

1 *Note to Reviewers: This handout presents draft reporting requirements, changed circumstances,*  
2 *and unforeseen circumstances text that will constitute a section Chapter 6, Plan Implementation,*  
3 *of the BRCP document.*

## 4 **6.1 BRCP Implementation Schedule**

5 *This section will describe the BRCP implementation schedule.*

## 6 **6.2 Compliance and Progress Reporting Requirements**

7 The BRCP Implementing Entity will regularly prepare planning documents and implementation  
8 reports to demonstrate compliance with the Plan and terms and conditions of its ESA section 10  
9 and NCCP Act permits. Preparation of these documents and reports will satisfy requirements  
10 that the USFWS/NMFS Five-Point Policy (65 FR 106, June 1, 2000) recommendation that HCP  
11 monitoring plans provide for the reporting of compliance with permit terms and conditions and  
12 NCCP Act requirements that implementation agreements include “provisions for periodic  
13 reporting to wildlife agencies and the public for purposes of information and evaluation of plan  
14 progress.” (California Fish & Game Code § 2820(b)(7)) The Implementing Entity will, over the  
15 term of the BRCP, submit various documents and reports and plans to USFWS, NMFS, and DFG  
16 that:

- 17 • Provide the necessary data and information to demonstrate that the BRCP is being  
18 properly implemented;
- 19 • Provide monitoring results and analyses demonstrating progress towards achieving the  
20 BRCP biological goals and objectives;
- 21 • Document the process and results of adaptive management (decisions, changes,  
22 corrective actions);
- 23 • Disclose issues and challenges concerning plan implementation, and identify potential  
24 modifications to the Conservation Strategy that would increase the likelihood of success;  
25 and
- 26 • Provide annual BRCP implementation plans and budgets.; and

27 Over the term of BRCP implementation, the Implementing Entity will prepare and submit to  
28 USFWS, NMFS, and DFG the following documents:

- 29 • Annual workplan and budget;
- 30 • Annual progress report; and
- 31 • Five-year comprehensive review report.

32 These documents will provide the information necessary to enable USFWS, NMFS, and DFG,

1 stakeholders, and the general public to assess on an ongoing basis the progress and performance  
2 of the BRCP toward meeting the BRCP biological goals and objectives and to make informed  
3 recommendations for implementation to the Implementing Entity.

## 4 **6.2.1 Annual Workplans and Budgets**

5 On an annual basis, the Implementing Entity will prepare a workplan and budget for the  
6 upcoming implementation year for submittal to USFWS, NMFS, and DFG by [date to come] of  
7 each year over the term of the BRCP. The workplan will identify planned actions for the  
8 implementation of conservation measures and the monitoring and adaptive management  
9 plans. The budget will identify planned expenditures and sources of funding for those  
10 expenditures. A final workplan and budget will be completed no later than one month prior to  
11 the beginning of the implementation year. A draft of the annual workplan and budget will be  
12 provided to USFWS, NMFS, DFG, and the BRCP Stakeholder Advisory Committee for review  
13 no later than one month prior to the annual due date for each final plan.

14 At a minimum, the workplan and budget will contain the following information:

- 15 • A description of the planned actions to implement conservation measures, including  
16 acquisition of conservation lands, and the entities that will carry out the actions;
- 17 • A description of the planned monitoring actions and any anticipated research studies to  
18 be undertaken, and the entities that will conduct the research;
- 19 • A budget reflecting the costs of implementing the planned actions; A summary of the  
20 projected and actual budgets for all prior implementation years; and
- 21 • A description of the sources of funding to support the budget.

## 22 **6.2.2 Annual Progress Reports**

23 At the end of each implementation year, the Implementing Entity will prepare an Annual  
24 Progress Report. These reports will provide a summary of the activities carried out during the  
25 previous implementation year. Annual progress reports will be completed within █ months of  
26 the close of each reporting year to provide sufficient time to compile data and complete analyses.

27 Each annual progress report will provide the following information.

- 28 1. Documentation of the implementation of habitat conservation measures (i.e., protection/  
29 enhancement/ creation/ restoration) in relationship to the implementation schedule  
30 described in Section 6.1, *Plan Implementation Schedule*, including:
  - 31 • A summary of the completed or in-progress habitat conservation actions, including

- 1 information related to type, extent, and location of restored enhanced, and existing  
2 protected habitats and natural communities. The report will document, on an annual  
3 and cumulative basis, the habitat conservation actions that have been carried out.
- 4 • A summary of all land management activities undertaken on BRCP conservation  
5 lands and a discussion of parcel-specific management issues encountered by the  
6 Implementing Entity.
  - 7 • Identification of habitat protection, restoration, or enhancement actions that have not  
8 been implemented in accordance the implementation schedule (i.e., behind or ahead  
9 of schedule) and an explanation for the deviation from the schedule.
2. 10 2. An assessment of nature and extent of the impacts of covered activities on natural  
11 communities and covered species, including:
- 12 • a description of each activity, the entity implementing the covered activity, and the  
13 location of habitat permanently or temporarily disturbed;
  - 14 • A cumulative summary of all impacts of BRCP covered activities on covered natural  
15 communities and covered species habitats, habitat mitigation implemented to address  
16 these impacts, and a description of how implementation of conservation measures is  
17 roughly proportional in time and extent to the impacts on covered species and their  
18 habitat; and
  - 19 • The status of the BRCP conservation lands system assembly with respect to  
20 authorized take/habitat loss, and an assessment of the progress toward all acquisition  
21 goals, including those related to land-cover types, landscape linkages, covered plant  
22 populations, and wetland protection.
- 23 3. An evaluation of the results of monitoring and research activities, including:
- 24 • A description of monitoring activities undertaken during the reporting period and a  
25 summary of monitoring results and results of data analysis.
  - 26 • A description of all BRCP directed research conducted during the reporting period, a  
27 summary of research results to date, and a description of how these results were or  
28 will be integrated into implementation.
- 29 4. A description of adaptive management activities, including:
- 30 • A description of the adaptive management decisions made during the reporting  
31 period, including how existing information was used to guide these decisions and the  
32 rationale for the action.
  - 33 • A description of the use of independent scientists or other experts in the adaptive  
34 management decision making processes.
  - 35 • A description of adopted and recommended changes to the conservation measures

- 1 based on interpretation of monitoring results and research findings.
- 2 5. A financial report describing:
- 3 • funds provided to the Implementing Entity by source;
- 4 • annual and cumulative expenditures by cost category;
- 5 • deviations in expenditures from the annual budget; and other relevant information as
- 6 appropriate.
- 7 6. A description of implemented or actions to respond to changed circumstances, including:
- 8 • A description of the changed circumstance and its effects on covered species and
- 9 natural communities.
- 10 • A description of the actions taken to address the changed circumstance and the
- 11 effectiveness of those actions, including the outcomes of actions to address changed
- 12 circumstances from earlier years.
- 13 7. A summary of any administrative changes, minor modifications, or major amendments to
- 14 the BRCP proposed or approved during the reporting period.

### 15 **6.2.3 Five-Year Comprehensive Review Report**

16 As described in Section 5.8.6, *Program Status Reviews*, the BRCP adaptive management plan

17 provides for five-year reviews of BRCP implementation to provide the Implementing Entity with

18 a methodical process to periodically evaluate its implementation procedures. The Implementing

19 Entity will prepare a report for submittal to USFWS, NMFS, DFG, and the Stakeholder Advisory

20 Committee describing findings of each review within  months following the completion of

21 each BRCP 5-year implementation period.

## 22 **6.3 Regulatory Assurances and Changed Circumstances and Unforeseen**

23 **Circumstances**

### 24 **6.3.1 Regulatory Assurances**

25 *This section will describe the regulatory assurances provided under ESA section 10 and the*

26 *NCCP Act.*

### 27 **6.3.2 Changed Circumstances**

28 Ecological conditions in the Plan Area are likely to change as a result of future events and

29 circumstances that may occur over the term of BRCP implementation. This section identifies

30 changes in circumstances that are reasonably foreseeable and that could adversely affect BRCP

31 species and natural communities, consistent with the “changed circumstances” provisions of

1 ESA regulations and in the NCCP Act. USFWS regulations define changed circumstances as  
2 “changes in circumstances affecting a species or geographic area covered by a conservation plan  
3 that can reasonably be anticipated by plan developers and the [USFWS and NMFS] and that can  
4 be planned for...” (50 C.F.R. §17.3) and the NCCP Act defines changed circumstances as  
5 “...reasonably foreseeable circumstances that could affect a covered species or geographic area  
6 covered by the plan.” (Fish and Game Code §2805(c)). To ensure successful implementation of  
7 the Conservation Strategy, the BRCP also identifies measures designed to respond to these  
8 anticipated future changes.

9 The changed circumstances provisions of the BRCP are intended to address reasonably  
10 foreseeable events, both inside and outside of the Plan Area, that may impede or prevent the  
11 BRCP from achieving its biological goals and objectives within the Plan Area. The BRCP  
12 identifies a range of potential changed circumstances, including events or conditions that may  
13 cause population-level declines in covered species, such as new invasive species, or that may  
14 substantially degrade habitat functions, such as flooding and climate change.

15 To address the potential for changed circumstances, the BRCP identifies set funding  
16 commitments for remedial measures (see Chapter 8, *Implementation Costs and Funding*  
17 *Sources*). In the event that changed circumstances occur, the Implementing Entity will  
18 implement the remedial measures identified in this section will be implemented within the levels  
19 of funding set out in the BRCP for these purposes.

20 The following describes the process for identifying the occurrence of changed circumstances, the  
21 changed circumstances that will be addressed by the BRCP, and the remedial measures that  
22 would be implemented in response to such occurrences.

### 23 ***Process to Identify Changed Circumstances***

24 The occurrence of a changed circumstance will generally become apparent to the Implementing  
25 Entity through information gained from system-wide or effectiveness monitoring, scientific  
26 study, or by notification received from another party (e.g., a reported wildfire on BRCP  
27 conservation lands). With indication that a changed circumstance has occurred, or is likely to  
28 occur, the Implementing Entity will immediately investigate and confirm the occurrence of the  
29 event. If a changed circumstance appears to have occurred, the Implementing Entity will contact  
30 USFWS, NMFS, and DFG to confirm the changed circumstance. The Implementing Entity will  
31 notify the BRCP Permittees and relevant supporting entities of the changed circumstance. [**Note**  
32 **to Reviewers:** “*supporting entities*” are those that may be identified as part of the BRCP  
33 *implementing structure.*]

34 After establishing an occurrence of a changed circumstance identified in this section, the  
35 Implementing Entity, in coordination with USFWS and DFG, will determine specific remedial  
36 actions that are consistent with the responses described below for the particular changed  
37 circumstance and develop a schedule for implementation. After implementing remedial actions,  
38 the Implementing Entity will monitor the effectiveness of the measures and report the associated  
39 results and findings.

## 1 *Changed Circumstances Addressed by the BRCP*

### 2 **1. Floods**

3

#### 4 *Nature of the Changed Circumstance*

5

6 The effects of floods on BRCP conservation lands and covered species depend on several  
7 factors, including the severity of the flood event, its duration, and the type of habitat affected.  
8 Flood events are a natural process that maintain aquatic, riparian, and wetland ecosystems and  
9 small flood events are expected have relatively minor effects on protected natural communities  
10 and covered species. Furthermore, many of the covered species are either adapted to flooding  
11 (e.g., the giant garter snake and western pond turtle), would likely not be present or nesting  
12 during winter flood events (e.g., Swainson's hawk, western burrowing owl), or are capable of  
13 fleeing flooded areas (e.g., bank swallow, tricolored blackbird). More severe flood events,  
14 however, can have deleterious consequences on protected resources, including erosion of  
15 protected habitats, deposition of sediment and debris on conservation lands that damage habitat  
16 functions for covered species, and loss of vegetation plantings in restored riparian habitats.

17

18 Flood damage to protected natural communities and habitats caused storms at or below a 50-year  
19 flood event on a given stream are considered to be a changed circumstance that are reasonably  
20 foreseeable over the term of the BRCP. Larger flood events are considered to be an unforeseen  
21 circumstance.

22

#### 23 *Planned Response*

24 Following a flood event, affected conservation lands will be inspected within 30 days of the  
25 event by the Implementing Entity to evaluate the extent of damage to the protected habitats and  
26 evaluate the need for implementing actions to rehabilitate affected habitat functions. If the  
27 habitat functions are unlikely to naturally reestablish the former conditions through natural  
28 processes at a similar or greater rate than with implementation of remedial management actions,  
29 the Implementing Entity will identify and implement management actions necessary to restore  
30 affected habitat conditions within 1 year of the flood event.

31

### 32 **2. Drought**

33

#### 34 *Nature of the Changed Circumstance*

35

36 The climate of the Plan Area is characterized by a Mediterranean climate, with cool, wet winters  
37 and warm, dry summers. El Niño and La Niña climatic events typically cause large annual  
38 fluctuations in precipitation levels (Minnich 2007, Reeve-Morghen et al. 2007). Precipitation is  
39 almost exclusively received in the form of rain, approximately 90 percent of which is received  
40 from October through April. Drought is a natural part of Mediterranean climates and drought  
41 conditions experienced over the term of the BRCP could result in the loss of restored riparian  
42 and wetland habitats and BRCP maintained agricultural habitats. Consistent with the East

1 Contra Costa HCP/NCCP, drought is defined as two or more consecutive water years with 75  
2 percent or less than mean seasonal precipitation as measured at the [ ] rain gage in the Valley  
3 Landscape Unit and as averaged between the [ ] gage and [ ] gage in the Hill and Ridge  
4 Landscape Unit.

5  
6 *[Note to Reviewers: additional information describing the expected frequency of drought conditions*  
7 *based on historical data over the term of the BRCP will be provided in the next draft of this section.]*

### 8 9 *Planned Response*

10 BRCP conservation land management plans (see Conservation Measure *CM9: Enhance and*  
11 *Manage Protected Natural Communities* in Section 5.4, *Conservation Measures*) include  
12 drought monitoring and protection measures to minimize the risk of losing restored and  
13 agricultural habitats to drought. Preventative measures include the following actions.

- 14     ▪ Monitoring Butte County rain data and gages to determine if the seasonal rainfall at the  
15     end of March and April indicate a drought (near 75% of mean seasonal precipitation).
- 16  
17     ▪ Monitoring habitat restoration sites that are beyond their establishment periods (i.e., no  
18     longer sustained by irrigation) for stress due to low soil moisture or high  
19     evapotranspiration rates.

20  
21 In the event of drought conditions, the Implementing Entity will evaluate habitat restoration sites  
22 to assess the degree of effect on habitat development and functions. Following the evaluation,  
23 the Implementing Entity will prepare a report that documents effects of drought on restoration  
24 sites and identifying management actions that will be implemented through the adaptive  
25 management process (see Section 5.8, *Adaptive Management Plan*) to alleviate the effects of  
26 drought (e.g., providing supplemental irrigation of riparian plantings). For droughts that affect  
27 the availability of water for irrigation of BRCP agricultural habitats, the Implementing Entity  
28 will purchase additional water supplies necessary to maintain crop types that support the target  
29 habitat functions of the agricultural land or acquire natural habitat areas to replace the habitat  
30 functions provided by the affected agricultural habitat.

### 31 32 **3. Water Availability**

33  
34 *[Text to come. This changed circumstance will address the potential affects of changes in the*  
35 *availability of water that supports existing covered species habitats on the ability to implement*  
36 *conservation measures for protecting and restoring those habitats.]*

### 37 38 **4. Levee Failures**

#### 39 *Nature of Changed Circumstance*

40 During the course of BRCP implementation, levee failures could occur within the Plan Area that

1 may affect benefits to covered species provided by the BRCP. To guide responses to such  
2 events, levee failures will be considered a changed circumstance under the BRCP if the failure:  
3 (a) significantly diminishes the function of BRCP restored and protected natural communities as  
4 habitat for covered species, as jointly determined by the Implementing Entity, USFWS, and DFG  
5 or (b) precludes implementation of habitat conservation measures.

## 6 *Planned Responses*

7 Following repair of the levee, the Implementing Entity will, to the extent practicable, identify  
8 and undertake actions through the adaptive management process to restore the degraded or lost  
9 BRCP habitat. To the extent feasible, the Implementing Entity will coordinate restoration efforts  
10 with the entity or entities with responsibility for repair and rehabilitation of the levee. Should a  
11 levee failure occur with no subsequent repair, the Implementing Entity will assess the new  
12 habitat conditions to determine the ability of the site to continue to achieve one or more of the  
13 BRCP biological objectives. If so, the Implementing Entity will identify and implement revised  
14 habitat enhancement and management measures for the affected lands that are conducive to  
15 supporting the revised objectives within the funding allocated for the affected unit of habitat. If,  
16 under the new conditions, the affected habitat is no longer capable of achieving BRCP biological  
17 objectives, no specific responses would be required under the BRCP.

## 18 **5. Fire**

### 19 *Nature of Changed Circumstance*

20 Fire is defined as any fire not prescribed by the Implementing Entity on conservation lands that  
21 removes a sufficient extent of vegetation such that the intended habitat functions of the protected  
22 land for covered species is substantially degraded, as jointly determined by the Implementing  
23 Entity, DFG, and USFWS.

24 Fire may substantially degrade the intended habitat functions of natural communities and  
25 covered species habitats protected and/or restored under the BRCP. The risk of fire is greatest  
26 for protected lands in the Hill and Ridge Landscape Unit, which support extensive areas of  
27 natural vegetation. Lands within the Valley Landscape Unit, however, are primarily  
28 characterized by intensively managed agriculture, which generally does not provide the  
29 conditions for uncontrolled or extensive fire events.

### 30 *Planned Response*

31 To minimize the risk of fire, the Implementing Entity will identify conservation lands with a high  
32 risk of fire (e.g., grasslands situated near roadways) and implement fire risk reduction measures  
33 on those lands, including:

- 34     ▪ establishing and maintaining fuel breaks around high risk conservation lands;
- 35     ▪ coordinating with state and local fire agencies to improve fire suppression preparedness  
36       for conservation lands; and

- 1       ▪ developing post-fire monitoring plans.

2 In the event of a fire, the Implementing Entity will assess the proportion of the protected habitat  
3 area that has burned and its likely effects on habitat use by covered species, will make an initial  
4 determination of whether or not a changed circumstance exists, and will notify USFWS and DFG  
5 of the fire event. If a changed circumstance is determined to exist, the Implementing Entity will  
6 implement the appropriate post-fire monitoring plan for a two-year period following the fire. If  
7 over the course of the monitoring period it is determined that vegetation is not recovering  
8 sufficiently in the burned area to reestablish the original functions of the affected habitat, the  
9 Implementing Entity will develop and implement through the adaptive management process a  
10 habitat restoration plan to enhance recovery of the affected habitat area. Elements of habitat  
11 restoration plans may include provisions for planting and caring for native vegetation and  
12 controlling the establishment of invasive plant species.

## 13 **6. Invasive Species and Diseases**

### 14 *Nature of Changed Circumstance*

15 A changed circumstance that involves the infestation of new or existing non-native animals,  
16 plants, or diseases affecting native wildlife, fish, and plant species will be considered to have  
17 occurred if the Implementing Entity, USFWS, and DFG jointly determine that such species or  
18 diseases are established within the Plan Area and that the presence of the species or disease will  
19 substantially diminish the benefits to covered species provided by the BRCP conservation  
20 measures. It is highly unlikely that large infestations of a new or existing non-native animal,  
21 plant, or disease within BRCP conservation lands can be addressed within the operating budget  
22 BRCP. Consequently, any infestations of new species and diseases beyond 25 percent of  
23 baseline condition within BRCP conservation lands are considered to be an unforeseen  
24 circumstance.

### 25 *Planned Response*

26  
27 As described in Section 5.7, *Monitoring Plan*, the Implementing Entity will take steps to detect,  
28 through the monitoring program and through collaboration with other responsible entities,  
29 infestations of existing or new non-native animal, plant, or diseases in the Plan Area. If an  
30 infestation of a non-native animal, plant, or disease is discovered, the Implementing Entity in  
31 coordination with USFWS, NMFS, and DFG will conduct an assessment to determine the  
32 possible threats of the species or disease to covered species and the Plan Area ecosystems. The  
33 BRCP Implementing Entity, through the adaptive management process, will identify and  
34 implement measures to reduce and/or control the adverse effects of the species or disease on the  
35 functions provided by habitat restored and protected under the Plan (e.g., control of non-native  
36 plant species in restored and protected habitats). If methods to adequately reduce and/or control  
37 adverse effects of the species or disease are not available or practicable, the Implementing Entity  
38 will identify alternative design, implementation, and management approaches to future habitat  
39 restoration actions to avoid or minimize potential adverse effects of the disease on covered  
40 species. If such modifications are not practicable, the Implementing Entity, through the adaptive

1 management process, will identify and implement alternative conservation measures that provide  
2 equivalent levels of benefit to applicable covered species.

3 If an agricultural pest or disease establishes such that crop types that are anticipated to be  
4 cultivated on BRCP conservation lands to provide habitat for covered wildlife species can no  
5 longer be grown, the Implementing Entity in coordination with USFWS and DFG through the  
6 adaptive management process will identify and provide alternative crop types that can be  
7 practicably cultivated and that are not affected by the pest or disease that provide the same or  
8 higher habitat values of the affected crop type(s). If suitable replacement crop types that provide  
9 the same or higher values are not available, the Implementing Entity will provide available crop  
10 types that can be practicably cultivated that provide the highest possible values for the target  
11 covered wildlife species.

## 12 **7. Long-Term Changes in Precipitation and Temperature**

### 13 *Nature of Changed Circumstance*

14 Long-term changes in precipitation and temperature will be considered a changed circumstance  
15 in the event that such changes in the timing and amount of rainfall and ambient air temperature  
16 in the Plan Area as a result of climate change are of a magnitude sufficient, as jointly determined  
17 by the Implementing Entity, USFWS, and DFG, to diminish the benefit to covered species  
18 provided by BRCP restored and protected natural communities.

### 19 *Planned Response*

20 Changes in precipitation and temperature patterns may affect vegetation composition and  
21 structure of BRCP protected, enhanced, and restored habitat areas. In the event of this changed  
22 circumstance, the Implementing Entity will identify and implement actions through the adaptive  
23 management plan to the extent such actions would help to moderate the ecological effects of  
24 changes in precipitation and temperature. Such adaptive management responses may include  
25 expanding the range of environmental gradients to provide for shifting species distributions and  
26 habitats. Measures beyond those contemplated by the adaptive management plan would likely  
27 be impracticable and ineffective given the magnitude and pervasiveness of such changes within  
28 Plan Area and, as such, are not provided for under the BRCP.

## 29 **8. Toxic or Hazardous Spills**

### 30 *Nature of Changed Circumstance*

31 Toxic or hazardous spills will be considered a changed circumstance if the spills of chemicals  
32 into BRCP restored and protected natural communities could significantly reduce the ecosystem  
33 and habitat functions they support as jointly determined by the Implementing Entity, USFWS,  
34 and DFG.

35

## 1 *Planned Responses*

2 The Implementing Entity will respond to toxic or hazardous spill events that occur in habitat  
3 areas that have been protected, enhanced, or restored through BRCP actions. To minimize the  
4 potential effects of a toxic or hazardous spill, the Implementing Entity will develop a toxic and  
5 hazardous spill response plan in coordination with responsible regulatory entities (e.g., local,  
6 state and federal specialized response teams) to guide its initial responses on detection of a spill  
7 event.

8 For a spill event that is caused by a BRCP action, the Implementing Entity will coordinate its  
9 response with DFG's Office for Oil Spill Prevention, the Regional Water Quality Control Board,  
10 and other state or federal regulatory entities as appropriate to the nature of the spill event to  
11 curtail the immediate spread and minimize the effects of the spill. The Implementing Entity will  
12 also identify and undertake management measures sufficient to remediate the effects of the toxic  
13 substance on covered species and affected habitats (i.e., removal or isolation of the material) and  
14 restore the ecological functions of the degraded habitat. If the affected habitat areas cannot be  
15 feasibly and effectively restored, the Implementing Entity, through the adaptive management  
16 process, will identify and implement measures to contain the ecological effects of the spill and  
17 compensate for the loss of habitat functions at other locations that provide equivalent or greater  
18 ecological benefits to the affected covered species.

19 If the spill event is not caused by a BRCP action, the Implementing Entity, will coordinate with  
20 responsible regulatory agencies and the party(ies) responsible for the spill event to identify the  
21 measures that will need to be funded and/or undertaken to adequately remediate the effects of the  
22 spill and restore the ecological functions of the affected habitat. The Implementing Entity will  
23 ensure that any such remediation and restoration actions are conducted in an appropriate manner.

## 24 **9. New Species Listings**

### 25 *Nature of the Changed Circumstance*

26 The USFWS or DFG may list additional species as threatened or endangered under the ESA or  
27 CESA (including designated CESA candidate species) that are not BRCP covered species. In the  
28 event that USFWS or DFG lists a species not covered by the BRCP, the provisions of this  
29 changed circumstance will be automatically triggered.

### 30 *Planned Response*

31 Upon a new listing of a species under State or federal endangered species laws, the  
32 Implementing Entity will undertake the following measures:

- 33 • Evaluate the potential impacts of covered activities on the newly-listed or candidate  
34 species and conduct an assessment of the presence of suitable habitat in areas of potential  
35 effect.

- 1 • Implement measures to avoid impacts to the newly listed species until such time as the  
2 BRCP has been amended to include the newly listed species as a covered species.

3 In the event that a species not covered by the BRCP becomes listed as threatened or endangered  
4 or designated as a candidate species, or is proposed or petitioned for listing, the Implementing  
5 Entity may request that USFWS and DFG add the species to the relevant take authorizations  
6 issued pursuant to the BRCP. In determining whether to seek take coverage for the species, the  
7 Implementing Entity will consider, among other things, whether the species is present in the Plan  
8 Area and if the covered activities could result in the take of the species. If such take coverage is  
9 sought, the BRCP and its authorizations will be amended. Alternatively, the Implementing  
10 Entity, on behalf of the Permittees could seek new and separate take authorizations.

### 11 **6.3.3 Unforeseen Circumstances**

12 The USFWS and NMFS define unforeseen circumstances as those changes in circumstances that  
13 affect a species or geographic area covered by an HCP that could not reasonably have been  
14 anticipated by the plan participants during the development of the conservation plan, and that  
15 result in a substantial and adverse change in the status of a covered species (50 C.F.R. §17.3; 50  
16 C.F.R. §222.102). Under ESA regulations, if unforeseen circumstances arise during the term of  
17 the BRCP, USFWS may not require the commitment of additional land or financial  
18 compensation, or additional restrictions on the use of land, water, or other natural resources other  
19 than those agreed to in the Plan, unless the BRCP permitted entities consent.

20 Within these constraints, USFWS and/or NMFS may require additional measures, but only if: (1)  
21 the USFWS and/or NMFS proves an unforeseen circumstance exists; (2) such measures are  
22 limited to modifications of the BRCP's operating conservation program for the affected species;  
23 (3) the original terms of the Plan are maintained to the maximum extent practicable; and (4) the  
24 overall cost of implementing the BRCP is not increased by the modification. USFWS and  
25 NMFS bear the burden of demonstrating that unforeseen circumstances exist. A finding of  
26 unforeseen circumstances must be clearly documented, based upon the best available scientific  
27 and commercial information and made considering certain specific factors (see 50 C.F.R.  
28 §17.22(b)(5)(iii)(C); 50 C.F.R. §222.307(g)(3)(iii)). If such a finding is made and additional  
29 measures are required, the BRCP permitted entities will work with USFWS to appropriately  
30 redirect resources to address the unforeseen circumstances.

31 Similarly, unforeseen circumstances are defined in the NCCP Act as changes affecting one or  
32 more species, habitat, natural community, or the geographic area covered by a conservation plan  
33 that could not reasonably have been anticipated at the time of plan development, and that result  
34 in a substantial adverse change in the status of one or more covered species (Fish and Game  
35 Code §2805(k)). The NCCP Act further provides that, in the event of unforeseen circumstances,  
36 DFG shall not require additional land, water, or financial compensation or additional restrictions  
37 on the use of land, water, or other natural resources without the consent of the plan participants  
38 for a period of time specified in the Implementation Agreement. However, such assurances are  
39 not applicable in those circumstances in which DFG determines that the plan is not being  
40 implemented consistent with the substantive terms of the BRCP Implementation Agreement

1 (Fish and Game Code §2820(f)(2)).

## 2 **6.3.4 Future Recovery Plans**

3 Recovery plans under the ESA describe actions necessary to recover and protect federally-listed  
4 species. Recovery plans, however, do not constitute obligations for Permittees to implement  
5 recovery plan actions. Consequently, ESA recovery plans will not affect BRCP implementation  
6 except to the extent that they provide new information that may improve BRCP implementation  
7 effectiveness. Any recovery plan addressing any covered species within the Plan Area that is  
8 developed after the approval of the BRCP will:

- 9 • Not require any additional water, land, or financial compensation to be provided by the  
10 Permittees;
- 11 • Be finalized only after the USFWS or NMFS has conferred with and requested input  
12 from the Implementing Entity on the preparation of the recovery plan; and
- 13 • In no way diminish the take authorizations provided pursuant to the BRCP and the IA.

## 14 **6.4 Permit Duration and Renewal, Plan Amendments, Permit Suspension and 15 Revocation**

### 16 **6.4.1 Permit Duration and Extension**

17 *This section will describe the requested duration of BRCP permits and the process for requesting  
18 permit extensions.*

### 19 **6.4.2 Modifications and Amendments to the BRCP**

20 *This section will describe the process for implementing modifications (e.g., clerical corrections  
21 to documents), minor amendments, and major amendments to the BRCP.*

### 22 **6.4.3 Annual Review and Oversight**

23 The BRCP provides for regular notifications to USFWS, NMFS, and DFG regarding BRCP  
24 implementation and to facilitate annual review and oversight of Plan implementation as  
25 described in Section 6.2, *Compliance and Progress Reporting*.

### 26 **6.4.4 Permit Revocation and Suspension**

27 *This section will describe the processes for revocation and suspension of permits issued under  
28 ESA section 10 and the NCCP Act.*

29