of crossings;
- vii. Additional law enforcement patrols;
- viii. Restoration of habitat and corridors;
- ix. Acceptance of the relinquishment of grazing permits or leases to make the land available for mitigation by allocating the forage permanently to wildlife use pursuant to the Consolidated Appropriations Act of 2012;
- x. Creating artificial nests or burrow sites;
- xi. Fencing between grazing lands and wildlife habitat lands;
- xii. Developing water sources for wildlife; and
- xiii. Increasing education outreach (e.g., interpreters, handouts, kiosks, signs).

b. Land Use Authorizations for Compensatory Mitigation. The following land use authorizations are available and may be approved and granted by the BLM to authorize CDFW-required compensatory mitigation actions on BLM Conservation Lands:

- i. Rights-of-way pursuant to 43 U.S.C. § 1761, et seq.;
- ii. Permits, leases, or easements pursuant to 43 U.S.C. § 1731, et seq., and 43 C.F.R. § 2920;
- iii. Leases pursuant to the Recreation and Public Purposes Act, 43 U.S.C. § 869, et seq. (RPPA); and
- iv. Terms and conditions on such land use authorizations that are necessary to meet state permitting or compensatory mitigation requirements;

The BLM may also recommend that the Secretary of the Interior exercise authority under 43 U.S.C. § 1714 to make withdrawals.

- c. Cooperative Agreements between the BLM and CDFW. In addition to the land use authorizations discussed above, the BLM and CDFW may enter into one of the following types of cooperative agreements to protect BLM Conservation Lands used to satisfy CDFW compensatory mitigation requirements:
 - i. Site-specific cooperative agreements for management pursuant to 43 U.S.C. § 1737(b); or
 - ii. Site-specific Sikes Act Agreements pursuant to the Sikes Act of 1974, 16 U.S.C. § 670g-o.
5. Coordination between BLM and CDFW With Respect to State-Recognized Compensatory Mitigation on BLM Conservation Lands.
- a. Notice. CDFW will inform the applicable BLM Field Office Manager in writing if it identifies BLM Conservation Lands that may be suitable to serve as compensatory mitigation for a project subject to CDFW permitting under CESA, the NCCPA, Section 1600, or CEQA. BLM will inform the applicable CDFW Regional Manager in writing if it identifies BLM Conservation Lands that may be suitable to serve as compensatory mitigation for CDFW permitting purposes.
 - b. Meet and Confer. Upon receipt of a written notice initiated by either agency pursuant to this section, the BLM and CDFW will meet within thirty (30) days to discuss whether the applicable BLM Conservation Lands possess the appropriate biological characteristics, land use designations, and other attributes to make the lands suitable to serve as compensatory mitigation for CDFW permitting purposes and for BLM land use management purposes.
 - c. CDFW Determination. Consistent with its authority and discretion under CESA, the NCCPA, Section 1600, and CEQA, CDFW will make the final determination as to whether protection of BLM Conservation Lands will satisfy compensatory mitigation requirements under permits or approvals issued by CDFW pursuant to these laws and accompanying regulations.
 - d. BLM Determination. Consistent with its authority and discretion under FLPMA, the BLM will make the final determination as to whether management actions or authorizations on BLM Conservation Lands to provide for compensatory mitigation consistent with CDFW compensatory mitigation requirements may be implemented consistent with the requirements of Federal law, regulations, and BLM land use management purposes.

- e. BLM Conservation Lands Approved for CDFW Compensatory Mitigation. For the purposes of this Agreement, BLM Conservation Lands on which the BLM has decided to take management actions or authorized activities that contribute to satisfaction of CDFW compensatory mitigation requirements, and which CDFW accepts for a particular permit or authorization, shall be called “BLM Conservation Lands Approved for CDFW Compensatory Mitigation.”
6. Consideration of Management Actions and Authorizations for BLM Conservation Lands to Contribute to CDFW Compensatory Mitigation Requirements. With respect to BLM Conservation Lands proposed to contribute to satisfaction of CDFW compensatory mitigation requirements, the BLM and CDFW further agree as follows:
- a. Once a land area is identified under Section C.5, BLM and CDFW will work together to identify and evaluate the specific management actions and authorizations, consistent with BLM’s land management authority defined by Federal law, regulations, and policy, which address CDFW goals for Compensatory Mitigation and are sufficient to contribute to meeting CDFW permitting requirements. In considering the specific management actions and authorizations, the BLM will take into account the duration of the impacts that are proposed to be mitigated through protection of the BLM Conservation Lands and will seek to secure the mitigation benefits for the duration of the impacts to the extent consistent with Federal law, regulations, and policy. For purposes of this Agreement, the duration of the impacts includes the duration of the project permitted by CDFW, decommissioning, and the restoration of the site sufficient to restore the biological functions to a level sufficient to provide habitat functions for the species in the affected area.
 - b. The BLM and CDFW shall consider the use of site-specific Sikes Act Agreements and Cooperative Agreements for Management for BLM Conservation Lands considered for compensatory mitigation purposes.
 - c. In addition to, or as an alternative to, entering into any Sikes Act Agreement or a Cooperative Agreement for Management, CDFW, or a third party capable of meeting the required terms and conditions, may request the BLM to consider one or more of the land use authorizations listed in Section C.4.b. to secure protection of BLM Conservation Lands. If the BLM issues to CDFW a land use authorization for compensatory mitigation purposes pursuant to this Agreement, CDFW will ensure that its employees and agents comply with the terms and conditions of that authorization. If the BLM issues to a third party a land use authorization for compensatory mitigation purposes pursuant to this Agreement,

the BLM and CDFW will work together to develop processes to monitor compliance with the terms and conditions of that land use authorization. CDFW will notify the BLM of any proposed activity on BLM Conservation Lands Approved for Compensatory Mitigation that has the potential to impact BLM-managed resources, biological or otherwise, and to obtain the appropriate BLM-approval prior to commencing that activity.

- d. BLM will manage BLM Conservation Lands Approved for Compensatory Mitigation in a manner that is consistent with the land use designations, management actions and authorizations (e.g., NLCS, ACEC, Wildlife Allocation, etc.) applicable to those lands, in accordance with Federal law, regulations, and policy and the terms and conditions of any completed instrument prepared under the terms of this agreement (see Section C.5.) for the term of the instrument, including any amendments or extensions to that term, so long as CDFW continues to recognize its compensatory mitigation value.
- e. To the maximum extent consistent with Federal law, regulations, and policy, BLM will seek to design Section C.5. instruments and maintain the land use designations on BLM Conservation Lands Approved for Compensatory Mitigation for the duration of the impacts. BLM will confer with CDFW at least ninety (90) days prior to initiating any action to amend or otherwise change the land use designations (e.g., NLCS, ACEC, Wildlife Allocation, etc.) on the BLM Conservation Lands Approved for Compensatory Mitigation. Both the BLM and CDFW acknowledge that the BLM may need to amend its land use plans and that such amendments could affect land use designations and land management practices. Consistent with Federal law and regulation, the BLM intends that any subsequent land use plan amendments will protect the biological values on BLM Conservation Lands Approved for CDFW Compensatory Mitigation to a level sufficient to meet those CDFW requirements for compensatory mitigation.
- f. If a third-party applicant proposes a project on BLM Conservation Lands Approved for CDFW Compensatory Mitigation, the application will be subject to the applicable land use plan, land use designations, and any valid existing rights (including previously-issued land use authorizations listed in Section C.4.b. and cooperative agreements listed in Section C.4.c.).
- g. If the BLM receives an application for a project on BLM Conservation Lands Approved for CDFW Compensatory Mitigation and subject to one of the land use authorizations listed in Section C.4.b. or agreements listed in Section C.4.c., the BLM will inform the third-party applicant proposing to develop those lands of the

extent of the existing use as compensatory mitigation, both temporally and spatially, prior to processing an application for a right-of-way or other authorization for development or use. Before approving any such application:

- i. The BLM will confer with CDFW to discuss whether and to what extent granting the application would impair or be inconsistent with the mitigation value of the lands, and whether alternative mitigation for those values is available.
- ii. The BLM will invite CDFW to be a Cooperating Agency under NEPA for purposes of the application for actions requiring an EIS-level analysis. CDFW may request Cooperating Agency status for other NEPA actions, such as Environment Assessment-level analysis.
- iii. The BLM, considering the commitment to mitigation value of the lands in question, will either:
 1. Deny the proposed project based on inconsistency with the Land Use Plan and commitments already made for compensatory mitigation without further analysis, or
 2. Propose an alternative for analysis that considers appropriate means of limiting impairment or inconsistency with the mitigation values, or
 3. Include an alternative in any further analysis (no action) that would deny the proposed project.
- iv. The BLM, when issuing a decision on the proposed project, will document the following:
 1. The basis for approving or denying the proposed project or requiring any additional mitigation measures or design features,
 2. Site-specific factors from the analysis that support whether to approve, approve with modifications, or deny any such application.
 3. If the BLM approves the proposed project, how compensatory mitigation values on the lands previously relied upon by CDFW as contributing to its mitigation requirements for specific projects are sustained; and
 4. If BLM approves the proposed project, how mitigation values addressed in (i) CESA's requirement for full mitigation of impacts to state-listed species as set forth in Fish and Game Code section 2081(b), (ii) Section 1600's requirement for "reasonable measures necessary to protect the [fish and wildlife] resource" as set forth in Section 1603, (iii) the NCCPA's requirements for conservation and protection of habitat reserves as set forth in Fish and Game Code section 2820(a)-(b), and (iv) CEQA's requirement for "feasible

mitigation measures” that would substantially lessen significant environmental impacts as set forth in Public Resources Code section 21002 will be protected through appropriate terms and conditions on any subsequent rights-of-way granted or by other actions; and

5. Consistent with Title 43 U.S.C. Section 1765, that any subsequent right-of-way granted for use of any BLM Conservation Lands Approved for CDFW Compensatory Mitigation include terms and conditions that both “minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment” and “require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards.” BLM will ensure that durability terms and conditions that integrate the state standards referenced above in Section C.6.g.iv.4, that have already been applied under a mechanism described above in Section C.4 and that CDFW has relied upon in the written record for a permit for partial or full satisfaction of mitigation requirements imposed by those provisions of state law, would not be affected by any subsequent right-of-way authorization unless the holder, the BLM and CDFW consent to a modification.
- v. If BLM expects to approve any such project, BLM will confer with CDFW before issuing a decision to discuss existing compensatory mitigation commitments, whether and to what extent granting the application would impair or be inconsistent with the mitigation value of the lands, the effectiveness of proposed alternative mitigation for those values, and the appropriate term or duration for any offsetting mitigation.. In the event the BLM approves an application or action on BLM Conservation Lands approved for compensatory mitigation purposes that impacts the values being mitigated for or makes that mitigation less effective, the BLM and CDFW will further confer to identify actions to offset any impacts to previously approved compensatory mitigation from the subsequently proposed project. Such offsetting actions may include, but are not limited to identifying, evaluating, and applying tools and actions on additional BLM Conservation Lands to provide durable, long-term assurances that they will be protected and managed. Prior to the BLM’s approval of a subsequently proposed project, the BLM and CDFW

will cooperate and coordinate to the maximum extent possible to achieve the goals of this Agreement.

- h. Projects proposed by the BLM on federal public lands will be subject to and consistent with the applicable land use plan, land use designations, and any valid existing rights (including land use authorizations listed in Section C.4.b. and cooperative agreements listed in Section C.4.c.), as well as Federal law, regulations, and policy. If the BLM is considering a project on BLM Conservation Lands approved for compensatory mitigation purposes, it will confer with CDFW as early as is feasible to design the project in a way that avoids or minimizes impacts to previously approved compensatory mitigation and follow the procedures set forth in Section C.6.g.

7. CDFW Considerations for BLM Conservation Lands Approved for CDFW Compensatory Mitigation. Consistent with the goals of this Agreement and its authority as defined in State law, regulations, and policy, and in acknowledgement of the importance of CDFW's management of wildlife, CDFW agrees to:

- a. Manage wildlife on BLM Conservation Lands Approved for CDFW Compensatory Mitigation in cooperation with the BLM in a manner that is consistent with the applicable land use plan, the land use designations, any applicable Section C.5. instrument, and the Department of the Interior Fish and Wildlife Policy (43 C.F.R. Part 24);
- b. Provide advice and counsel to the BLM with respect to wildlife management on BLM Conservation Lands Approved for CDFW Compensatory Mitigation; and
- c. Consistent with Section C.5.c, recognize the BLM Conservation Lands Approved for CDFW Compensatory Mitigation toward the mitigation requirements of those projects for which the BLM approved management actions or authorizations are made.

8. Notification.

- a. Notice to Holders of Land Use Authorizations for Mitigation Actions. The BLM and CDFW will provide written notification to the holder of any land use authorization for any compensatory mitigation action, as described in Section C.6.e., upon the BLM's receipt of an application for a right-of-way or other authorization, CDFW's receipt of an application for any permit or approval, or the initiation of any activity by the BLM or CDFW themselves if the application

received or activity proposed has the potential to affect the BLM Conservation Lands Approved for CDFW Compensatory Mitigation. Both the BLM and CDFW agree to meet in a timely manner with the holder of the land use authorization, if a meeting is requested by either BLM, CDFW or the holder of the land use authorization, to discuss the application or activity and its potential impact to the compensatory mitigation action.

- b. Annual Report on Project Approvals relating to BLM Conservation Lands Approved for CDFW Compensatory Mitigation. The BLM and CDFW shall provide each other with and make available to the public, on or before January 31 of each calendar year, a written account of all rights-of-way, permits, authorizations, and other approvals issued by the BLM or CDFW for projects and activities occurring on or potentially affecting BLM Conservation Lands Approved for CDFW Compensatory Mitigation during the prior calendar year.

9. Dispute Resolution.


- a. Dispute Resolution Process. The BLM and CDFW recognize that disagreements concerning implementation or interpretation of this Agreement may arise from time to time and agree to work together in good faith. In the event of such a disagreement, it is in the best interest of each agency to resolve the issue at the lowest possible level of each organization. The first level will involve the BLM Field Office Manager and the CDFW Environmental Program Manager. If resolution cannot be reached at that level, the next level will involve the BLM District Manager and CDFW Regional Manager. If resolution cannot be reached at that level, the next level will involve the BLM State Director and CDFW Director or Chief Deputy Director. Both agencies agree to make the appropriate individual or their representatives available within a reasonable timeframe to discuss the disagreement.
- b. Proposed BLM Land Use Plan Decisions. Title 43 CFR Section 1610.3-2(a) requires BLM land use plans to be consistent with officially approved or adopted resource related plans of state governments, so long as the land use plan decision is also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to federal public lands. The BLM and CDFW will seek to reconcile applicable state and federal land use and wildlife management planning decisions wherever this agreement is applied.
- c. Final Determinations on Federal and State Law. Notwithstanding anything in this section, the BLM remains the final decision maker for interpretation and


implementation of applicable federal law, and CDFW remains the final decision maker for interpretation and implementation of applicable state law, to be applied on BLM-administered public land.

D. ADMINISTRATIVE PROVISIONS

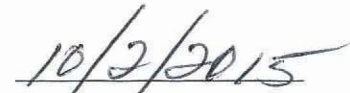
1. Effective Date. This Agreement is made and entered into as of the last date of signature by and between the BLM and CDFW.
2. Termination. Either the BLM or CDFW may terminate this Agreement by delivering to the other agency a written notice of intent to terminate at least ninety (90) days prior to the proposed termination date. Termination of this Agreement shall not affect any authorizations by BLM pursuant to Section C.6. of this Agreement. Notwithstanding any termination of this Agreement, the land use authorizations for compensatory mitigation lands shall continue to be subject to the terms and conditions of and law applicable to each individual authorization.
3. Amendment or Modification. This Agreement may be amended with the written agreement of the BLM and CDFW.
4. Applicability of State and Federal Law. Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to be nor shall it be interpreted to be inconsistent with any applicable Federal or state law or regulation.
5. Funding. This Agreement does not obligate any funds from either Agency. Subject to the availability of funds, the BLM and CDFW each agrees to fund its own expenses associated with this Agreement. Nothing contained in this Agreement shall be construed as obligating any Federal agency to any expenditure or obligation of funds in excess or advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. §1341.
6. Elected Officials Not to Benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.
7. FACA. The BLM and CDFW will comply with the Federal Advisory Committee Act to the extent it applies.

U.S. BUREAU OF LAND MANAGEMENT




Signature



Title



Date

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE



Signature


Title



Date