

This joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) evaluates the impacts associated with implementing the joint Habitat Conservation Plan/Natural Community Conservation Plan and its associated Endangered Species Act (ESA) incidental take permits (ITP), for western Butte County, known as the Butte Regional Conservation Plan (BRCP or Plan). This EIS/EIR was prepared pursuant to the National Environmental Policy Act (NEPA) (42 United States Code [USC] 4321; 40 Code of Federal Regulations [CFR] 1500.1); the President's Council on Environmental Quality (CEQ) guidelines on implementing NEPA; the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] Sections 21000–21178.1); and the State CEQA Guidelines.

1.1 BRCP Overview

The following local and state agencies are jointly applying for endangered species permits from state and federal wildlife agencies.

- The County of Butte (County)
- The Cities of Oroville, Chico, Biggs, and Gridley
- The Butte County Association of Governments¹ (BCAG)
- Western Canal Water District
- Biggs–West Gridley Water District.
- Butte Water District
- Richvale Irrigation District
- California Department of Transportation District 3 (Caltrans District 3)

These entities are collectively referred to as the Permit Applicants. Together, they are applying for ITPs from the U.S. Fish and Wildlife Service (USFWS) and NOAA's National Marine Fisheries Service (NMFS), pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act (ESA) of 1973, as amended; and from the California Department of Fish and Wildlife (CDFW), pursuant to Section 2835 of the California Fish and Game Code. The ITPs would authorize take of certain state- and federally listed species (i.e., covered species) during the course of otherwise lawful activities (i.e., covered activities), as described in Chapter 2, *Proposed Action and Alternatives*.

As a required component of the application for these permits, the Permit Applicants have prepared the BRCP, which serves as a habitat conservation plan (HCP) under ESA and a natural community conservation plan (NCCP) under the California Natural Community Conservation Planning Act (NCCPA). The BRCP is intended to support the issuance of ITPs with a term of 50 years from USFWS,

¹ BCAG is a joint powers authority formed pursuant to the Joint Exercise of Powers Act, Government Code Sections 6500 et seq. BCAG would be the BRCP Implementing Entity and would be the agency responsible for implementing the BRCP.

NMFS, and CDFW, and to develop a long-term conservation plan to protect and contribute to the recovery of covered species and natural communities in the BRCP Plan Area, which is the same as the Permit Area, while allowing for development and maintenance activities that are compatible with local policies and regulations. The BRCP identifies where future impacts on protected species will likely occur and lays out a strategy for avoidance, minimization, and mitigation of the impacts on natural resources that will result from these activities.

This EIS/EIR evaluates the potential impacts of ITP issuance by USFWS, NMFS, and CDFW; approval and execution of the Implementing Agreement (IA) for the BRCP; and implementation of the BRCP by the Permit Applicants (see Chapter 2, *Proposed Action and Alternatives*, for a detailed description of the proposed action). It also evaluates the impacts of other alternatives, including the No Action Alternative. The purpose of the EIR component of this joint EIS/EIR is to inform member agency decision makers and the public regarding the anticipated significant environmental impacts of the proposed action, potential measures to mitigate these significant impacts, and reasonable alternatives that could reduce the significant environmental impacts of the proposed action to a less-than-significant level. The EIR will be used by the Permit Applicants approving the BRCP to comply with CEQA. The EIR will also be used by CDFW to comply with CEQA in issuing to the Permit Applicants the state NCCPA permit. The purpose of the EIS component of this joint EIS/EIR is to inform the two federal agencies and the public of the effects on the human environment of their issuance of the ITPs to these local and state entities and the implementation of the BRCP. USFWS and NMFS will use the EIS to comply with NEPA for their issuance of ITPs to the Permit Applicants. See Section 1.3, *Purpose and Need*, for more details on the purpose of this document under both NEPA and CEQA.

1.1.1 Background

In 2007, the BRCP Planning Agreement (Planning Agreement) was entered into by the County; the Cities of Oroville, Chico, Biggs, and Gridley; and CDFW, USFWS, NMFS, and BCAG. That document established the initial planning scope and goals and the planning and preparation process for the BRCP. In 2010, the Western Canal Water District, Biggs West Gridley Water District, Butte Water District, Richvale Irrigation District, and Caltrans District 3 signed the Planning Agreement. BCAG was designated as the lead to coordinate the process and preparation of the BRCP.

An organizational structure that allowed for input from stakeholders and the general public was created to develop the BRCP. This organizational structure consisted of a Steering Committee composed of the Permit Applicants and a Stakeholder Committee composed of parties with a broad range of interests in the BRCP Plan Area (Figure 1-1). These interests include biological resources, agriculture, land use and development, education, transportation, resource management, and water delivery. USFWS, NMFS, and CDFW provided input throughout the development of the BRCP and participated in Steering Committee and Stakeholder Committee meetings as well as in separate meetings with BCAG and the consultant team that helped draft the Plan. Public involvement was encouraged through open Stakeholder Committee meetings, public workshops, newsletters, and a regularly updated website.

The Plan was developed in coordination with the development of the County and Cities' general plans in the Plan Area, allowing for feedback between the BRCP and general plan processes. This feedback process identified opportunities and constraints and allowed for improvements in the general plans regarding the avoidance and minimization of impacts on biological resources and the development of open space and conservation elements that dovetail with the BRCP.

1.1.2 Plan Area Boundary

The BRCP Plan Area was developed with a focus on the areas where growth and development may greatly affect state- and federally protected species. For the purposes of this EIS/EIR, the Plan Area boundary encompasses 564,219 acres in western Butte County and is the same as the Permit Area (Figure 1-1). This area consists of the western lowlands and foothills of Butte County and is bounded on the west by Tehama, Glenn, and Colusa Counties; on the south by Sutter and Yuba Counties; and on the north by Tehama County. On the east, the Plan Area is defined by the upper extent of landscape dominated by oak woodland natural communities. The elevation below which land cover types dominated by oak trees comprise more than one-half of the land cover present (referred to hereafter as the oak zone) plus a small portion of the City of Chico that extends above the oak zone, marks the woodland boundary. The upper elevational range of the oak zone within the Plan Area varies from about 800 to 1,500 feet above mean sea level. Typically, oak tree-dominated land cover types transition to either chaparral or conifer-dominated land cover types at elevations higher than the Plan Area.

Although the Plan Area includes portions of the Sacramento River within Butte County, the BRCP does not address activities that could affect listed fish species in the Sacramento River; such activities are addressed under other regional conservation planning efforts for the Sacramento River (e.g., the Anadromous Fish Restoration Program). The portion of Sacramento River floodplain within Butte County is included in the BRCP for implementing conservation measures for covered species and natural communities. There are 11 watersheds in the Plan Area: Red Bluff, Butte Basin, Upper Dry Creek, Below Oroville Reservoir, Sutter Bypass, Lower Feather River, South Honcut Creek, Upper Big Chico Creek, Upper Little Chico Creek, Upper Butte Creek, and Bloomer Hill.

1.2 Overview of NEPA and CEQA

1.2.1 NEPA

NEPA provides an interdisciplinary framework with action-forcing procedures requiring federal agency decision makers to take environmental factors into account for their proposed action and a range of alternatives. NEPA applies to all federal agencies and to most of the activities they manage, regulate, or fund that affect the human environment. NEPA requires all agencies to consider and to publicly disclose the environmental implications of their proposed actions through the preparation of appropriate documents. CEQ has adopted regulations and other guidance providing detailed procedures that federal agencies must follow to implement NEPA.

NEPA requires that every federal agency prepare an EIS for proposed legislation or other major federal actions “significantly affecting the quality of the human environment” (42 USC 4332; 40 CFR 1501). In this case, an EIS must be prepared because USFWS, as the federal lead agency under NEPA, has determined that the issuance of ITPs to the Permit Applicants under Section 10 of ESA constitutes a major federal action likely to result in a significant impact on the human environment and, thus, warranted the preparation of an EIS.

As described in CEQ’s NEPA regulations (40 CFR Section 1501.6), federal agencies other than the NEPA lead agency that have jurisdiction by law or special expertise with respect to the action’s anticipated environmental effects can be included as cooperating agencies. Other federal agencies

may use the lead agency's NEPA document to support their own decision-making processes, if appropriate. A *cooperating agency* participates in the NEPA process and may provide input and expertise during preparation of the NEPA document. Federal agencies may designate and encourage nonfederal public agencies, such as state, local, and tribal entities, to participate in the NEPA process as cooperating agencies (40 CFR 1508.5). Accordingly, NMFS, the U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (EPA) are cooperating agencies under NEPA because of their jurisdiction by law, their special expertise in aquatic resources and endangered species, and their involvement in the BRCP. Consequently, this EIS/EIR may be used by NMFS and USACE to satisfy those agencies' NEPA requirements. See Section 1.5, *Uses of this EIS/EIR*, for more details on how each agency will use this document.

1.2.2 CEQA

CEQA requires state and local agencies to estimate and evaluate the environmental implications of their actions and aims to prevent significant environmental impacts of those actions by requiring agencies, when feasible, to avoid significant environmental impacts or reduce them through the adoption of feasible mitigation measures. Like NEPA, CEQA requires all agencies to consider and publicly disclose the environmental implications of their proposed actions through the preparation of appropriate documents. The State CEQA Guidelines are the primary source of rules and interpretation of CEQA.

CEQA requires that the state or local lead agency prepare an EIR when the lead agency determines that a project may have a significant impact on the environment. CEQA applies to all discretionary activities proposed to be carried out or approved by California public agencies. BCAG is the CEQA lead agency, and it has determined that an EIR must be prepared for the proposed action because the BRCP may result in a significant impact on the environment. This EIR has been prepared to facilitate CEQA compliance for all of the Permit Applicants. Each Permit Applicant must adopt the final EIR to provide that compliance.

In addition to lead agencies, responsible and trustee agencies have roles in the environmental review process. A *responsible agency* under CEQA is a state or local public agency other than the CEQA lead agency that has discretionary approval over the project. A *CEQA trustee agency* is a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of California.

CDFW is a responsible agency under CEQA because it will approve the NCCP portion of the BRCP and issue a take permit for the covered species under Section 2835 of the California Fish and Game Code. CDFW is a trustee agency under CEQA because it has jurisdiction by law over the natural resources that are the subject of the BRCP.

All agencies having responsibility for implementing or approving the BRCP, including the Permit Applicants, are considered responsible agencies under CEQA (Section 1.5, *Uses of this EIS/EIR*). All of the Permit Applicants, other than BCAG, are CEQA responsible agencies responsible for approving and implementing the BRCP: the County; the Cities of Oroville, Chico, Biggs, and Gridley; Caltrans District 3; Western Canal Water District; Biggs West Gridley Water District; Butte Water District; and the Richvale Irrigation District.

All Lead and Responsible Agencies have independently reviewed and directed the preparation of this document.

1.2.3 Joint Documentation

CEQ regulations (40 CFR 1506.2), Department of Interior (DOI)² procedures (516 DM 4.18), and the National Oceanic and Atmospheric Administration (NOAA)³ recommend federal agencies to reduce duplication between NEPA requirements, and state and local environmental requirements, by preparing joint documents when possible. Similarly, CEQA and the State CEQA Guidelines strongly encourage state and local agencies to prepare a combined EIS/EIR that satisfies both NEPA and CEQA (PRC § 21083.6, State CEQA Guidelines § 15222).

Although there are many requirements of CEQA and NEPA that are similar or the same, there are some important terminology differences between the two laws. For example, NEPA refers to the activity evaluated in an EIS as a proposed *action* by a federal entity, whereas CEQA refers to the activity as a proposed *project* undertaken, supported, or permitted by a public agency. For purposes of this EIS/EIR, the proposed action comprises the following components.

- Issuance of ITPs by USFWS, NMFS, and CDFW for the covered species associated with covered activities described in the BRCP.
- Approval and execution of the IA for the BRCP.
- All federal, state, and local agency actions or approvals that would be issued or undertaken under the BRCP.
- Implementation of the BRCP by the Permit Applicants.

See Chapter 2, *Proposed Action and Alternatives*, for a detailed description of the proposed action.

1.3 Purpose and Need

NEPA requires that an EIS briefly describe the underlying purpose and need for the Agency's proposed and alternative actions (40 CFR 1502.13). Similarly, the State CEQA Guidelines require that an EIR contain a "statement of objectives sought by the proposed project;" this statement should include the "underlying purpose of the project" (State CEQA Guidelines 15124[b]).

1.3.1 Underlying Need

The need for the proposed action is based on the potential that the Permit Applicants' proposed covered activities that would be conducted, approved, or otherwise under their jurisdiction within the BRCP Plan Area could result in the take of covered species, thereby necessitating ITPs from USFWS, NMFS, and CDFW. Therefore, the Permit Applicants have applied for ITPs pursuant to Section 10(a)(1)(B) of ESA.

² USFWS is a federal government agency within the U.S. Department of the Interior.

³ NMFS is a federal government agency within the NOAA and the U.S. Department of Commerce.

1.3.2 Purpose and Need Statement

The purposes of the proposed action for USFWS and NMFS are listed below.

- In response to the Permit Applicants' application, USFWS and NMFS are proposing to issue ITPs for species currently listed under ESA as well as species that are not currently listed but may become listed during the permit term.
- To comprehensively protect and conserve covered species and to conserve, enhance, and restore the habitat and ecosystems upon which these species depend to ensure their long-term survival in the Plan Area.
- Assemble and maintain a reserve system within the Plan Area that focuses on preservation and enhancement actions that provide for the protection of species, natural communities, and ecosystems on a landscape level.

1.3.3 Statement of Objectives

The objectives of the proposed action for the Permit Applicants are listed below, based on the Planning Agreement for the BRCP.

- Provide for long-term conservation and management of covered species within the BRCP Plan Area at a regional scale while allowing for compatible future land uses and development under the general plans of the cities and County within the BRCP Plan Area and the Regional Transportation Plan (RTP).
- Provide for a streamlined permitting process that integrates habitat conservation with long-term general plan implementation to balance the need for growth with species protection and to make more predictable and certain that future development will comply with endangered species regulations.
- Provide a means to implement covered activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including ESA, the California Endangered Species Act (CESA) (through the NCCPA), NEPA, CEQA, and the Clean Water Act (CWA).
- Provide a basis for permits and authorizations necessary to lawfully take certain native species of plants, fish, and wildlife, including species that are listed as threatened or endangered pursuant to the terms of ESA and CESA.
- Provide for issuance of take permits for other species that are not currently listed but that may become listed in the future.
- Coordinate and standardize mitigation and compensation requirements of ESA, CESA (through the NCCPA), NEPA, CEQA, CWA, and other applicable laws and regulations related to biological and natural resources within the Plan Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses, and regulatory duplication.
- Support issuance of a Master Streambed Alteration Agreement (MSAA) from CDFW under Section 1602 of the California Fish and Game Code, a programmatic wetlands permit (e.g., Programmatic General Permit) from USACE under CWA Section 404, and a regional water quality certification by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) under CWA Section 401. The BRCP has been prepared to comply with these regulations and facilitate separate applications for programmatic permits from these agencies.

1.4 Public and Agency Involvement

Public participation is an essential part of the NEPA and CEQA processes. The NCCPA and federal regulations also require public participation and outreach. This section describes the public and agency involvement activities for the BRCP, including the EIS/EIR scoping process (pursuant to NEPA and CEQA), agency coordination activities, BRCP Steering and Stakeholder Committee meetings, and other public outreach activities that have occurred since the initial stages of the BRCP planning process.

1.4.1 EIS/EIR Scoping Process

The public scoping process began on December 14, 2012, with the publication of a Notice of Intent (NOI) in the Federal Register (pursuant to NEPA) and submittal of a Notice of Preparation (NOP) to the State Clearinghouse (pursuant to CEQA). The NOI and NOP notified the public and agencies of the BRCP, the intent to prepare an EIS/EIR, and the public meetings held on January 9, 2013. The NOI and NOP also informed the public that written comments on the NOI and NOP should be received by January 28 and January 30, 2013, respectively. The NOI and NOP are included in Appendix A.

Legal notices of the NOP were run in the *Gridley Herald*, *Chico Enterprise-Record*, and *Oroville Mercury-Register* on Friday, December 14, 2012. The NOI/NOP and information about scoping meetings were sent by mail to BCAG's BRCP distribution list, posted on the BRCP website (www.buttehcp.com), and sent by email to USFWS' media contacts and BCAG's email distribution list. Publication of the NOI in the Federal Register constitutes public notice of that document. Additionally, USFWS posted a media release on its website.

Public Scoping Meetings

USFWS, as the NEPA lead agency, and BCAG, as the CEQA lead agency, held two joint public scoping meetings on January 9, 2013.

- Oroville City Council Chambers, 1735 Montgomery Street Oroville, CA 95965, from 2:00 p.m. to 4:00 p.m.
- BCAG Conference Room 2580 Sierra Sunrise Terrace, Suite 100 Chico, CA 95928, from 6:00 p.m. to 8:00 p.m.

A total of nine people signed in as meeting participants (three in Oroville and six in Chico). Both meetings consisted of a brief presentation by USFWS, BCAG, CDFW, and USACE, followed by an open house-style forum in which participants were encouraged to walk around to various stations to view presentation boards about the BRCP and the environmental review process. Scoping comments received during the public scoping meetings are summarized in Appendix A.

Significant Issues Identified in Scoping Comments

Two comments, summarized below, were received from stakeholders regarding the EIS/EIRs during the scoping period.

- Nitrogen deposition in the Plan Area could contribute to growth of invasive plant species.

- Compliance with CEQA should be ensured in terms of adherence to laws related to historic resources and notification of appropriate tribal governments.

The State of California Office of Planning and Research sent a courtesy letter to reviewing agencies to encourage them to submit comments on the scope and content of the NOP in a timely manner.

1.4.2 Agency Coordination

Technical Agency Meetings

Regular technical agency meetings were held with USFWS, NMFS, USACE, CDFW, and EPA to discuss specific agency concerns related to administrative draft sections of the BRCP. These agencies provided technical input on the baseline data, covered species lists, covered species accounts, existing ecological conditions report, covered activities, impact analysis, and conservation strategy.

Collaboration and Consultation with Tribes

Outreach to tribal governments began with coordinating the formation of the Stakeholder Committee in 2007. Each tribal government in the Plan Area was invited to attend and participate. The Mooretown Rancheria tribe had a representative attend the first few Stakeholder Committee meetings in 2007. Several tribal government representatives receive updates on the BRCP via the “interested parties” email distribution list and through mailing list newsletters.

USFWS identified potentially interested parties as defined in 36 CFR 800 and in 33 CFR 325 by contacting the Native American Heritage Commission (NAHC) to request a Sacred Land search and list of tribal groups or individuals with local information or an interest in the BRCP. The NAHC was contacted on September 5, 2013.

1.4.3 Committee Meetings

An organizational structure was created to develop the BRCP efficiently and with substantial opportunity for input from stakeholders and the general public. BCAG led coordination of the process and preparation of the BRCP, while the federal and state permitting agencies—USFWS, NMFS, and CDFW—participated in Steering Committee and Stakeholder Committee meetings as well as separate meetings with BCAG, the BRCP consultant, and the environmental consultant.

Steering Committee

A Steering Committee was established in 2007 to provide administrative oversight in the development of the BRCP. The members of the BRCP Steering Committee are listed below.

- Butte County, Board of Supervisors (various districts)
- City of Chico, Mayor
- City of Oroville, Mayor or City Council Member
- Caltrans District 3, Director
- Western Canal Water District, District Manager

USFWS, NMFS, and CDFW staff members also attend these meetings. Steering Committee meetings are scheduled on an as-needed basis and are open to the public.

Stakeholder Committee

The BRCP Stakeholder Committee was formed in 2007 and is composed of a group of interested stakeholders with a broad range of interests in the BRCP and Plan Area. The committee is responsible for reviewing draft sections of the BRCP and providing recommendations for BRCP development to BCAG and the Steering Committee. The member organizations of the Stakeholder Committee are listed below.

- Chico Building Industry Association
- Butte County Farm Bureau
- Ducks Unlimited
- Butte Environmental Council
- Altacal Audubon Society
- Sierra Club
- CSU Chico
- Butte County Agricultural Commission
- The Nature Conservancy
- California Native Plant Society (CNPS)
- Butte County Resource Conservation District
- Caltrans
- Western Canal Water District
- Biggs–West Gridley Water District
- Butte Water District
- Richvale Irrigation District

USFWS, NMFS, CDFW, and USACE staff members also attend these meetings. The Stakeholder Committee generally meets on a monthly basis at the BCAG Conference Room, and its meetings are open to the public.

1.4.4 BRCP Public Outreach

In addition to the public involvement opportunities associated with the Steering and Stakeholder Committee meetings, other public outreach and involvement has taken place since the initial stages of the BRCP planning process. Public workshops were held on September 5, 2007, in Chico and on September 12, 2007, in Oroville, in part to educate and involve the public in the BRCP development process and answer questions from the community. Workshops were held again on January 15, 2013, in Oroville and Gridley and on January 16, 2013, in Chico to solicit additional public input and further educate the public on the BRCP.

Newsletters

BRCP newsletters have been published on a regular basis to keep interested parties updated with the latest information on development of the BRCP. To date, nine newsletter editions have been

released: Summer/Fall 2007, Winter 2008, Summer 2008, Spring 2009, Fall 2009, Spring 2010, Winter 2011, Winter 2012, and Winter 2013.

Project Website

A project website (www.buttehcp.com) was established for the BRCP in 2007. BCAG staff manages the website and updates the contents on a regular basis. The website provides updated information on the BRCP process and status, including public meetings, and serves as a clearinghouse for BRCP planning and environmental documents. Public comments can be submitted through the “Contact Us” page. This EIS/EIR is also available on the website.

1.5 Uses of this EIS/EIR

Implementation of the BRCP will require permits and approvals from the Lead Agencies as well as public agencies other than the Lead Agencies. This section describes the uses of this EIS/EIR by the Lead Agencies as well as the Cooperating and Responsible Agencies. Table 1-1 summarizes the permits and approvals associated with implementation of the BRCP.

Table 1-1. Summary of Federal and State Permits and Approvals for the BRCP

Agency	Legal Authority	Permit or Approval
Federal		
U.S. Fish and Wildlife Service	Federal Endangered Species Act, Section 7	Biological Opinion
	Federal Endangered Species Act, Section 10(a)(1)(B)	Incidental Take Permit; Implementing Agreement
National Marine Fisheries Service	Federal Endangered Species Act, Section 7	Biological Opinion
	Federal Endangered Species Act, Section 10(a)(1)(B)	Incidental Take Permit; Implementing Agreement
U.S. Army Corps of Engineers	Clean Water Act, Section 404	Evaluation of permit application(s) for the discharge of dredged and/or fill material into waters of the United States under Section 404 of the Clean Water Act.
State		
Department of Fish and Wildlife	California Fish and Game Code, Section 2835	Incidental Take Permit; Implementing Agreement
	California Fish and Game Code, Section 1602	Master Streambed Alteration Agreement
Central Valley Regional Water Quality Control Board	Clean Water Act, Section 401; Section 10 of the Rivers and Harbors Act	Regional Water Quality Certification

1.5.1 U.S. Fish and Wildlife

USFWS must decide whether to issue an ESA Section 10(a)(1)(B) permit (ITP) for the species under its jurisdiction that are covered under the BRCP (all nonmarine and nonanadromous species). They must also select a preferred alternative. ESA Section 10(a)(2)(B) requires that specific issuance criteria be met before USFWS may issue ITPs. The Permit Applicants have proposed a permit term of 50 years. If they decide to issue the ITP, USFWS would also sign the IA.

Permit Issuance Criteria

The issuance criteria for an ITP are contained in ESA Section 10(a)(2)(B) and the implementing regulations for ESA (50 CFR 17.22[b][2][i]). These issuance criteria are listed below.

1. All taking of federally listed fish and wildlife species must be incidental to otherwise lawful activities.
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
3. The applicant will ensure that adequate funding for the HCP and procedures to deal with changed circumstances, including adequate funding to address such changes, will be provided.
4. The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
5. The applicant will ensure that other measures that USFWS may require will be provided.

An applicant must prepare and submit to USFWS for approval an HCP containing the mandatory elements of Section 10(a)(2)(A) before an ITP can be issued. Accordingly, the HCP must specify the following information.

1. The impact that will likely result from the taking.
2. What steps the applicant will take to monitor, minimize, and mitigate such impacts; the funding available to implement such steps; and the procedures to be used to deal with unforeseen circumstances.
3. What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be used.
4. Such other measures that USFWS may require as being necessary or appropriate for the purposes of the plan.

The determination as to whether the criteria have been met will be described in USFWS's decision package: a Biological Opinion (BO) pursuant to Section 7 of ESA; a Findings and Recommendations for the issuance of a Section 10(a)(1)(B) permit; and a NEPA decision document (in this case, a Record of Decision [ROD]). These decision documents are produced at the end of the process and will contain the rationale behind USFWS's decision to either approve or deny a Section 10(a)(1)(B) permit application. USFWS may decide to issue the ITPs, which will contain standard terms and conditions and may also contain additional terms and conditions as deemed appropriate by USFWS. Alternatively, USFWS may deny the ITPs.⁴

⁴ Permit denial regulations are codified in 50 CFR 13.21(b).

ESA Section 7

Issuance of an ITP is also a federal action subject to Section 7 of ESA. Section 7(a)(2) requires all federal agencies, in consultation with USFWS, to ensure that any action “authorized, funded, or carried out” by any such agency “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat. Because issuance of a Section 10 permit involves a federal authorization, it is subject to this provision. In this case, because it is issuing the authorization, USFWS will conduct an internal consultation. Although the provisions of Section 7 and Section 10 are similar, Section 7 and its regulations require an analysis of the HCP’s direct and indirect effects, a jeopardy analysis for federally listed plants, and effects on critical habitat. The results of this internal consultation will be documented in a BO, which will be produced at the end of the process.

NEPA

Issuance of an ITP is a federal action subject to NEPA. An EIS is required when the project or activity that would take place under the HCP is a major federal action that would significantly affect the quality of the human environment, though an agency may produce an EIS at its discretion even when the action is not likely to result in significant effects. As the federal lead agency under NEPA, USFWS has determined that issuance of ITPs for the BRCP is a major federal action likely to result in a significant impact on the environment, and preparation of an EIS is warranted. The EIS will culminate in a ROD, which will document USFWS’s final decision.

1.5.2 National Marine Fisheries Service

NMFS shares responsibility with USFWS for implementing ESA and oversees marine and anadromous species. Like USFWS, NMFS must also decide whether to issue ESA ITPs for the federally listed species covered under the BRCP. NMFS would also be responsible for executing the IA. The same issuance criteria (pursuant to Section 10[a][2][B] of ESA) must be met before NMFS may issue ITPs.

As part of its decision package, NMFS will need to issue a separate BO. As discussed in this chapter, NMFS is a Cooperating Agency under NEPA (see Section 1.2.1, *NEPA*, in this chapter). Accordingly, a ROD will likely be issued by NMFS at the end of the process.

1.5.3 California Department of Fish and Wildlife

CDFW must decide whether to approve the NCCP and issue an ITP for the state-listed species covered in the BRCP, pursuant to Section 2835 of the California Fish and Game Code. The determination as to whether the criteria for approval of the NCCP and issuance of ITPs have been met is described in CDFW’s ITP decision and CEQA findings. CDFW would also be jointly responsible for executing the IA.

NCCPA

In accordance with the NCCPA (California Fish and Game Code, § 2800 et seq.), CDFW will approve the NCCP for implementation after making the following findings, based on substantial evidence in the record.

1. The BRCP has been developed consistent with the process identified in the Planning Agreement entered into pursuant to California Fish and Game Code Section 2810.
2. The BRCP integrates adaptive management strategies that are periodically evaluated and modified on the basis of information from the monitoring program and other sources. These strategies will assist in providing for the conservation of covered species and ecosystems within the Plan Area.
3. The BRCP provides for the protection of habitat, natural communities, and species diversity on a landscape or ecosystem level through the creation and long-term management of habitat reserves or other measures that provide equivalent conservation of covered species appropriate for terrestrial, aquatic, and marine habitats within the Plan Area.
4. The development of reserve systems and conservation measures in the Plan Area provides, as needed for the conservation of species, all the following functions.
 - a. Conserving, restoring, and managing representative natural and seminatural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem functions, and biological diversity.
 - b. Establishing one or more reserves or other measures that provide equivalent conservation of covered species within the Plan Area, and linkages between the reserves and adjacent habitat areas outside the Plan Area.
 - c. Protecting and maintaining habitat areas that are large enough to support sustainable populations of covered species.
 - d. Incorporating a range of environmental gradients (e.g., slope, elevation, aspect, coastal or inland characteristics) and high habitat diversity to provide for shifting species distributions due to changed circumstances.
 - e. Sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the Plan Area.
5. The BRCP identifies activities, and any restrictions on those activities, allowed within reserve areas that are compatible with the conservation of species, habitats, natural communities, and their associated ecological functions.
6. The BRCP contains specific conservation measures that meet the biological needs of covered species and are based on the best available scientific information regarding the status of covered species and the impacts of permitted activities on those species.
7. The BRCP contains a monitoring program.
8. The BRCP contains an adaptive management program.
9. The BRCP establishes the estimated timeframe and process by which the reserves or other conservation measures are to be implemented, the obligations of landowners and plan signatories, and the consequences of the failure to acquire lands in a timely manner.
10. The BRCP contains provisions that ensure adequate funding to carry out the conservation actions identified in the plan.

Section 2835 of the NCCPA allows CDFW to authorize take in an NCCP for any identified species for which conservation and management is provided in the plan, whether or not the species is listed as threatened or endangered under CESA or ESA.

CDFW will also enter into a master streambed alteration agreement (MSAA) with BCAG under Section 1602 of the California Fish and Game Code that will be implemented under the local aquatic resources ordinance. The MSAA will allow BCAG to authorize activities that affect the bed and bank of streams, ponds, and lakes, in the Plan Area with the implementation of the Aquatic Resources Plan (ARP) (refer to Section 1.5.4, *U.S. Army Corps of Engineers*, for additional information about the ARP).

CEQA

NCCPs require appropriate compliance with CEQA. The CEQA document for the NCCP must include a specific mitigation, monitoring, and reporting program consistent with the requirements of PRC Section 21000 et seq. As a responsible and trustee agency under CEQA, CDFW would be required to adopt the EIR and make findings pursuant to the EIR.

1.5.4 U.S. Army Corps of Engineers

The Permit Applicants are anticipating a Regional General Permit issued by USACE to authorize BRCP covered activities BRCP that would result in the discharge of dredge and/or fill material into waters of the United States pursuant to CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899. If sufficient for its purposes, USACE intends to use this EIS/EIR to support the RGP. If issued, the proposed RGP would include conditions, including reporting requirements, impact thresholds, mitigation (avoidance, minimization, and compensation), and compliance with other related federal laws (e.g., CWA Section 401, ESA, NHPA).

During RGP development, USACE may use the information and analysis found in this EIS/EIR to develop cumulative and alternative analysis documents in support of the RGP. The overall CWA permitting strategy for BRCP approved projects will primarily include the RGP. However, Individual Permits, including Letter of Permission (LOP) may be used to cover activities under the BRCP that do not meet the RGP conditions or impact thresholds. The overall CWA permit strategy would incorporate the BRCP conservation measures and provide greater protection to waters of the United States in the Plan Area than provided under the current CWA program (i.e., no RGP). If sufficient, USACE would utilize the BRCP and EIS information and analyses to the maximum extent possible to develop and implement the 404 permitting strategy. As a cooperating agency, USACE would consider the EIS to be a programmatic NEPA document from which it can tier to make permit decisions, including establishing the RGP and issuing Individual permits.

ARP

The Butte Regional ARP establishes a local program to conserve aquatic resources in the Plan Area through the avoidance and minimization of impacts on aquatic resources from regional growth and development. It provides for the conservation of wetlands, streams, and the waters and the watersheds that support them in the Plan Area while streamlining the USACE's CWA Section 404 and 401 permit process for covered activities. The ARP will be integrated into the BRCP. See Chapter 2, *Proposed Action and Alternatives*, for a detailed description of the ARP.

NEPA

USACE would also need to ensure compliance with the United States Environmental Protection Service's Section 404(b)(1) guidelines for any proposed RGP and standard permits that would result in the discharge of dredged and/or fill material into waters of the United States. As part of its

compliance with the Section 404(b)(1) guidelines, USACE would conduct an alternatives analysis to determine the least environmentally damaging practicable alternative (LEDPA). In addition, USACE would need to evaluate any proposed RGPs, LOPs, and standard permits to determine if they are contrary to the public interest. USACE cannot issue any permits for activities that do not meet all of the requirements of the 404(b)(1) guidelines and/or that are contrary to the public interest. Compliance with the Section 404(b)(1) guidelines and the effects on the public would be determined by USACE in its decision documents for any proposed RGPs, LOPs, or standard permits.

This EIS/EIR has been prepared in cooperation with USACE as a NEPA cooperating agency; consequently, the alternatives analysis contained in this EIS/EIR is expected to satisfy USACE's alternatives analysis obligations as set forth in the 404(b)(1) guidelines, as well as NEPA requirements.

Moreover, if sufficient, USACE may rely on and tier from the alternatives analysis in an existing EIS, such as this EIS/EIR, in reviewing subsequent individual permit applications (i.e., for activities that are not authorized in the RGP). USACE can, therefore, tier from this EIS/EIR for covered projects that fall within the BRCP's and the ARP's parameters.

1.5.5 Participating Jurisdictions

BCAG would be responsible for adopting the BRCP, certifying the EIS/EIR as the lead agency under CEQA, making Findings of Fact pursuant to CEQA, and signing the IA. Each of the Permit Applicants must decide whether to adopt the BRCP and sign the IA. Each of these entities is also a responsible agency under CEQA and would be required to adopt the EIR and make findings pursuant to the CEQA.

Local jurisdictions that adopt the BRCP, sign the IA, and adopt the EIR would be listed on the joint ESA Section 10(a)(1)(B) ITP and NCCPA Section 2835 permits. These permits will provide authorization for take of covered species resulting from covered activities within their respective jurisdictions. To implement the BRCP, the Local Agencies would rely on the land use authority provided through their general plans and zoning ordinances. Local Agencies may be required to pass a local ordinance to implement the local funding provisions of the BRCP.

1.5.6 Relationship of EIS/EIR with the BRCP

The proposed action, as described in Chapter 2, *Proposed Action and Alternatives*, is based on information contained in the BRCP, including the Plan Area boundary, goals and objectives, covered species, covered activities, and anticipated permit duration. In addition to the species identified for coverage under the BRCP, this EIS/EIR also evaluates species not proposed for coverage by the BRCP that may be affected by plan implementation, such as special-status animal and plant species that are legally protected under ESA, CESA, or other regulations, and species that are considered sufficiently rare by the scientific community to qualify for such listing.

This EIS/EIR evaluates a broad range of alternatives to the proposed action, including a no action alternative. This EIS/EIR will be used to inform agency decision makers and the public regarding the potential significant environmental effects of the proposed action, potential measures to mitigate these significant effects, and reasonable alternatives that could reduce the significant adverse environmental effects related to implementing the proposed action. See Chapter 2 for a more complete discussion of the requirements of selecting and evaluating alternatives.