

**MEMORANDUM OF UNDERSTANDING
BY AND AMONG
CALIFORNIA DEPARTMENT OF FISH AND GAME
CALIFORNIA COASTAL COMMISSION
AND
CALIFORNIA RESOURCES AGENCY**

This Memorandum of Understanding ("MOU") implements a policy of coordination and cooperation by and among the California Department of Fish and Game ("CDFG"), the California Coastal Commission ("CCC"), and the California Resources Agency ("the Resources Agency") to meet their common commitment to future coastal habitat conservation planning in California.

The Resources Agency oversees and coordinates the State's activities relating to the conservation, management, and enhancement of California's natural and cultural resources. Pursuant to Government Code Section 12805.1, the Secretary for Resources is required to facilitate coordination between CDFG and CCC in a manner consistent with, and in furtherance of, the goals and policies of the California Coastal Act of 1976 and the Natural Community Conservation Planning Act. CDFG is responsible for implementing and administering the Natural Community Conservation Planning Act and the California Endangered Species Act ("CESA"). CCC is responsible for implementing the California Coastal Act and the Federal Coastal Zone Management Act for California.

The purpose of this MOU is to establish a basic framework to further advance the parties' objectives by identifying shared interests and strengthening cooperative relationships between CCC and CDFG. The MOU requires substantial commitment and effort on the part of CCC and CDFG to continually identify and improve areas of collaboration and to ensure effective, timely and mutually beneficial use of financial and personnel resources.

NOW, THEREFORE, it is mutually agreed and understood as follows:

1. For purposes of the application of this MOU to geographic areas outside the coastal zone, the phrase "uses or resources of the coastal zone" shall be interpreted and applied pursuant to the language utilized by the CCC in its geographic description of USFWS Incidental Take Permits (ITPs) listed in the California Coastal Management Program (CCMP) for the exercise of its consistency jurisdiction. That language applies only with respect to: "1) federal land geographically within the coastal zone; 2) areas inland of the coastal zone that include habitat that is intended in any way to offset impacts to resources within the coastal zone; and, 3) within coastal counties or coastal watersheds, whichever extends the least distance inland, habitat areas outside the coastal zone that are contiguous or adjacent to the coastal zone boundary and that function as an integral part of an ecosystem that includes habitat within the coastal zone."
2. This MOU shall apply to: 1) Natural Community Conservation Plans/Habitat Conservation Plans (NCCP/HCPs) that include areas within the coastal zone and 2) NCCP/HCPs located inland of the coastal zone but within the CCMP's description of the

geographic areas outside the coastal zone where activities authorized by federal incidental take permits are likely to affect the coastal zone. Staff of the CCC and CDFG will work to identify and delineate on maps those habitat areas outside the coastal zone that are within coastal counties, that are contiguous or adjacent to the coastal zone boundary and that function as an integral part of an ecosystem that includes habitat within the coastal zone. Upon completion and approval of the maps, the mutually agreed upon maps for each county shall replace the above verbal description as the geographic limit of this MOU. Until these maps are completed and approved, this MOU shall apply inland of the coastal zone only to the following extent: to the inland limit of a coastal county or of a coastal watershed, whichever is less. CCC and CDFG will utilize this MOU's dispute resolution process to resolve any disagreements over the mapping of these areas.

3. As soon as practicable after learning that any person or entity is planning a new NCCP/HCP that CDFG reasonably believes may affect uses or resources of the coastal zone as defined in paragraph #1, CDFG shall notify CCC and initiate procedural coordination between the two agencies. CDFG will either provide, or ask the person or entity initiating the NCCP/HCP to provide CCC with information about the planning area boundaries and any other available preliminary information. CCC will inform CDFG, the sponsor of the NCCP/HCP, and other known interested persons of the boundary of the coastal zone and of any local coastal programs, public works plans, or other plans certified under the California Coastal Act in the area where the NCCP/HCP is being discussed.
4. If CCC determines based on the information it receives that the proposed NCCP/HCP may affect uses or resources of the coastal zone as defined in paragraph #1, CCC will assign a staff member to the proposed NCCP/HCP as a contact person. On the understanding that these processes are locally initiated, appropriate CCC staff will participate in the NCCP/HCP planning process for the purpose of providing CCC review and comment on coastal issues at the stages of NCCP/HCP development identified in this MOU. CCC will notify NCCP/HCP sponsors and the U.S. Fish & Wildlife Service ("USFWS") that CCC staff will be participating in and reviewing the NCCP/HCP to ensure consistency with coastal policies.
5. Planning agreements that are signed for NCCP/HCPs that may affect uses or resources of the coastal zone as defined in paragraph #1 will include a section discussing potential issues associated with the coastal zone.
6. If at any time during the review process CCC determines that a NCCP/HCP will not affect uses or resources of the coastal zone as defined in paragraph #1, it will notify CDFG to that effect. Unless the proposed plan or project is subsequently changed in a way that may affect uses or resources of the coastal zone as defined in paragraph #1, further consultation or coordination pursuant to this MOU will not be required. CDFG will promptly notify CCC of any such changes in the NCCP/HCP, so that CCC can determine whether it needs to become further involved in the consultation and coordination process. For a plan or project that requires a federal Endangered Species Act section 10(a) permit, after the applicant has provided an appropriate consistency certification to the CCC, and CCC staff has determined that it will not affect uses or resources of the

coastal zone as defined in paragraph #1, the CCC will issue a “no effects” letter that indicates that the plan or project is not expected to affect uses or resources of the coastal zone as defined in paragraph #1.

7. As the NCCP/HCP planning process continues, CCC staff, in cooperation with the NCCP/HCP plan sponsor, will use its best efforts to provide to the participants any applicable land use, coastal resource, and geographic information relevant to the planned NCCP/HCP. To the extent possible, CCC staff will also identify for the participants any preliminary features of their NCCP/HCP that CCC staff reasonably believes may be inconsistent with coastal policies. Information provided may include, but is not limited to: 1) applicable policies from the Coastal Act, certified LCPs, other certified plans, and for informational purposes, draft LCPs; 2) applicable maps from these certified plans including some or all of Habitat/Sensitive Resource Protection Maps, Land Use Designation and Zoning Maps, Visual Resources/Significant Viewshed Maps, Public Access and Recreation Maps, and Hazard Maps; and 3) applicable development history, including past coastal development permit applications and permits within the area under discussion.
8. Once a planning agreement is signed, CDFG and CCC staff will provide the CCC with a brief memo describing the initiation of the NCCP/HCP as well as its participants, workplans, and any other relevant information and maps. For planning purposes only, the memo may also discuss target dates and locations for any subsequent workshops, issue identification, and draft plan reviews by the CCC. CDFG and CCC staff may elect to schedule and conduct a workshop for the CCC at a CCC meeting held in the area of the proposed NCCP/HCP.
9. During the development of an NCCP/HCP, CDFG will, upon request, provide the CCC with pertinent data and analysis that documents the habitat evaluation process as it relates to coastal zone resources. Where CDFG convenes scientific panels to review geographically focused issues or species, the CCC will be notified and given an opportunity to participate in developing and suggest appropriate questions for the panel reviews with respect to coastal resource issues. CCC will work to identify questions for the panel that relate to coastal zone environmentally sensitive habitat areas as defined by §30107.5 of the Coastal Act. Work products from the scientific review panels and other biological information developed through the process that relate to coastal resources will be provided to the CCC upon request.
10. When available during the preparation of the preserve design or draft NCCP Plan, CDFG will upon request share with the CCC any Geographic Information Systems (GIS) products, including but not limited to products that illustrate habitat, species and preserve boundaries that are prepared in the course of developing the NCCP.
11. In its review of the NCCP/HCP, CDFG will work to provide the CCC with information on the factors being considered during the development of potential preserve boundary alternatives. CDFG will cooperate with CCC to help assure that any relevant land use plans and policies certified by the CCC are evaluated, and will provide an analysis to CCC staff prior to release of the draft NCCP/HCP for public review. To the extent that “soft-line” preserves would allow a specified level of potential development on preserve

parcels within the coastal zone, the draft NCCP/HCP should include, among other things, the following factors: impacts to wetlands and ESHAs; landform alterations, water quality, and visual resources. The draft NCCP/HCP should provide alternative preserve designs, biological considerations, and potential development standards (implementing measures).

12. When a proposed preserve design has been prepared and transmitted to CDFG, or when design alternatives are available on which the CCC could, in the opinion of CCC staff and CDFG staff, provide meaningful information, CCC staff will prepare and submit an initial issue identification document to the CCC. This issue identification document, together with appropriate maps of the area(s) to be covered by the NCCP/HCP, will be agendized for Commission review and action at an available local public hearing within 120 days of when CCC is provided the plan information. The issue identification document will identify the various issues involving potential impacts to uses or resources of the coastal zone as defined in paragraph #1 that may be raised by the proposed preserve design, and the potential regulatory approvals that may be necessary from CCC. CDFG will help to assure that the CCC is provided with all necessary information in order for the following specific issue areas to be discussed in this document, as applicable:
 - a) an indication of all potential coastal zone wetlands and ESHAs to the extent known within the boundaries of the NCCP/HCP;
 - b) the appropriateness of land uses proposed, if any, in relation to California Coastal Act preferred uses or previously approved uses under any applicable plans and programs certified by the Coastal Commission;
 - c) potential density and intensity of development (area build-out) for plans that include specific land use development proposals within the coastal zone;
 - d) a discussion of the other relevant Chapter 3 policies or certified LCP policies; and,
 - e) options for NCCP/HCP enforceability where uses are being contemplated within the coastal zone that may not in the absence of the NCCP/HCP be approvable pursuant to the Coastal Act, or when the NCCP/HCP provides for mitigation outside the coastal zone for adverse impacts on coastal resources in the coastal zone.
13. Upon completion and release of the public comment draft plan, CCC staff will prepare and submit a comment letter to the CCC for its concurrence. This comment letter will discuss any potential remaining issues regarding impacts to uses or resources of the coastal zone as defined in paragraph #1 that may be raised by the NCCP/HCP plan or permit, and identify the necessary potential regulatory approvals that may be necessary from CCC. CCC comments may also suggest changes that may resolve any identified inconsistencies. CCC's comments on a draft NCCP/HCP shall be submitted by the CCC no more than 120 days from release of the draft plan, unless the jurisdiction or persons preparing the NCCP/HCP provides more time for comments from public agencies. To assist in this process, CDFG will use its best efforts to provide CCC with any necessary and appropriate information to explain decisions made regarding specific issue areas identified in the issue identification document and any changes in approach to the NCCP/HCP made subsequent to the issue identification document.
14. When deciding whether to designate habitat or potential habitat as an ESHA, CCC will include in its consideration analysis and pertinent data by CDFG that is based on

conservation biology principles. Habitat designation for sensitive species will include but not be limited to the following factors: the size of the area and habitat linkages or connectivity to other habitat areas; whether the area will provide viable habitat over time; and whether preservation of the area has the potential to create a habitat “sink” that is detrimental to species.

15. Where the CCC staff believes that a consistency certification may be required for an ITP that affects uses or resources of the coastal zone as defined in paragraph #1, CCC staff shall provide notification to the Secretary and to the CDFG of its intent to require a consistency certification prior to the issuance of the ITP. The CCC staff will provide with its notification a statement of the basis for its conclusion that the issuance of the ITP will affect uses or resources of the coastal zone. If the Secretary or the CDFG disagree with that recommendation, they shall notify the CCC staff of that disagreement, and the basis for that disagreement within 15 working days of receipt of the staff notification. After receiving these comments, if the CCC staff continues to think that a consistency certification is required, it shall schedule the matter of whether a consistency certification will be required promptly for hearing at a CCC meeting. The CCC after public hearing will then decide whether a consistency certification will be required for the ITP.
16. For an HCP/NCCP that includes land outside the coastal and that affects uses or resources of the coastal zone as defined in paragraph #1, and where both an LCP amendment and a consistency certification are required and are submitted together, the CCC will process these and schedule them on the same agenda, so that all approvals can occur at one CCC meeting. For an HCP/NCCP that includes only land within the coastal zone, the CCC's effective certification of an LCP amendment that contains specific development standards and includes an HCP/NCCP shall function as a consistency concurrence for purposes of section 307 of the Coastal Zone Management Act.
17. Where policy, planning or other issues or disputes are resolved in writing during discussions among the staff of CCC, CDFG, the proponents of an individual NCCP/HCP and agencies of local or the federal government, and where these form part of the basis of a draft NCCP/HCP, these resolutions will be submitted to the Director of CDFG and to the CCC with a recommendation of approval.
18. CDFG and CCC upon mutual agreement intend to cooperate to ensure early and coordinated review of projects affecting uses or resources of the coastal zone as defined in paragraph #1 that are not NCCP/HCPs but that will require incidental take permits under both the federal Endangered Species Act and the California Endangered Species Act. A habitat conservation plan will have to be prepared for such projects as part of the federal permitting process. This MOU does not cover projects that do not require a section 10(a)(1)(B) incidental take permit under the federal Endangered Species Act.
19. Pursuant to Section 12805.1 of the Government Code, in the event of a serious disagreement between CDFG and CCC arising out of this MOU, the Secretary may schedule a mediation conference to be attended by representatives from the Resources Agency, CDFG and CCC, and any other interested agencies whose participation is deemed necessary by the parties. Notwithstanding the foregoing, the Secretary

reserves the right to issue an advisory opinion in writing to the parties.

20. This MOU shall be effective as of the date it is signed by all parties and shall remain in effect until terminated by any party in writing.
21. This MOU may be amended with the mutual consent of all parties in writing. All parties understand and agree that amendments to this MOU may be necessary due to changes in the fundamental assumptions upon which this MOU was based.
22. For the purpose of implementing this MOU, CDFG and CCC shall designate a contact person for consultation and coordination with the other party, and shall inform the Resources Agency of the designated person's name, phone number, facsimile number, and business address.
23. All parties further agree to take whatever steps they deem necessary, including additional agreements, in order to fulfill the purposes of this MOU.
24. Nothing in this MOU shall be construed in any way as limiting, expanding, delegating or affecting the existing statutory authority of CDFG or CCC.

Signed,

Mary Nichols, Secretary of Resources Date

Robert Hight, Director, Department of Fish & Game Date

Sara Wan, Chair, Coastal Commission Date

Dave Potter, Vice Chair, Coastal Commission Date

Peter Douglas, Executive Director, Coastal Commission Date